

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
ATTORNEY-GENERAL'S DEPARTMENT

Output 1.1

Question No. 4

Senator Stott-Despoja asked the following question at the hearing on 31 October 2005:

Can the Department advise how the new provisions proposed to be introduced into s60B and s68F to refer to the need for children to have a meaningful involvement with both parents will not, in every case where an allegation of violence or abuse is made, render nugatory the provisions in the same sections that refer to the need to protect children from harm?

The answer to the honourable senator's question is as follows:

The Shared Parenting Bill includes two new objects in section 60B which is the section that sets out the objects and principles of Part VII of the Act. The first new object recognises the importance of ensuring that children are given the opportunity for their parents to have a meaningful involvement in their lives to the maximum extent possible, consistent with their best interests. The second new object recognises that there is a need for children to be protected from physical and psychological harm and from being subjected to, or exposed to, abuse, neglect or family violence. Each of these objects is intended to have similar weight; one does not outweigh the other.

To give greater importance to these objects, the amendments to section 60CC (which replaces the existing section 68F) will create two tiers of considerations that the court must take into account in determining what is in the best interests of a child. The primary considerations mirror the two new objects in section 60B.

The safety of the child is not intended to be subordinate to the child's meaningful relationship with both parents. Both factors are important and will be considered in light of the circumstances of the individual case. In a case where there is family violence or sexual abuse, keeping the child safe will have particular relevance.

In cases not involving any issues of safety the object of facilitating a meaningful relationship with both parents will be of greater importance.