

Submission re Amendments to Family Law Act.

from

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Like many thousands of others, I anxiously await the Family Law Amendment (Shared Parental Responsibility) Bill 2005 No. , 2005 (Attorney-General) A Bill for an Act to amend the Family Law Act 1975, and for related purposes which has been introduced and promoted by Mr Ruddock.

However amidst all the publicity given to the pending changes, little if any has been given to:

Schedule 1 Shared parental responsibility Part 2 Application of amendments

Part 2--Application of amendments

42 Definitions 3 In this Part: 4
commencement means the commencement of this Schedule. 5
new Act means the Family Law Act 1975 as in force after 6 commencement. 7
old Act means the Family Law Act 1975 as in force immediately before 8
commencement. 9 43

Application 10 (1)

Section 60CC of the new Act applies to proceedings initiated on or after 11 commencement. Despite its repeal by item 5 of Schedule 5, section 68F 12 of the old Act continues to apply to proceedings initiated before 13 commencement.

14 (2) The amendments made by items 13, 29 and 30 of this Schedule apply to 15 parenting orders made in proceedings initiated on or after 16 commencement. 17 (3)

The amendment made by item 14 of this Schedule applies to 18 proceedings under Part VII, whether or not the proceedings were 19 initiated before commencement. 20 (4)

The amendment made by item 15 of this Schedule applies to directions 21 given under subsection 62G(2) of the new Act on or after 22 commencement. 23 (5)

The amendment made by item 16 of this Schedule applies to parenting 24 plans made on or after commencement. 25 (6)

The amendment made by item 22 of this Schedule applies to parenting 26 orders made in proceedings initiated on or after commencement. 27 (7)

The amendment made by item 25 of this Schedule applies to parenting 28 orders made on or after commencement. This includes, without 29 limitation, a parenting

order that varies an earlier parenting order, 30 whether the earlier parenting order was made before or after 31 commencement. 32 (8)

Sections 65DAA, 65DAB, 65DAC and 65DAE of the new Act apply to 1 parenting orders made n proceedings initiated on or after 2 commencement. 3 (9) The amendment made by item 33 of this Schedule applies to a court 4 proposing to make an order mentioned in subsection 65G(1) of the new 5 Act, whether or not the proceedings to which the order relates were 6 initiated before commencement. 7

(8) Sections 65DAA, 65DAB, 65DAC and 65DAE of the new Act apply to 1 parenting orders made in proceedings initiated on or after 2 commencement. 3 (9) The amendment made by item 33 of this Schedule applies to a court 4 proposing to make an order mentioned in subsection 65G(1) of the new 5 Act, whether or not the proceedings to which the order relates were 6 initiated before commencement. 7

As a member of the affected public I respectfully request a convincing rationale for the insertion of these clauses. So far, the bureaucratic explanation is that "laws are never applied retrospectively." This is sophistry rather than a reasoned and thoughtful argument, for the amended laws, in applying to all children after enactment, would not be thus "applied retrospectively." In fact, if the amended laws are only to apply to applicants lodging after 1 July, those of us already in the system will be judged by inferior laws to those by which applicants lodging after that date will be judged. Further, I understand that those of us subjected to the unamended laws will not be able to appeal on grounds of changed circumstances if by that we mean a change in the laws.

Mr Ruddock has held many public meetings around the country, and issued several press releases announcing Amendments to the current laws. Most of his audience, and people most attentive to the publicity he has given to the Amendments, are those who currently have applications before the Court or who consider themselves disenfranchised by Court judgements. Yet ironically we are the ones who will be forever excluded from the benefits and justice intended by the Amendments, if the exclusionary clauses are upheld!

While I understand that bureaucratic and economic considerations need to be considered, the Family Court exists to serve the people, and surely ought not to be an entity whose agenda takes priority over the needs of that public. Is it not most peculiar that after 1st July 2006, A and B may be before the Court with separate cases on the same day in front of Judge/Registrar/Magistrate X, who will apply the unamended laws to A and the amended laws to B?! The argument that A has undergone different procedures to B is faulty, because as things stand at present, counselling, mediation etc. have occurred before A gets to Court, as will be mandated for B under the Amended law.

I do hope the Senate Committee will consider removing these clauses before the Bill is enacted, or at least specifically justify to the public why the proposed Amendments to Family Law will not apply to all children after enactment.

Yours most respectfully,
Gail Abrahams