

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

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 1995.

I do not doubt the intentions of many parliamentarians may be to give effect to their genuine desire to repair what is quite obviously beyond repair, and seriously damaging our children. that 'future' some pay lip service to so frequently.

THE APPEARANCE OF SHARED CARE (A naturally just outcome in most cases)

Crucial errors and omissions in the proposed legislation will render it as ineffective as the strikingly similar Labor Government amendment to the Family Law Act in 1995, which was accompanied by all the fanfare the citizens of Australia now witness in relation to "The Family Law Amendment (Shared Parental Responsibility) Bill, 2006".

Goodness knows that the intentions of a clearly framed law can be corrupted with sufficient impetus. Merely requiring that a court "consider" something does not compel a court to do anything at all!

The idea that shared care would be mandated was being sold by the then Parliamentary Secretary Mr Peter Duncan, IN 1995 as "a Reform Act would implement a rebuttable presumption of shared parenting. That legislation stood no chance whatsoever of achieving that goal of that whilst the power to circumvent it was left in the hands of the established law practitioners, and the Judges selected from their ranks.

In essence, the Family Court simply chose to interpret the legislation in such a way as to completely ignore the legislation's INTENT, IMMEDIATELY IT WAS PASSED.

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 children could see both parents more or less equally.

They were able to do this because they were required to "consider" shared custody.

One could argue that the only thing they "considered" was how to circumvent the legislation.
The results certainly give that appearance. Once they had "considered" what did they do?
Continue with their old approach to custody issues, that's what, and still it goes on.

The statistical result? What was supposed to be the default (shared care), accounted (and accounts) for less than 2% of arrangements ordered by the courts.

Influential Family Court Judges are on the public record as saying: "I have never ordered hared care, nor will I ever order it." or words to that effect. Does parliament believe that the correlation between statements like that, and the fact that less than 2% of children are sharing their parents is some kind of statistical fluke?

The results by ANY MEASURE are an abysmal failure of policy and law making. Do you really want to repeat this?

What IS required is a rebuttable presumption, rebuttable not with innuendo, gossip, and reports from "experts", all of whom profit handsomely from separating bewildered children from loving fathers.

The Attorney-General gives all the appearace of believing that this bill will as helping to change the callous and parasitic culture within the family law community, and I use the word 'community' very loosely loosely in this context. I take it that members of parliament support real change?

As it appears to the layman, and to one whose children have suffered at the hands of the Family Court (violent mother, children somehow 'better off' with her 4/7 of the time), this Bill as it stands inspires no confidence whatsoever that it represents more that an exercise in word-smithing.

One could be forgiven for thinking that the entire process was intended to generate THE IMPRESSION that something is really being done. Surely this is not the case?

Courts must be COMPELLED to give children equal or substantially equal time with each parent UNLESS there is clear evidence why such an arrangement would damage the children. Natural Justice demands this, and most children demand it, at least for the first few years after separation, until they have been "re-educated".

FALSE ALLEGATIONS:

As for penalties for false allegations, do the left parties actually wish to ENCOURAGE people to lie in court by removing an onus of proof? Proof is one tenet that supports our Justice system, is it not?

Why should persons making allegations of ANY sort in ANY court be exempted from proving their allegations?

A court where unsubstantiated claims can be used to exclude one parent or another should never be part of a justice system in a democratic, civilised country. THAT approach fits in far better with the methodologies used in totalitarian states.

Unless I have missed something crucial, in a democratic society, citizens are able to face their accusers and answer the charges made, conversely the accuser must have proof of their allegations.

The penalty for Unsubstantiated allegations should be that the person who cannot substantiate an allegation suffers the same fate as if THEY themselves had perpetrated what they are alleging.

Removing false accusers' access to their children would REMOVE the currently handsome incentive to fabricate.

Is it not TRUTH we are after?

Consider the Bridget Marks case in the USA last year, which alas, bears a striking resemblance to the ideological way that family law decisions are made in Australia: Bridget Marks (the mother) was PROVEN to have coached her two small girls to falsely accuse their father of molestation. Even so, the mother was awarded custody with no wrongdoing on the part of the father.

What kind of example will such a "parent" be for two young children?
What chance of a balanced outlook on life will those girls ever have?
Would YOU have awarded it thus?

FAMILY VIOLENCE

In the definition of family violence in subsection 4(1), the word "reasonably" has also been added.

The new phrase is "reasonably to fear for, or reasonably to be apprehensive about his or her personal wellbeing or safety".
The addition of the word "reasonably" is grossly inadequate.

Family violence allegations have long been used simply as a tool to gain a tremendous, unjustified and damaging advantage in the Family Court.

Unless family violence is proven and not merely "reasonably" alleged, then the rorting of these provisions will continue, again damaging children in the process. Just how DOES such a false allegation benefit a child?

Goebbels proved that if one utters a lie that contains any resemblance to truth often enough, it will be adopted as 'fact'. The Canard that family violence is perpetrated almost solely by men is even 'enshrined' in NSW law!
400 studies over thirty Years, with hundreds of thousands of subjects, performed by independent researchers,

contradict this canard, instead postulating the idea that violence is essentially gender-neutral.

We are all aware of the powerful industry that benefits from and commissions 'research' supporting an alleged gross violence gender imbalance, are we not?

I do not consider a self-referencing circle of self proclaimed experts who do not leave their circle of like-minded 'experts', a valid group of people to proclaim ANYTHING. Do you?

MOVE - ALWAYS:

As a parent I willingly make sacrifices to ensure that my children receive the best possible start in life. I have no time for those who refuse to inconvenience themselves for their children, and neither should parliament, or indeed the courts. Such a parent does not deserve children, and children most certainly DO NOT deserve such a self-interested parent (and the myriad of well-funded pressure groups that support those parents) foisted upon them, against their will and interests.

I believe it is reasonable for me to ask whether the convenience of just one parent will continue to be the thinly-disguised primary consideration used when determining how the children, who are treated as chattels, are allocated to primarily one parent. This appears to be perpetrated wholesale on children to appease the powerful and well-funded (usually by taxpayers) lobby groups who act on behalf of that parent, against the real interests and indeed, wishes of the children themselves.

SUMMARY:

The conflict generated by a system that is unfair to parents AND children is what fuels and perpetuates this shameful, adversarial system and all the misery it spreads throughout our 'community'.

Until fundamental changes are made to our legislation, the courts will continue with ease and equanimity to interpret the law in line with their current ideology, rather than the true interests of the children. History shows that they will certainly not adhere to the weak legislation that you intend to protect those children with. Make it strong, make it right and make it last.

You will note the dearth of well-funded father's groups at this place, and the plethora of ideological groups lobbying you here today. Forget us all, give the children back BOTH parents.

You have an opportunity to do good here, please do not let your intentions be corrupted by powerful self-interest groups.

Our children deserve real support, not lip service, or ideological massaging.

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Yours sincerely, and in disbelief, Michael L Deutsch