

Legal and Constitutional Affairs Legislation Committee
Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011
Public Hearing, Friday 8th July 2011

Senator HUMPHRIES: On page 4 of your submission you talk about the friendly parent provision. You say:

... we are concerned that these provisions could also be used against a mother in a case involving family violence, where the mother limits the other parent's participation to protect the child and the proposed provisions are used to bring in arguments about failure to facilitate a relationship ...

You recommend:

... this provision be amended to ensure that this cannot occur.

Do you want to tell us how you might make such an amendment?

Ms Davies: It is difficult, but I believe that it might be as simple as needing to follow through with investigations of the kinds of violence and that, given a claim of violence has been made, it would be understandable that the parent would not be required to facilitate the relationship. It is difficult and I do not choose to assume that I would know how to best word it so that it came across. I would love to have a bit more thought about that and respond to you a bit later on.

The Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011 proposes that s 60 CC(3)(c) be reworded to:

- (c) the extent to which each of the child's parents has taken, or failed to take, the opportunity:
 - (i). to participate in making decisions about major long-term issues in relation to the child; and
 - (ii). to spend time with the child; and
 - (iii). to communicate with the child;
- (ca) the extent to which each of the child's parents has fulfilled, or failed to fulfil, the parent's obligations to maintain the child;

If a parent is violent then it is their violence which is a barrier to the extent of their effective and involved parenting. The proposed amendment leaves open the opportunity for a perpetrator of violence to blame their lack of involvement with their children on the protective parent and their protective behaviour. This potentially places the responsibility for their relationship with the child back on the other parent rather than with themselves and their behaviour.

CSMC believes that s 60CC(3)(c) should be amended so that it clearly refers only to a parent's own personal efforts regarding their relationship with and obligations to the child. In situations involving violence it would then be clear that it is the perpetrator who has responsibility for failing to take opportunities or fulfil obligations rather than the other parent being made responsible for facilitating any kind of relationship with such a person.