

Submission to the Inquiry by the Senate Legal and Constitutional Committee into the
FAMILY LAW AMENDMENT (SHARED PARENTAL RESPONSIBILITY) BILL 2005

The Children and the Law Committee of the Law Society of South Australia have had the opportunity of reading the very lengthy *Family Law Amendment Bill 2005*.

The Committee is disappointed that there has not been greater recognition given to the very strong desire of many children, particularly teenagers, to have a more integral part in negotiations that relate directly to their future care and welfare.

It is with disappointment that the Committee notes there has been no progress in recognising that children of a certain maturity should be able to express their views. Many feel disaffected, disillusioned and vulnerable in Court processes that consult their parents and not themselves.

Article 12.1 of the United Nations Convention of the Rights of the Child ratified by Australia in 1991 states:-

“Parties shall assure to the child who is capable of forming his or her views the rights to express those views freely in all matters affecting the child, the needs of the child being given due weight in accordance with the age and maturity of the child”

Article 12.2

“For this purpose the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly or through a representative or an appropriate body consistent with the procedural rules of national law.”

Why is it that children and young people in the Youth Courts throughout Australia are able to have direct representation and yet in the Family Law system when issues are being considered that are vital to a child’s welfare and development, they have no ability to be directly involved in proceedings?

The Children and the Law Committee believes it is totally inadequate to expect a mature young person and in fact any young people over about the age of 10 to be satisfied with perhaps one interview by a child psychologist who interprets their views and submits them in a Report to the Court. Mature young children and young people should be able to have direct representation in Family Court proceedings.

There has been no extension of the role of the Child Representative, to be called *‘Independent Children’s Lawyer’*, to allow direct representation.

The Bill is extremely parent-centric and in no way supports the child or young person in negotiations or proceedings.

The new Section 60CC definition of what is in the child’s best interests fails to even acknowledge as a primary consideration the wishes and views of a child.

In paragraph 60CC(3) as an additional consideration the views expressed by the child become relevant.

The Committee is also concerned that there is a large emphasis being placed on the child spending equal time with each parent. We question whether adequate consideration has been given to the impact on the child of changing residences, often on a week about basis, and the instability and long term psychological effects that this may have on the child.

Again the child has very little opportunity to be involved in any meaningful discussions either at the primary dispute resolution stage or at the Family Court or Federal Magistrates Court application stage to react to quite radical changes to their daily lives.

Children and the Law Committee urges the Legal and Constitutional Committee to give greater priority to the voice of the children in Family Law proceedings.

Deej Eszenyi
PRESIDENT