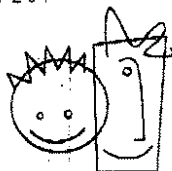




02 9286 7267



nsw commission for children & young people

28 JUN 2004

Mr Phillip Bailey  
Acting Secretary  
Senate Legal and Constitutional Legislation Committee  
Parliament House  
CANBERRA ACT 260

Dear Mr Bailey

I am writing in relation to the Senate Legal and Constitutional Legislation Committee inquiry into the Family Law Amendment Bill 2004.

I support the predominantly technical amendments in the Bill which are intended to improve the operation of the *Family Law Act 1975*. I also support the proposal to clarify the Court's power to send parties in contravention proceedings to counselling and post-separation parenting programs.

I note that the Bill proposes to give the Family Court the power to vary, on its own motion, 'unworkable' parenting orders when either party brings a contravention application. While such a power will ensure that the Family Court is not burdened by contravention proceedings resulting from what the Court considers poorly designed parenting orders, I am concerned that the proposal allows the Court to unduly interfere in arrangements both parties have consented to.

The Bill also provides that where a court determines that a party to a child maintenance order is found not to be a parent or liable step-parent of the child to whom the order relates, that person may recover any amounts paid in compliance with the order. I am concerned that the Bill and explanatory material is silent on where this money would be recovered from. I am particularly concerned that the money might sought to be recovered from the custodial parent of the child to whom the order related. This may place a significant financial burden on that parent and family. There is no indication in the Bill or explanatory material of any measures that might be imposed to make sure that the best interests of the child, is safeguarded following any action to recover this money. I suggest that such safeguards should be incorporated into the Bill.

Thank you for the opportunity to comment.

Yours sincerely

Gillian Calvert  
Commissioner

28 June 2004