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16th June, 2003



Senator Marise Payne
Chairperson
Senate Legal and Constitutional Committee
Parliament House
CANBERRA ACT

Dear Madam,

Re: Family Law Amendment Bill 2003

The Family Mediation Centre, Moorabbin Victoria made a submission in relation to the Attorney Generals' proposal to repeal the provisions of the Family Law Act 1975 governing the registration of Parenting Plans contained in the Family Law Amendment Bill 2003.

I have been advised that your Committee is due to report on 13th August 2003. For your information and consideration I have enclosed a copy of our Centre's submission.

As you will see by the submission, our Centre is totally opposed to the proposed changes and we would argue that the current law or registration of Parenting Plans be retained. In our view this would be in the best interests of separating couples and their children.

Our Centre would be happy to further elaborate and provide further information on the points raised should you deem it necessary.

Yours sincerely,

A handwritten signature in cursive script that reads 'Des Devlin'.

Des Devlin
Mediator.

Office Hours:
Monday, Wednesday, Thursday, Friday 9.00am - 5.00pm and Tuesday 9.00am - 8.00pm

Submission by Family Mediation Centre for the Retention of the Current Parenting Plan Laws

Background

The Family Law Act expressly encourages parents to agree between themselves on matters concerning their children rather than seek a court order on those matters. This legislative enactment reflects the ever increasing trend towards promoting agreement between parties themselves or with the aid of primary dispute resolution mechanisms.

To this end Part VII, Division 4 of the Family Law act makes provision for parents to enter into a written agreement on matters relating to their child's welfare. This is referred to in the Act as a 'parenting plan'. When it is registered in a court exercising jurisdiction under Part VII of the Act its provisions concerning parental responsibilities have effect as if they were a court order.

Registration of a Parenting Plan is not a mere formality. The court has a discretion whether to register the plan.

The plan may be registered if the court considers it appropriate to do so having regard to the best interests of the children (sec 63E(3)).

Registration is therefore at the discretion of the Court. The parenting plan can be written as informal document or a legally enforceable agreement. Because of the very extensive and comprehensive enforcement provisions available under the Family Law Act, most parties settling a Parenting Plan opt for the registration option.

There are now moves afoot to repeal the parenting plan procedures.

Reasons for Retention of Existing Parenting Plan Laws

1. Parents Have a Choice

Parenting plans are established in law and widely used in many countries including New Zealand and United States. The plan can either be registered with a court or remain as a record which the parents can review as their own and their childrens' needs change over the years.

Thus the parenting plan procedure gives parties a choice about making parenting arrangements a legally binding agreement or simply agreement to the parenting arrangements in an informal document.

2. Creative Opportunities

Parenting plans offer the parties, the opportunity to be creative and define/divide as between themselves parental responsibilities.

Thus parties can make arrangements about things like

- residence
- contact
- parental responsibility both short term and long term
- communication issues such as telephone, mail, presents and email
- schooling
- travel
- discipline
- movement and
- all of the other many and varied issues relating to the care of children.

A parenting plan is also a useful negotiating framework where parents wish to discuss issues regarding a child with special needs or disabilities, perhaps to ensure there is a record of what is needed in the event of their not being to care for that child at some time in the future. In this way parents can document their wishes as a guide for others who may care for the children, either in the event of serious illness of one or both parents, or in the event of death.

Many of the abovementioned arrangements are not able to be included in consent orders made through the court. Therefore it can be said that a parenting plan can promote in a better fashion arrangements which are in the children's best interests.

3. Simple Straightforward Procedure

The parenting plan procedure is a simple, straightforward cost effective method which parents find easy to follow and complete. A plan can be settled with the help of a solicitor, a family and child mediator or family and child counsellor. No fees are payable to the court upon registration. One of the benefits of a plan is that it can be drawn up immediately in the context of a mediation session, and therefore it becomes actionable whilst parties are negotiating in good faith. Contrast this with the very formal consent order procedure, which requires parties to complete an extensive application for consent orders form, accompany that form with certified copies of the minutes of consent along with a copy of a marriage certificate if parties are married or a copy of a child's birth certificate if the application relates to an ex-nuptial child.

4. Facilitates Co-Operative Parenting

By completing a parenting plan couples can confirm their joint parental responsibilities towards their children. By working together in a way which is non threatening couples are able to use the framework of a parenting plan to discuss any potential areas of conflict. They can make decisions about issues which may otherwise become contentious.

All in all a parenting plan facilitates co-operative parenting resolution of disputes rather than competitive parenting.

5. Parenting Plan is enforceable

The parenting plan procedure has the same status for enforceability as consent orders and therefore carries the same burden of responsibility upon parents as court orders. A provision in the plan that has effect as if it were a court order can be enforced as a court order.

6. Separation of Enforceable and Non-Enforceable Provisions

A parenting plan can be written in clear plain and enforceable language understood by courts and laypersons alike. Issues concerning residence, contact and specific issues which can be enforced as court orders can be separated from non enforceable arrangements such as discipline, communication or sporting matters.

The court has a discretion whether to register a parenting plan, so if there are ambiguities in the plan or the plan is not clear enough the parties can be requested to clarify and correct any uncertain provisions.

7. Plan can be Revoked Easily

A registered parenting plan can be revoked by all the parties to the plan entering into a written agreement to the effect, which is then registered. The procedure for registering an agreement that revokes a registered parenting plan is basically the same as the procedure for registering a parenting plan, and therefore is not a difficult procedure.

8. Parental Autonomy

A registered parenting plan enables parental autonomy concomitant with the parental responsibility enforced upon parents under the Family Law Act, thereby enjoying a greater understanding, commitment and willing compliance by parents.

Des Devlin
Family and Child Mediator