Jonathan Curtis,
Committee Secretary,
Senate Legal and Constitutional Affairs Committee,
Department of the Senate,
Parliament House.
CANBERRA. ACT 2600
18 February 2006

Dear Sir,

Re. The Family Law Amendment (Shared Parental Responsibility) Bill.
Submission to the Senate Legal and Constitutional Affairs Committee.

The Attorney-General, Phillip Ruddock, tabled the Family Law Amendment (Shared Parental Responsibility) Bill in Parliament and read the second reading speech on 8 December 2005. The Bill is being promoted by the Attorney-General as helping to change the culture of family law. His intentions may be quite sincere and this is not doubted. Unfortunately there will be no change.

The Bill could be even described as simply an exercise in word-play and nothing more.

The words "court to consider child spending equal time or substantial and significant time with each parent in certain circumstances" are now proposed to be added to the Family Law Act (section 65DAA). Under the current proposal, a Family Court judge would theoretically at least have to consider if both parents can have equal contact with their children after separation.

However it is noted that the Labor Government made similar changes to the Family Law Act in 1995. This was when the Family Law Reform Act 1995 was passed with fanfare by the Keating Labor Government. The Labor Government Parliamentary Secretary, Mr Peter Duncan, stated in Parliament that the passing of the Family Law Reform Act would implementing a rebuttabe presumption of shared parenting (21 November 1995). It has not.

The Family Court simply chose to interpret the legislation in such a way as to make those changes ineffective. The Full Court of the Family Court decision "In the Matter of B and B: Family Law Reform Act 1995" (Nicholson CJ, Fogarty and Lindenmayer JJ) decided that the changes did not mean that the court had to change their then current (and present) approach to custody issues.

As a result, the status quo stayed the same with less than two (2) per cent of court orders continuing to be made for equal time shared parenting. With the loose wording that we currently have in the Bill, it can be assumed that the current amendments are more than likely to meet the same fate.

Using words like "equal time" is certainly a good start. However when linked to the word "consider", this change effectively means nothing has changed. The desired outcome of any change to family law amendments is the introduction of "a rebuttable presumption of equal time, shared parenting" (i.e. unless desired otherwise by the parents). Our politicians have not been game enough to include this outcome in the current bill.

Under definition of family violence in subsection 4(1), the word "reasonably" has also been added. The new phraseology is "reasonably to fear for, or reasonably to be apprehensive about his or her personal wellbeing or safely". The addition of the word "reasonably" is grossly insufficient. The family violence issue has long been used as an inappropriate tool to gain a financial advantage in the Family Court.

Unless family violence is proven and not merely alleged (as it is now) or "reasonably" alleged (as proposed), then this mis-use will simply continue to occur.

Despite what the Attorney-General, the Hon Phillip Ruddock, has stated on numerous occasions, the Family Law Amendment (Shared Parental Responsibility) Bill does not make any significant changes to the current family law fiasco.

In summary, until significant these fundamental changes are made to our legislation, nothing changes.

Regards

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