

From: [Patrick Parkinson](#)
To: [Legal and Constitutional Committee \(SEN\)](#)
Cc: [REDACTED]
Subject: QON 11 August 2023
Date: Monday, 14 August 2023 8:00:32 PM

Dear [REDACTED],

I was asked by Senator Scarr for any comments on the Women's Legal Services submission.

It is a long submission with numerous recommendations. What I would say in general terms is that 'safety' and 'best interests' are not in opposition to each other, as the submission suggests. Safety is subsumed in 'best interests'. No judge can sensibly make a decision about the best interests of a child without careful consideration of risks to the safety of the child and his or her caregivers.

Furthermore, it is hard to see the need for yet more amendments to the Act to emphasise safety. The message is already loud and clear. The current amendments build upon years of earlier amendments going back to 1995 which give the courts numerous instructions and ample powers to address issues of family violence. There is a tendency for advocacy groups to keep on demanding more and more changes to the Act as if just adding words to the Act will somehow make people safer. It won't. At the end of the day, if a case goes to trial, the judge must make the best he or she can of the evidence before the court, listening to both sides of the story. Not infrequently, both parents have engaged in family violence towards one another or the children. Cases that go to trial also involve many other issues such as alcohol or drug abuse and mental illness. These are not often simple matters and the judge must weigh up risks and benefits of various courses of action.

I was also asked if I had any comments on Richard Chisholm's response to my opening comments. Richard and I are good friends but we also come with different experiences. He has never been a family law practitioner, but he served for ten years as a judge. So he tends to see things from the perspective of someone deciding cases (about 5% of the cases filed). I look at the issues with a much wider lens – thinking about the family law system in terms of all the people who do not need a judge to decide for them, but to a greater or lesser extent get guidance from the legislation through lawyers and mediators.

The principles which I say should be retained are clearly subject to the best interests of the child, so they do not dictate a particular outcome.

Kind regards

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Many of my articles are available at <http://ssrn.com/author=97324>

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