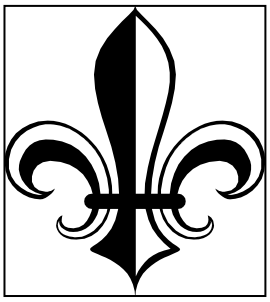

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The Committee Secretary,
Senate Legal and Constitutional Affairs Committee,
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Parliament House.
Canberra. ACT. 2600.

Dear Secretary,

The Family Law Amendment Bill 2023

We feel that if this Bill is passed by Parliament then we would have some of the most adverse Family Law legislation that would exist anywhere in the civilised world.

Some of the main issues that we have with the Family Law Amendment Bill 2023 are as follows:

1. Removal of Shared Parenting Responsibilities.

Shared parenting responsibilities are about long-term decisions involving such things as health, education and religion (even to obtaining passports). We generally have shared parental responsibilities. As a result, there is normally input by both parents.

However the removal of the presumption of shared parenting responsibilities would be effectively the outcome of the new legislation. This would happen by the repealing of existing sections 61DA and 65DAA and replacing them with the new, wishy-washy section 61CA contained in the Bill.

We believe this new section 61CA would make shared parenting responsibilities ineffective. As a result, only one parent would then decide health, education and religious issues (even about getting a passport(s) for the children).

The wording of the proposed legislation in this new section 61CA is as follows:

61CA Consultation between parents on major long-term issues.

If it is safe to do so, and subject to any court orders, the parents of a child who is not yet 18 are encouraged:

(a) to consult each other about major long-term issues in relation to the child; and

(b) in doing so, to have regard to the best interests of the child as the paramount consideration.

The use of the above keyword “encouraged” in this new section 61CA can too easily prevent the other parent from having a role in any long-term decisions in regard to their children.

It is interesting to note that Ms Zali Steggall MP (Federal Member of Parliament for Warringah) has since proposed a further amendment to this new section 61CA. Ms Steggall has put an amendment to Parliament stating that she wants the additional words “*to make a reasonable attempt*” inserted after the word “*encouraged*”.

In other words, if added, the first parent would only have to make what is believed to be a reasonable attempt. This is to further satisfy not giving the second parent a role in long-term decision making regarding their child(ren).

2. Downgrading of Shared Parenting.

The existing section 60CC states that one of the two primary considerations is the benefit to the child of having a meaningful relationship with both of the child’s parents.

This benefit to the child from being a primary consideration would be now downgraded to a minor item 2(e) in a new sub-section 60CC.

The wording of proposed sub-section 60CC2(e) is as follows:

60CC. How a court determines what is in a child’s best interests

2(e) the benefit to the child of being able to have a relationship with the child’s parents, and other people who are significant to the child, where it is safe to do so;

What is even worse is that in the proposed new clause 60CC2(e), there has been added the words "*where it is safe to do so*". Safety is always an important issue. However we suspect that shared parenting would simply become further irrelevant. This is due to any unfounded safety concerns which can now frequently occur in Family Court proceedings.

3. Contravention Orders are Full of Loopholes.

In future, we believe that should one parent fail to follow a court order, then it would be almost impossible to successfully obtain a contravention order (it is pretty hard even now to obtain a contravention order). We feel that the proposed new legislation, in Division 13A, for contravention orders is full of loopholes. As a result, any application for a contravention order would no doubt be easily dismissed.

For example, the wording of the proposed new section 70NAD is as follows:

70NAD Meaning of reasonable excuse for contravening a child-related order

Where person did not understand obligations

(1) A person has a reasonable excuse for contravening a child-related order if:

……

(b) the court considers that the person ought to be excused in respect of the contravention.

The above proposed new clauses (and in particular the last clause) are very open-ended and could be too easily used to dismiss an application for a contravention order.

and

(3) A person has a reasonable excuse for contravening a child-related order if:

(a) the person contravened the order because the person reasonably believed that the person's actions constituting the contravention were necessary to protect the health or safety of the person, a child or any other person; and

(b) the period of the contravention was not longer than necessary to protect the health or safety of the person, child or other person.

These clauses again rely on unproven perceptions (i.e. "*reasonably believed*") by the person accused of contravening a court order. This is very similar to how the current family violence legislation can use unproven perceptions for someone to obtain too easy-to-get restraining orders and subsequent benefits in other proceedings.

As a result, we believe that future applications for a contravention order would probably almost certainly become ineffective.

We are also concerned that the complainer has to reach a standard of proof that is beyond reasonable doubt (new section 70NBF), whilst the accused

only has to reach a balance of probabilities in their defence (new section 70NAE).

4. <u>Too Easy to be Made a Vexatious Litigant</u>.

Under the new proposed legislation, the vexatious litigant issue would become a much more significant item in the Family Law Act. By declaring someone to be a vexatious litigant, it could be considered that this is a good way to get rid of litigants out of the court system.

If the Bill is passed, there would then be a very wide definition for the court to use to make a litigant a vexatious litigant and to get rid of that litigant. Once made a vexatious litigant, that person cannot make a further application to court. This is without the court's approval to make an application. Normally this approval to proceed is then not given and that person is not allowed to make the main application to the court.

In the proposed section 102QAB, a litigant can still have a good case (as noted in the Bill) but still could then be declared to be a vexatious litigant. New section 102QAB states that the litigant could be declared to be declared vexatious. This is despite the fact that the main application does "*need not be*" hopeless or bound to fail.

The proposed new section 102QAB reads in part:

102QAB Summary decrees

No reasonable prospect of successfully prosecuting proceedings

……..

.

(2) The court may make a decree for one party (the first party) against another in relation to the whole or any part of a proceedings if

(a) the first party is defending the proceedings or that part of the proceedings; and

(b) the court is satisfied that the other party has no reasonable prospect of successfully prosecuting the proceedings or that part of the proceedings.

When there is no reasonable prospect of success.

(3) For the purposes of this section, a defence or proceedings or part of proceedings need not be:

(a) hopeless; or

(b) bound to fail;

to have no reasonable prospect of success.

(**note**: the key words are "*need not be*").

5. Widening of the Secrecy Laws

Section 121 "Secrecy" has always been a contentious issue in Family Court proceedings. This is particularly with respect to a perceived lack of accountability of the Family Court.

As part of this Bill, it is proposed that the existing secrecy laws would be amended. However we believe that they would still not be improved.

As part of the amendments, the existing section 121 would be replaced by a new section 114Q. Section 114Q would then expand the previous protection of the court (now under section 121) to now include the wider protection of a court, an officer of the court and a tribunal.

Effectively we would consider that change would not be an improvement as such but that it would only be a widening of the existing laws.

Regards

John Flanagan,
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