



The Divorce Tango Pty Ltd

Sydney, NSW

T: [REDACTED]

E: [REDACTED]

W: [www.thedivorcecentre.com.au](http://www.thedivorcecentre.com.au)

ABN 25 628 299 981

*Helping families impacted by Separation and Divorce*

### **Should the Family Law Act repeal 'Equal Shared Parenting Responsibility'?**



Attorney-General Mark Dreyfus has proposed a bill to make changes to the Family Law Act (1975);

The Bill will implement recommendations, in part or in full, from: the 2009 Family Law Council report *'Improving responses to family violence in the family law system: An advice on the intersection of family violence and family law issues'*; the 2017 House of Representatives Standing Committee on Social Policy and Legal Affairs report *'A better family law system to support and protect those affected by family violence'*; and the 2019 Australian Law Reform Commission report *'Family Law for the Future – An Inquiry into the Family Law System'*.

*The two key changes of concern are;*

- The Bill will repeal s61DA of the Family Law Act (FLA) due to the misconception that *'equal shared parental responsibility'* in section 61DA means that children spend equal time with each parent.
- The Bill will also repeal the associated provision, s65DAA, which requires the courts to consider, in certain circumstances, the possibility of the child spending equal time, or substantial and significant time with each parent.

According to the [Australian Institute of family studies](#) about 3% of separated parents use courts as their main pathway to making parenting arrangements (based on a sample of about 6000 separated parents about 18 months after separation). These are predominantly families affected by family violence, child safety concerns and other complex issues. Most separated parents (97%) do not go to court to decide their parenting arrangements, although 16% use family dispute resolution services or lawyers.

So why should the current law which enables 97% of parents to reach parenting agreements have significant family law acts repealed for the 3% which are in court already being assisted by the judge to make arrangements in the best interests of the children?

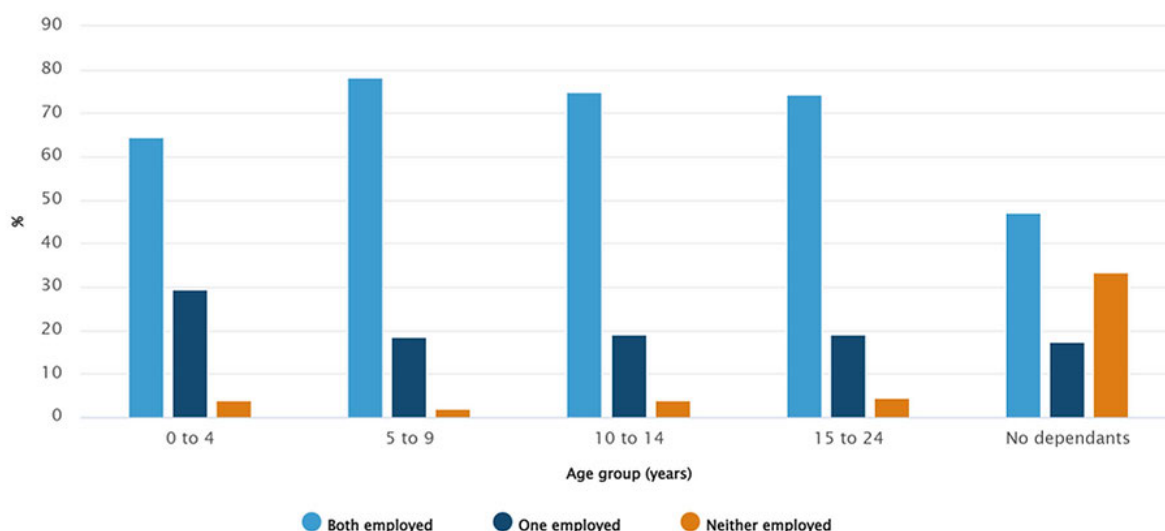
Australian parenting has significantly changed over the decades from 'gendered roles' of mothers being the primary carers and homemakers and fathers being the financial providers for the family, to a more shared parenting model where fathers have become more hands on in caring for the children as mothers have embarked on careers of their own. This shift in society has seen paternity leave been introduced and at some progressive firms, it has changed parenting leave whereby parents can share the 12month paternity leave or choose either parent to take the 12month parenting leave based on their family situation.

The Australian government promotes diversity in the workplace encouraging women to return to the workforce to have a career, has a strategy for equal pay, established paid parental leave and also considering large organisations to report their diversity metrics to government.

So why does our law want to go backwards to repeal family law acts that value both parents having equal shared parental responsibility on major decisions regarding the children and for children to have meaningful relationships and significant time with each parent?

Families in Australia have significantly shifted from one employed parent to two, as seen below in the latest census according to age of children. The percentage of both parents in the workforce shows Australian families are now sharing the care of the children. Some children may be cared for at pre-school and after school centres too. Many parents share the drop off/pickups at day care or schools, helping children with homework, taking them to extra-curricular activities, feeding, bathing and putting kids to bed. The family dynamic has shifted, and children rely on either parent for care as each parent has become interchangeable (obviously not for breastfed children but some toddlers are still having time with the other parent by using expressed milk or formula for some feeds)

Couple families by number employed and age of youngest dependant, June 2022



Source: Australian Bureau of Statistics, Labour Force Status of Families June 2022

As our society progresses with fathers and mothers sharing the care of the children, our family law is considering repealing sections of the family law act to shift parenting roles back in time. This will see a shift to a primary carer with the other parent 'visiting' in a part time capacity. Of course, if pre-separation the family structure had a primary carer, then this is in the best interests of the children to maintain that model, but where the family structure had a shared care model pre-separation then separated parents should create two loving homes close by where children can thrive.

To repeal the family law act s61A & s65DAA by removing shared equal parenting responsibility will increase the resistance of some separated parents to share time spent with the children and share major decisions regarding parenting arrangements, medical and schooling for the children which will increase the number of disputes going to court.

The family law act currently promotes equal shared parental responsibility and significant time with each parent as a commitment to the [United Nations Children's articles](#) below which are upheld currently by the family law act enabling the children to have a meaningful relationship with both parents, to be safe from violence and have their voice heard through child informed mediation which we should continue to abide by.

- **ARTICLE 9** (separation from parents) No child should be separated from his or her parents against their will unless it is in the child's best interests. Children whose parents have separated have the right to contact and a relationship with both parents, unless that's not in the child's best interests.

- **ARTICLE 12** (respect for children's views) Every child has the right to express their views on matters that affect them, and for these views to be taken into consideration.
- **ARTICLE 18** (parental and state responsibilities) The state should recognise that both parents have responsibility for a child's upbringing and development, and the best interests of the child should be their primary concern. States should assist parents in this through support for care services.
- **ARTICLE 19** (protection from violence, abuse and neglect) The state must do all it can to protect children from violence, abuse, neglect, bad treatment or exploitation by their parents or anyone else who looks after them.

The family law doesn't need to change, it is the support for parents at the onset of separation that needs to change so they can be emotionally supported, guided through separation as role models and accountable as parents to take responsibility to help their family transition and adjust to the new family structure.

Many families get caught up in adversarial legal battles significantly costing them not only financially but emotionally too after lengthy delays where conflict escalates, and children become estranged from a parent. Separated parents need emotional support at the onset of separation through Divorce Coaches who can help them through the overwhelm, anxiety and fear of the challenges ahead to stay future focused to be good role models to help their family transition and adjust to the new family structure.

Some separated parents resist separation and are deemed uncooperative, inflexible and irrational. It is not until they can feel empowered to feel emotionally supported and guided that they become ready for change and future focused. A Divorce Coach refers clients to the right professionals at the right time to avoid them engaging lawyers as their perceived only divorce resource to help them through this traumatic time in their life. Lawyers provide legal services only and should only be engaged when legal activity is required. There are so many ways to prepare separated parents for the journey ahead such as emotional support, prioritising challenges, preparation with collation of information, embarking on Parenting after Separation and Anger Management courses at the onset of separation to help them minimise conflict and put the children's needs first. Family Dispute Resolution performs screening and risk assessment for family violence to enable cases to go to court to keep families safe. If it is safe to proceed with mediation it can help families explore issues, seek options and negotiate solutions for ongoing parenting arrangements.

So, let's keep the family law act as is, so Australia's societal shift continues to value both parents and not be plunged back into the dark ages denying children meaningful relationships with both parents. Helping families at the onset of separation is the key to creating successful coparenting relationships!

Author – Cheryl Duffy, Divorce Coach, Family Dispute Resolution Practitioner and Parenting Coordinator

[www.thedivorcecentre.com.au](http://www.thedivorcecentre.com.au)