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BLUE MOUNTAINS
COMMUNITY LEGAL CENTRE

Submission No. 79

Date Received

BY:

www.bmclc.org.au

Our ref: Sara Blazey
Your ref:

27 July 2005

Secretary to House of Representatives
Standing Committee on Legal and
Constitutional Affairs
Parliament House
Canberra
ACT 2600

BY LETTER AND EMAIL

Dear Sirs

RE: Exposure Draft of the *Family Law Amendment (Shared Parental Responsibility) Bill 2005*

We are writing to make our submission in respect of the above Bill. Although we are aware the date for submissions has passed we understand your Department has indicated further submissions will still be accepted at this stage.

Blue Mountains Community Legal Centre is a community organization providing free legal advice and other legal services to clients who live in the Blue Mountains, Lithgow, Bathurst and Oberon regions of NSW. We provide assistance to some 3000 clients a year. In 80% of cases we provide some element of advice on family law.

In view of the short time frame allowed for submissions we are not able to provide a detailed response to each clause of the proposed bill. We would therefore wish to endorse the submission of the National Network of Women's Legal Services which goes into some detail particularly around the concerns as to how cases are treated where there is domestic violence or allegations of child abuse.

We will therefore restrict our submission to making general comments on the overall effect of the proposed changes.

We are aware that Members of Parliament receive more letters and complaints from constituents about issues of family law than any other topic. It is a fraught area and is often perceived to be a stand off between the interests of mothers/wives on one side and husbands/fathers on the other. We are concerned that what comes out of this perception is that the only way to try and meet these needs is to try and find some "balance" between these competing interests. Thus when changes are made to take into account domestic violence, seen as in the interests of women, there will be a corresponding change or strengthening of the provisions concerning contact,

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seen as in the interests of men. It is our view that what is being lost is the fundamental principle that all decisions concerning children should be made on the basis of what is in the best interests of the child.

When clients (both mothers and fathers) first contact us for advice on relationship breakdown the first question is invariably "What are my rights concerning children". It is a real strength of the current legislation that we are able to respond that parents have no rights. Children have rights and parents have responsibilities. This immediately shifts the focus many people have to concentrating on the needs of the children. We believe that where the proposals seek to create a presumption or an obligation to raise one model of caring for children, this will have the practical effect of demoting the primary consideration being that of the best interests principle.

Our second concern is the family law system in Australia does not provide for children to have a voice in decisions concerning their lives and in most cases their views are often not even factored in. This exclusion will become worse if more cases are referred to or settled at mediation as there is no provision at all for children to participate in this process.

The situation is very different in the United Kingdom which operates under very similar legislation at the present time. As soon as an application is made to Court a Court Welfare Officer is appointed, ultimately to file a report with the Court. However, from an early stage the Officer will attempt to assist the parties to reach agreement and will see the children to ascertain their views. They will also speak to any other significant person in the children's lives who are often able to provide more balanced information than either of the parties. The overwhelming majority of cases are settled by agreement without the need for preparation of a detailed report.

A case study of a matter dealt with in court in the U.K. is as follows:

Father made an application for a contact order to his 11 year old daughter saying the mother was obstructing contact and turning the child against him. The mother stated the child hated going to the fathers house because of his new girlfriend. They had been unable to reach agreement at mediation. The appointed officer interviewed the child and discovered her main concern was she missed her netball match every time she went to her father's. She also told the officer about other things that worried her or she did not like. When these concerns were explained to the parents they were eventually able to arrange contact so the child could always play netball and made changes to deal with some of the other concerns. An order was made by agreement where the terms remained flexible so the needs of the child could be addressed. The child was very happy that for the first time since her parents separated she was listened to and her concerns addressed.

Unfortunately under the present system in Australia the child would not have been given this opportunity unless the case got near to hearing. There is nothing in the draft legislation that addresses this.

Another example where the proposed changes make no provision for the needs of children and are more concerned with the rights of parents concerns the "make up contact" provisions where there has been a breach of a contact order. Whilst we welcome the proposal that breaches should be dealt with in a

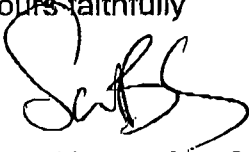
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practical and positive way rather than punitively, there is little emphasis on considering the needs of the children in any make up contact.

We would respectfully suggest the proposed changes represent a shift away from the best interests principle. When Parliament considers this Bill it should perhaps be remembered that although they receive more mail on this subject than any other, children do not write letters to M.P's and therefore perhaps their best interests have not been fully taken into account.

Should you have any enquiries in relation to this submission, please contact Sara Blazey, Solicitor.

Yours faithfully



Blue Mountains Community Legal Centre
Mark MacDiarmid, Principal Solicitor

