

10 May 2011

Committee Secretary
Senate Legal and Constitutional Committees
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Dear Committee Secretary,

Family Law Legislation Amendment (Family Violence and Other Measures) Bill

I am writing to express my support for the changes to the Family Law Act proposed in the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011, and to recommend further changes to the Bill to ensure that the family law system ceases to jeopardise the safety and development of children and parents who are victims of violence.

History

My experience in going through the process of compulsory mediation and eventually court opened my eyes on how infants and more broadly children, are dealt with under the provisions of the Family Law Act; with time divided between two houses that do not essentially speak to one another.

We have little history together and in many ways are strangers to one another. Shared care in this circumstance is not a practice that operates well for the child, or in reality, for either parent, where there is no knowledge of what each parent does for the child or the strengths of each parent. I imagine this circumstance is becoming more common, where the two biological parents have little history together and were never a family. This situation needs to be properly considered when coming to some view of what constitutes family and how a family law act may operate in the best interests of the child where the parents are essentially strangers.

I support the changes being made to the Act. I also believe the Act needs further changes to improve outcomes for children.

Support for key changes

In summary I support:

- Broadening the definition of ‘family violence’ to include elements of coercion and control, a wider range of behaviour and removing the objective test of ‘reasonableness’ so that family violence can be properly considered whenever the victim actually fears for their safety.
- A broader definition and understanding of child abuse that includes exposure to violence.
- Prioritising family violence when considering what is in the best interests of the child.
- Removing the ‘facilitation’ aspects of the ‘friendly parent provision’.
- Repealing section 117AB about costs orders relating to false allegations or denials of violence.

Further changes that are needed

I believe that a number of further changes are necessary to better protect the safety of children and their family in the family law system.

I am concerned that the shared care sections of the Act are not to be altered to require judges (and all others involved in making arrangements for infants and children of parents who are not together) to consider only what is in the best interest of the child. The outcomes of the only research undertaken into post-separation parenting arrangements and developmental outcomes for infants and children by Jennifer McIntosh, Bruce Smyth, Margaret Kelaher, Yvonne Wills and Caroline Long demonstrates that shared care is “developmentally challenging for infants and pre-school children” (Page 10). The report also points out that “children’s needs at different developmental stages appear to remain in the margins of policy and legislation” (page 10) and not at the forefront of judicial decision-makers minds when making decisions. This report was made available by The Hon Robert McClelland MP.

Just seeing the impact of shared care on my child makes me realise that the interests of the child needs to be paramount and not a simple shared care policy of substantial time with both biological parents simply because that is what one parent wants.

I therefore recommend that:

- You consider amendments to the presumption of equal shared parental responsibility, the concept of equal shared parental responsibility, the linking of equal responsibility and significant time arrangements and in general the assumption that shared equal time approaches are the best for all children. The results of the research requested by the Attorney General McClelland demonstrate these assumptions are not correct.
- Every family should be treated as unique and each child considered against that child's development. There should be no presumption of equal shared parental responsibility and the courts should not be required to start from any particular care arrangement.
- The safety and protection of children should be prioritised above all else. Its priority should not be subject to proving an inconsistency with other considerations.
- The Act should make it clear that exposure to family violence is a form of family violence and that it applies to behaviour by the person perpetrating violence, and not the victim of the violence.
- The Act should protect the safety of the primary carer as this increases children's safety.

Conclusion

The Family Law (Family Violence) Amendment Bill 2010 needs to be modified to consider only what is in the best interests of the child and to modify the overarching policy of shared care. The shared care policy is not in the best interests of the child; it is not interpreted in the interests of the child, it is interpreted in the interests of the parents only and has been demonstrated to have negative consequences for children.

Based on my experience since the birth of my _____ and the evidence presented in research reports as referred to above, I would ask that you support the amendments suggested in this letter as well as the changes currently proposed in the Bill.

Should you wish to contact me regarding this matter I am available on the phone number on page 1 or via email. I would be more than happy to speak about my views to the committee.

Yours sincerely