



2/8/2011

The 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 support the changes to the Family Law Act proposed in the Family Law Legislation Amendment (Family violence and Other Measures) Bill 2011, and to recommend that further changes be made to the Bill to ensure that the family law system ceases to jeopardize the safety of women and children who are victims of violence.

I strongly support the measures proposed in the Bill to provide better protection for people who have experienced family violence within the family law system and I believe that the proposed amendments are essential to placing the safety and protection of children and family members at the forefront of the Family Law Act.

A child's right to a life without needless stress, and to be able to be guaranteed safety in the sanctuary of their own home, in a loving caring environment, with the parent of their choice, should take precedence over any other decision made under Family Law. An established history of psychological abuse should disqualify the perpetrator from any entitlement to equal shared parental responsibility for a child, including any claim to substantial un-supervised contact with a child. Forced overnight contact, where this is expressly against the wishes of the child, and where there is a history of significant distress for the child resulting from this, should be absolutely abolished.

Young children have expectations of their primary carer that their wishes will be supported. It is fundamentally wrong to expect the resident parent to compromise their own relationship with their child, to disregard their wishes, simply to facilitate contact with the non-resident parent; and particularly so when the non-resident parent puts their own interests and so-called rights before those of the child. As a basic principle of human rights, a child has the right to decide whether they wish to engage with an adult socially, even when that adult happens to be their parent.

I strongly believe that the Family Court does not adequately protect the rights and needs of children. Children's voices, their wants and needs are being ignored. The right of a child to be consulted and to have a voice is supported by the UN Convention on the Rights of the Child. The Family Court should stop re-traumatizing children by making them spend time with parents against their wishes.

Support for key changes

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

Further changes that are needed

I believe that there are a number of changes needed immediately that have not been addressed in the Bill.

- The presumption of equal shared parental responsibility. There should be no presumption of equal shared parental responsibility. The courts should not be required to start from any particular care arrangement. Every case should be treated as unique.
- The concept of equal shared parental responsibility. Parental responsibility should reflect a parent's demonstrated ability to parent and capacity to behave responsibly.
- The link between equal shared parental responsibility and equal time/substantial and significant time arrangements.
- The "one size fits all" approach in which it is assumed that equal time and substantial and significant time arrangements are best for children. Each child is unique. What works for one will not necessarily work for another. The child's voice must be heard. Their wishes must be respected.
- If these recommendations are endorsed and become law, they should be made retrospective and be available to those who are disadvantaged as a result of the application of current provisions of the Act and who wish to redress their situation.

Based on my own experiences and the evidence based research papers I have read over the last few years, I strongly recommend that you support the amendments suggested in this letter and the expeditious passage of the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011.

Thank you for considering my submission.

Yours sincerely

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