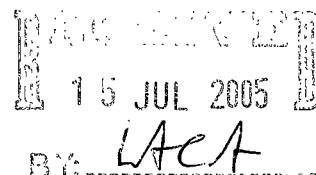


From: Robert Mastripolito & Melissa Ballantyne [mastripr@chariot.net.au]
Sent: Friday, 15 July 2005 4:58 PM
To: Committee, LACA (REPS)
Subject: Review of exposure draft of the Family Law Amendment (Shared Parental Responsibility) Bill

Submission No. 32
2005
Date Received



Dear Ms Towner

Thank you for the opportunity to provide comment on the draft Bill. The following points are put forward for the Committee's consideration;

A. Schedule 1.

1. Objects in Part VII of the Family Law Act (FLA)

The new Objects and Principles section is to be commended particularly the provisions relating to protecting children directly & indirectly from harm.

2. Compulsory Attendance at Family Dispute Resolution (FDR)

The draft bill provides for an exception to compulsory attendance at FDR where the court believes on "reasonable grounds " that there has been violence or abuse. It is unclear what will satisfy the test of "reasonable grounds ". This could be particularly difficult for women who may have endured many years of abuse but none of it has been reported to police. At the time of separation such women are particularly vulnerable to abuse & may have to come into unwanted contact with the perpetrator via FDR if they cannot provide some supporting evidence of the trauma they have suffered.

Furthermore the draft bill provides that even if the exception applies the court must still consider an order that both the victim & perpetrator attend FDR. It is not clear in what type of situation involving violence or abuse it is appropriate for the court to consider making such an order.

3. Presumption of Joint Parental Responsibility (JPR)

It is submitted that there needs to be clarification as to what would satisfy the requirement for " consultation" & a " genuine effort to come to a joint decision". This has the potential to increase litigation in the Family Court.

4. Obligation on advisers

The draft bill states that advisors assisting separating couples should suggest substantial time for children with both parents. It is submitted that advisers should use what is in the best interests of the child as the starting point for working out care arrangements for children.

5. Substantial Time

It is submitted that new Section 65 DAA puts an onus on the court to give undue weight to a regime of substantial time with both parents. In all cases the court should be guided by what is in the best interests of the child.

6. Best Interests of the Child

The elevation of protection as part of the first tier is to be commended.

B. Schedule 2 - Compliance Regime

The suggested changes do help to clarify this part of the FLA.

C. Schedule 3 - Conduct of child-related proceedings

The move towards a less adversarial approach in determining these matters is commended. Extending the Children's Cases Program model would be very helpful.

D. Schedule 4 - Dispute Resolution Changes

It is a concern that statements made to court based family & child specialists may be used in court even if those making the statements are not told of the lack of confidentiality.

E. Schedule 5 - Removal of references to residence & contact

A difficult area. It is not clear that the suggested terminology will help the situation. Perhaps the use of "lives with X at the following times... " & " At all other times lives with Y " could be considered.

We look forward to release of the Committee's report in due course.

Yours sincerely

Melissa Ballantyne

Member

Women Lawyers' Committee of the
Law Society of SA