

27/4/2011

Committee Secretary

Senate Legal and Constitutional Committees

PO Box 6100

Parliament House

Canberra ACT 2600 Email:

Dear Committee Secretary,

RE: FAMILY LAW LEGISLATION AMENDMENT BILL

I am writing to express my strong support for the amendments to the Family Law Act proposed in the Family Law Legislation Amendment Bill 2011, and to urge that further changes be made to the Bill to ensure that the family law system does not continue to jeopardise the safety of women and children.

I do strongly agree with all of the additional proposed amendments contained within the Women's Legal Services of Australia position paper that has already been submitted to this committee.

FURTHER RECOMMENDATION

The Primary Caregiver's testimony regarding the needs and particularly the need for protection of the children should be given significant weight. At present, we can see from the Judgements on the Family Court Website and the reports prepared for this enquiry, that the Primary Caregiver's testimony is often viewed with suspicion and scepticism and rarely is much weight attached. Penalties are often inflicted on a child and Primary Caregiver because of this view. The Penalty is always the complete or partial removal of the child from the Primary Caregiver. This occurs regularly, despite medical evidence or evidence from other jurisdictions; such as criminal proceedings.

RESULTS OF SHARED PARENTING PROVISION (from my own case)

The result of my own child being sent, according to the Orders, for "Substantial and Significant Time" with her father, has now given rise to exactly the opposite effect than was envisaged by the provision of the Shared Parenting laws.

The implementation of the Shared Parenting laws has lead to my child's relationship with her father reaching an acrimonious level. The absence of priority being given to the Child's view and the Primary Caregiver's view on the child's needs has contributed to this regrettable outcome.

Children are being forced to rigidly adhere to draconian laws 'no matter what' with the penalty for non-compliance: - the looming prospect of being dealt further bizarre judicial decisions, such as those that are the basis for this enquiry.

The Shared Parenting provision is demonstrably damaging to children and their relationship to the parent they are ordered to spend time with against their will, be it 50/50 time or Substantial and Significant time, or any other amount of time. The Shared Parenting provision should be removed. The provision is seriously harming the parent/child relationship. The implementation of the Shared Parenting provision is

misguided in its intention of fostering a relationship with both parents. In reality, no law can force a relationship where a child has been mistreated, is fearful or simply wishes to remain living with their known Primary Caregiver. We have the benefit of psychological research which informs us that it is not possible to successfully force a child to love a parent against their will, although brainwashing can occur, we have learnt that the result is most likely to be a tortured adult. Homicides occur when a child has been forced to grow up with a parent they despise. We are fostering generations of children who will be a massive drain on the public health purse.

50,000 Australian children are living solely in the care of their father according to CSA statistics. What have 50,000 children done to deserve the penalty of living without their mother? What have 50,000 mothers done to deserve the penalty of having a child removed from their care?

MY STORY

My story is an illustration of the capricious attitude that can be taken by the judiciary when laws are not prescriptive enough to exclude misinterpretation and judicial discretion is too broad.

IN ADDITION I STRONGLY SUPPORT THE FOLLOWING KEY CHANGES :

- Broadening the definition of ‘family violence’ to include elements of coercion and control, a wider range of behaviour and removing the objective test of ‘reasonableness’ so that family

violence can be properly considered whenever the victim actually fears for their safety

- A broader definition and understanding of child abuse that includes exposure to violence
- Prioritising family violence when considering what is in the best interests of the child
- Removing the ‘facilitation’ aspects of the ‘friendly parent provision’. (This provision has resulted in a culture of punitive orders... the child is punished by being removed from the care of the protective parent and forced to spend more time or all time in the care of the parent they do not wish to be with and are often not safe with.)
- Repealing section 117AB about costs orders relating to false allegations or denials of violence
- The safety and protection of children should be prioritised above all else. Its priority should not be subject to proving an inconsistency with other considerations.
- The Act should make it clear that exposure to family violence is a form of family violence and that it applies to behaviour by the person perpetrating violence, and not the victim of the violence.
- There should be no presumptions in family law – every family should be treated as unique.

This means that there should be no presumption of equal shared parental responsibility and

the courts should not be required to start from any particular care arrangement.

- The Act should protect the safety of the primary carer as this increases children’s safety.

Conclusion

Based on my own experiences as well as reading the experience of others dealing with the family court, along with the family court Judgements that are displayed on the court website, and the evidence presented in numerous research reports over the last few years, I strongly recommend you support the amendments suggested in this letter and the expeditious passage the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011.

Yours sincerely,
(Name withheld)