

Brisbane North Community Legal Service

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Committee Secretary
Senate Legal and Constitutional Affairs Committee

Submitted electronically

RE: SUBMISSION TO PROPOSED FAMILY LAW AMENDMENT BILL 2023

Brisbane North Community Legal Service (“BNCLS”) welcomes the opportunity to make a submission to the proposed amendments to the Family Law system as stipulated in the Family Law Amendments Bill 2023.

Background

BNCLS is a program of Northside Connect inc. Within BNCLS we have a specialist family law and DV clinic.

We draw this submission from our experience with the marginalised member of our community that seek legal advice from BNCLS and our other programs daily.

The majority of the clients we assist are self-represented clients seeking assistance to navigate a highly complex family law system. These clients are not eligible for legal aid but also can not afford a private lawyer.

It is from this space that we welcome any amendments that could potentially simplify and reduce harm to parties in the Family Law Courts.

Schedule 1 – Amendments to the framework for making parenting orders Best interest of the child factors and parental responsibility

1. We welcome the simplifying of s60CC to have no hierarchy of factors and we believe that this will promote the best interest of the child.
2. We believe by removing the presumptions of equal shared parental responsibility and equal or substantial and significant time; that this will make it easier with managing client’s expectations and remove the misinterpretation of a 50/50 care arrangement as an entitlement.
3. This will force the Courts and decision makers’ minds back to what is in the best interest of that particular child rather than having a default position.
4. Respectfully, we do consider that the best interest factor of “any views expressed by the child” could benefit from further clarification, possibly in the Explanatory Notes.
5. The factor seems too broad and could benefit from adding the Court’s consideration on the “maturity of the child” before taking all views into account:
 - a) Unintended consequences might result in cases where parental alienation is prevalent; and



- b) It is also not uncommon for parties to present with the view that their child should be able to choose with which parent they live and how much time they spend with each parent. In advising clients it is effective to then “reality check” parties to consider the level of maturity of their child in making these decisions.
6. Broadening this factor is also in line with Article 12 of the *Convention on the Rights of the Child* where it states “...the views of the child being given due weight in accordance with the age and maturity of the child.” Given the fact that the intention of redrafting the objects and principles in s60B is to reflect the child’s rights in line of the convention it seems natural to also include this in the best interest factor.

Codification of Rice and Asplund

7. BNCLS supports a proposed list of factors that may constitute to a significant change of circumstances and in addition requires the Court’s consideration whether it is in the best interest of the child to reconsider the orders.
8. Examples as follow may be helpful in the explanatory notes:-
- a) The child’s mental and/or physical health has significantly declined or changed;
 - b) There has been child neglect or abuse;
 - c) One parent is seeking to relocate with the child;
 - d) Increase safety concerns for one parent in facilitating changeover; and
 - e) The orders are no longer relevant or practical.

Schedule 4 – Independent Children’s Lawyers Requirement for ICLs to meet with a child

9. BNCLS supports the obligation for an ICL to meet with a child to consider their views; respectfully, though, for this to be practical and promote the child’s best interests, there are some additional provisions that could be considered.
10. It may be that the ICL be guided by additional child experts as to the level of maturity of the child.
11. An ICL is ordinarily appointed in matters that are highly complex and the concern may be that the proposed amendments could cloud the the ICL’s normal role, which is to be an independent legal professional promoting the best interest of the child. This creates ethical duties to the Court and may put the ICL in an impossible situation of conflicting duties.
12. As discussed above the provisions should refer to the child’s maturity in considering the child’s views.
13. It may be more appropriate to have a list of exceptions.

Schedule 5 – Case Management and Procedure Harmful proceedings orders

14. BNCLS supports the Court's discretionary powers to restrain a party from filing new applications that could potentially be harmful to a party or the child. Respectfully, BNCLS considers that this should be a balancing act to also promotes procedural fairness.
15. Ongoing coercive control through parenting is one area where applicants may have no other option than seeking assistance from the Court whether it be for a contravention or initiating an application under the Rice and Asplund rule. Some cases are not as clearly defined to fit into a category and require analytical assessment of the layers of complexity to assess whether an application is potentially vexatious.
16. We respectfully submit that these provisions should also include considering **repeated** harmful administrative applications or complaints to Centrelink and notifications to the Department of Children, Youth Justice and Multicultural Affairs.
17. Harmful proceedings orders should potentially also consider financial harm in cases of systematic abuse.

This submission was prepared by Yolandi Beer, Principal of Brisbane North Community Legal Service and authorised by the full management committee of Northside Connect.

If you have any questions regarding this submission or we can be of further assistance please feel free to contact us on [REDACTED] or [REDACTED].

Yours faithfully
NORTHSIDE CONNECT

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BRISBANE NORTH COMMUNITY LEGAL SERVICE

