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I am a separated father. I am not a lawyer. I appreciate the opportunity to make a private submission to this inquiry. Doubtless, the things I have to say will be echoed by many.

My experience of the Family Court of Australia is mixed, ranging from even handed treatment by some magistrates to what I can only interpret as outright bias from (fortunately) only one other. Litigation commenced in [redacted] when, what started out as an amicable separation in [redacted] turned nasty.

The litigation continues today, and I expect a trial (after [redacted] and considerable expenditure of moneys) in [redacted]. The lawyers for my ex-wife (I have till recently been an SRL) have employed the usual tactics in an attempt to defeat my application for increased meaningful contact with my children. As I already have about [redacted] access ([redacted]), any meaningful increase would be close to a shared care arrangement. As my kids, at [redacted] and [redacted] are too old for the 'sexual abuse' or 'neglected when in my care' approach, they have, I believe, suggested that she instigate conflict at every turn. It may well be successful. I do not see how the new legislation will put a stop to that. At the very first hearing, this conflict, which seemed to have come out of nowhere, was a key focus of my ex-wife's Barrister. As a novice, I was not aware of the implications of this.

The other thing that she was likely advised, was that the longer the status quo was maintained, the more reluctant a court would be to change it. For this reason, there have been large delays. These delays have cost money, and deepened the anger and conflict.

The new Bill, whatever its final form, will not change the culture of the system. That will take time. It has left the onus of proof, that increased contact would be beneficial, with the non resident parent. The presumption of shared care was defeated – I will never really understand why. All serious research (almost exclusively in the US) has shown that children in separated families, where extensive contact is maintained with both parents, outperform children where there is one 'major' parent. The obvious assumption is that both parents are 'fit' parents.

What this bill must do, in my view, is force lawyers to act in the best interests of the family – not just of their client. The reality is, lawyers are not suited to this role, they grow up in an adversarial system. The revised Family Law rules (2004, Schedule 1), go some way down this path, but there appear to be no sanctions for those lawyers who do not. More easily obtained costs orders against litigious/obstructionist lawyers would help.

The Committee acknowledged that despite the changes of a few words back in 1995, the culture of the system did not change. The Bill is again relying on essentially the same methodology, although this time coupled with some new factors to take account of (e.g. extended family) and some changes in emphasis.

The Bill supports fit parents both having 'meaningful' and 'substantial' contact (to use the old term). This is a step forward, but leaves the definition of both these terms to the court.

I do however see some hope in this.

Lets look at the current 'typical' court decision in the light of this new emphasis, and see if it fits the new thrust of the legislation. A typical regime is half the school holidays and every second weekend. Keep in mind that this is the outcome which very many fit non resident parents are delivered. To quantify this, it is about 85 days per year.

Does it meet the goal? I suggest it does not.

Childrens lives have two distinct components, particularly when they are young. School life, and home life. School is their 'day job', in much the same way as for most parents, 'work' is their day job.

How can this typical contact regime be considered as 'meaningful', if it does not include many, if any, aspects of school life? These include, homework, discussion of school issues, even having school friends over after school. My view is that it cannot.

What the non resident parent gets in this situation is a substantial and meaningful child minding role. Important, yes, and no non resident parent would give that up, but that is essentially what it is.

I want to be involved in the kids school life However on the alternate weekends, the kids are not really interested in talking about or even thinking about school – they are on holidays and I do not blame them.

This Bill can be made a step forward, only is the word 'meaningful' is interpreted as being that the non resident parent is able to participate in all main aspects of their children's lives. The one that is frequently missed is school life. The same controversy was recently addressed in NZ, where amendments were made to their legislation. I believe the Bill was nicknamed the 'McDonalds Bill', in reference to the previously stereotypical contact regime. I am not aware of the details.

The Bill reinforces the fact that the views of the children should receive appropriate consideration. The difficulty is that their views are delivered via a third party. That third party has the ability to not only influence the child's views (by the way in which those views are elicited), but also to censor them before delivery to the court. The path between the child's views and the final orders has two key links in it, the mediator and the Judicial officer. If either of those has a particular bias against increasing meaningful contact for the non resident parent, it will not happen.

A better, (but still not perfect) way would be to open the door between the child and the judicial officer, for direct communication in appropriate circumstances (the age and

maturity of the child being keys). I believe this is either happening in NZ or is close to happening. All that would need to happen to facilitate this is for the Rules of the court to change, the Bill already allows any form of communication it sees fit.

In cases where both parents are reasonable people, focused on the real welfare of their children, the Bill will achieve its objectives. It is worth noting however, that this would have happened without any amendments to the Bill. What it appears not to deal with, are the cases where one parent is unreasonable, vindictive, or cares little about the welfare of the children. This will be particularly important when this parent is the current resident parent.

It is well understood that the court cannot make orders which will guarantee the welfare and happiness of the children. All it can do, is craft orders which show the parents appropriate ways to act, and interact. The resident parent can at any time, decide to make life uncomfortable for the other parent. I have been on the receiving end, it is not difficult to do.

This Bill will re-enforce the factors which will give the children the best chance of achieving their maximum potential in situations where both parents are similarly focused. Whether it will achieve this in the face of one of the parents deciding to minimise contact with the other, will depend entirely how it is interpreted by the Judiciary. They have, as is usual in this jurisdiction, been left with enormous discretion.