

The Impact of Proposed Family Law Amendments on the Rights of Children: An Analysis of Compliance with the CRC and Research on Parental Access

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Written by Nathan Organ – Aggrieved neurodivergent father .

Abstract

This paper examines the proposed amendments to the Family Law Act in Australia, focusing on how they may violate the United Nations Convention on the Rights of the Child (CRC) and go against research supporting the importance of children having access to both parents. By analysing the proposed changes, specifically the repeal of the presumption of equal shared parental responsibility, this paper aims to highlight the potential negative consequences for children and the need for legislation that prioritises the child's rights and best interests.

Introduction

The United Nations Convention on the Rights of the Child (CRC) is an international human rights treaty that outlines the civil, political, economic, social, and cultural rights of children. Article 9 of the CRC emphasises the importance of children maintaining personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests (United Nations, 1989). Recently proposed amendments to the Family Law Act in Australia, specifically the repeal of the presumption of equal shared parental responsibility, have raised concerns about potential violations of the CRC and the implications for children's well-being.

Analysis of Proposed Amendments and Violation of the CRC

The proposed changes to the Family Law Act in Australia include repealing the presumption of equal shared parental responsibility, which may not comply with Article 9 of the CRC. By removing this presumption, the proposed amendments lack a mechanism to ensure significant time with both parents, which could lead to arrangements that do not prioritise the child's right to maintain personal relationships with both parents, as emphasized in the CRC (United Nations, 1989). Moreover, the focus on addressing the community's misconceptions about parents' entitlement to equal time, rather than prioritising the child's rights, may result in decisions that do not serve the best interests of the child. This shift in focus could negatively impact the child's emotional, psychological, and social development, as it may undermine the importance of maintaining relationships with both parents.

Research Supporting the Importance of Access to Both Parents

Numerous studies have demonstrated the benefits of children having access to both parents following separation or divorce. Research has shown that children who maintain relationships with both parents exhibit better psychological and behavioral outcomes, such as lower levels of anxiety

and depression, and better academic performance (Nielsen, 2013). In addition, children with access to both parents are more likely to have positive self-esteem and social competence (Amato & Gilbreth, 1999).

Furthermore, a meta-analysis conducted by Warshak (2014) found that children who spent at least 35% of their time with each parent in shared parenting arrangements had better outcomes in various domains, including emotional, behavioral, and academic, compared to those in sole custody arrangements. These findings suggest that shared parenting arrangements, which promote significant time with both parents, are beneficial to children's well-being and development.

From the International Conference on Shared Parenting:

<https://www.psychologytoday.com/us/blog/co-parenting-after-divorce/201706/understanding-children-s-best-interests-in-divorce>

Dr. Richard Warshak spoke about the development of his consensus paper on the ***benefits of shared parenting on infants*** and young children, ***endorsed by 110 scientists worldwide***

Dr. William Fabricius spoke on the benefits of shared parenting and increased father-child involvement on the mother-child relationship. His second paper focused on children whose mothers relocated, ***decreasing fathers' parenting time, resulting in damage to the father-child relationship. These children were shown to have more delinquency and drug and alcohol abuse, and greater incidence of depression and anxiety***

-Dr. Kari Adamsons looked at quality time for fathers versus the quantity of time they have with their kids, noting that fathers need sufficient time with their children in order to enjoy quality time

-Prof. Hildegund Sunderhauf from Germany presented a legal perspective on the European Convention on Human Rights and the United Nations Convention on the Rights of the Child, which guarantee the rights of children to relationships with both parents

[Michael Lamb](#) took on the issue of overnights for young children with their fathers. He pointed out that literally hundreds of studies demonstrate that parental separation can be hard on children or they can adjust reasonably well. **The critical factor in which result obtains is whether the child maintains healthy relationships with both parents.**

Lamb has done extensive research on [shared parenting](#) after divorce.^{[9][10][11]} He has stated that *hundreds of papers show a higher risk of maladjustment in children when parents have separated and that maintaining a relationship with both parents minimizes the risk and the bad effects of parental separation.*^[12]

Edward Kruk examined the intersection of shared parenting and parental alienation as a form of [emotional abuse](#) of children, noting how shared parenting acts as a bulwark against parental alienation.

<https://humanrights.gov.au/our-work/human-rights-brief-no-1> The principle of 'the best interests of the child' is set out in the United Nations [Convention on the Rights of the Child](#) (CRC). **The CRC was adopted in 1989 and ratified by Australia in December 1990.**

Child protection and custody - article 9.1

States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one.

Conclusion and Recommendations

The proposed amendments to the Family Law Act in Australia, specifically the repeal of the presumption of equal shared parental responsibility, may violate the CRC and go against research supporting the importance of children having access to both parents. It is essential for policymakers

to recognise and uphold the child's rights as stated in the CRC and to prioritise their best interests when considering changes to family law legislation.

To ensure compliance with the CRC and to promote the best interests of children, the following recommendations are suggested:

Reconsider the repeal of the presumption of equal shared parental responsibility and explore alternative ways to address misconceptions about parents' entitlement to equal time, while still prioritising the child's rights and best interests.

Provide education and resources for parents, legal practitioners, and the community to better understand the child's rights and the importance of making decisions based on the child's best interests.

Encourage and support research on the long-term effects of different parenting arrangements on children's well-being and development to inform future policy decisions.

By focusing on the child's rights and best interests, policymakers can work towards creating a legal framework that supports the well-being and development of children in the context of separation and divorce.

References

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