SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

BUDGET ESTIMATES 2017

Family Court of Australia

Question No. BE17-172

Senator Lambie asked the following question on 26 May 2017:

Can you please provide a copy of research completed by the Family Law Institute with their findings in regard to the below matter.

But the questions are simply did your organisation through this research or any research ever conclude that such views:

1) Are accurate interpretations from the Family Law Act so it does not need any changes?
2) Are indeed in the best interest of children so the Family Law Act does not need any changes?

More specific findings the Attorney-General's department saying your organisation and your research supports that we would like to question include

a) That whoever as the judges say "unilaterally imposes living and contact restrictions" is always more important than the other parent and should always have more time because while secondary parents are very important only the parent who first gained possession is essential to a child, and children are incapable of ever switching their level of need, and can never develop and equal or greater relationship with the secondary parent?
b) That in relation to the Family Law Act's protection from harm requirement, a secondary parent can not harm a child so the threshold of harm inflicted by a secondary parent is lower with regards to increasing the level of contact towards more time with a secondary parent, but protection of harm from a primary parent with regards to reducing a primary parents level of time is much higher as they must reach a level of harm to the child that exceeds (not matches but exceeds) the child's brain not developing, even in cases where the secondary parent is no risk at all.
c) That any harm caused to a child by the primary parent is the fault of the secondary parent seeking contact that is of no additional value to children as they are only secondary parent as a result of the arrangements forced on the child by the first person to get possession of the child prior to passing the mandatory mediation session and reaching court.
d) That secondary parent seeking any level of contact greater than that set out by Dr. Jennifer McIntosh in her studies tendered by the Attorney General's office as per age at trial date, must be less creditable and their evidence down weighted compared to the first person to get the child, because only primary parents can argue for time, secondary parent seeking time are seeking something of no additional value to children once you have a minimum contact needed for a meaningful relationship so the secondary parent and their evidence must be less creditable?
e) That it is appropriate and ethic to not inform secondary parent, that the interim order which must under the Family Law Act according to the judges have a little bit of time during school

days (as little as an hour) and a little bit of time on non-school days (as little as an hour) so as to "stabilise" until they can determine what is in the best interest of the child, without telling them that at the time of trial judges also say that the fact they put in place these limited interim orders, the judges made it in the best interest of the child to always have more time with the parent they allowed precisely as a result of making that limiting interim order? Again assuming the first person to get the child limits their harm they might inflict on the child to a level no greater than (though equal to is fine) that would result in the child's brain not developing.
That as conflict between parents is the greatest form of harm to a child the best interest of children is achieved by any level of contact at all when the child is not at risk of harm during their time with a secondary parent, even if the primary parent is harming the child under the threshold limit, but that it is the extremely difficult nature of returning to court that leads as a result of final orders that makes it in the best interest of a child to remain more with the first parent to get the child if the first parent, refuses to communicate, refuses to co-operate, or makes demands that are inappropriate for a secondary parent to do and the secondary parent refuses to comply (such as being asked by the primary parent to harm the child so long as they are being ask to harm the child in a way that is below the threshold)

The response to the honourable Senator's question is as follows:

It is not clear what research the Honourable Senator is referring to. The Australian Institute of Family Studies and the Family Law Council have produced research reports; however such reports were commissioned by the Australian Government. The Family Court of Australia has had no input into such research aside from the provision of data.

The Family Law Council's published reports are available on the website of the Attorney-General's Department, at the following link: <https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Pages/FamilyLawCouncilpublishedreports.aspx>.

The two most recent reports may be of particular interest. Those reports are:

- *Family Law Council Interim Report on Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems — Terms 1 & 2* (30 June 2015); and
- *Family Law Council Final Report on Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems — Terms 3, 4 & 5* (30 June 2016).

The Australian Institute of Family Studies publishes its research on its website: <https://aifs.gov.au/>.

The following comprehensive reviews of major family law reforms since 2006 may be of particular interest:

- Rae Kaspiew et al, *Evaluation of the 2006 Family Law Reforms* (Report, December 2009), available at: <https://aifs.gov.au/publications/evaluation-2006-family-law-reforms>; and
- Rae Kaspiew et al, *Evaluation of the 2012 Family Violence Amendments*. This project had three parts, being a quantitative analysis of patterns in orders for parental responsibility and time made in the Family Court of Australia, the Federal Circuit Court of Australia and the Family Court of Western Australia; a national analysis of court

filings data provided by these courts; and an analysis of published judgments. The three publications setting out the findings of the project are available at: <https://aifs.gov.au/projects/evaluation-2012-family-violence-amendments>.

In relation to questions 1) and 2) these are policy matters for government. It is not appropriate for the Court to comment on such policy matters.

In relation to the question : *More specific findings the Attorney-General's department saying your organisation and your research supports that we would like to question include …*

Judges hear cases and decide them on the basis of admissible evidence provided about individual families in individual cases. Within those parameters they apply the law in the context of the facts in each case. In parenting cases, the ultimate decision reached must be in the best interests of the child based on the particular circumstances of that case, and every case is different, just as every family is different. The judgments are published and available for public scrutiny. Given that each case is decided on its merits, and also that courts comprise of individual judges, it is not appropriate to say that the Family Court of Australia 'supports' or has a 'collective view' about such issues or research.