

DISSENTING REPORT BY THE AUSTRALIAN LABOR PARTY

1.1 Labor Senators' agree with almost all of the recommendations of the majority report.

1.2 In particular, we agree that this is an important Bill that could substantially improve the family law system by encouraging settlement of disputes without the stress and expense of court and encouraging involvement of both parents in the lives of their children after separation. The changes to allow more flexibility in court procedures for cases involving children are also very welcome.

1.3 We are also very pleased the Government Senators have agreed with the Opposition's position that a cost penalty for false allegations should be dealt with after the Australian Institute of Family Studies has completed its research on violence and family law. This is a commonsense proposal and we hope the Government now takes this advice.

1.4 We also strongly agree with the recommendation that three hours of Commonwealth-funded family dispute resolution should be available to those people who do not have a Family Relationship Centre nearby.

1.5 It is unfair to require compulsory attendance at a service when that service is only available free-of-charge to those Australians fortunate enough to live near a Family Relationship Centre. To do this would discriminate against Australians living in regional, rural and remote areas. It would also breach the spirit of the Prime Minister's pre-election promise that under the new family law system 'the first three hours of dispute resolution sessions will be free.'¹

1.6 Although we agree with most of the majority report, we do disagree on three very important issues: a cooling-off period for parenting plans; the proposed change to the definition of family violence and the use of the term 'equal shared parental responsibility'.

Cooling-off period for parenting plans

1.7 The majority rejects the proposal for a 7-day cooling off period for parenting plans. It argues that such a protection could 'stifle what is intended to be a flexible document'.

1.8 We do not see the logic of this argument. In the context of agreements that could last for many years, a 7-day cooling off period is hardly a serious obstacle to flexibility. It would be, however, a useful protection in cases where people might feel

¹ Framework Statement on reforms to the Family Law System, Prime Minister, 29 July 2004

that they have been cajoled or bullied into an agreement against the interests of their children or themselves.

1.9 On other issues, the majority has deferred to the recommendations in the LCAC report. On this issue the majority has chosen to cast aside a very sensible suggestion of the LCAC report with very little discussion or explanation.

Labor Senators recommend a 7-day cooling off period for parenting plans.

Definition of family violence

1.10 We agree with the majority that changes to the definition of family violence should not be taken lightly. For that reason, we believe that the proposed change from a subjective to an objective test (based on whether the victim has a ‘reasonable’ fear) should be deleted from this Bill and reconsidered only after the Australian Institute for Family Studies (AIFS) has completed its research.

1.11 The Committee heard compelling evidence that an objective test could have harmful affects on the ability of the family law system to deal with all cases involving family violence. As a result, we believe more careful consideration is needed before making this change.

1.12 On the issue of false allegations, the majority has accepted that it is more sensible to delay change until after the AIFS research is complete. There is no reason that this argument does not apply with equal validity to the definition of family violence.

1.13 We appreciate what the majority hopes to achieve with its recommendation to amend the definition of family violence further. However, there is a risk that this will merely add to the complexity and uncertainty of the definition. We would prefer to maintain the current definition until the AIFS reports.

Recommendation 1

1.14 Labor Senators recommend retaining the existing definition of family violence and reconsidering the issue once the Australian Institute of Family Studies research is available.

‘Equal’ vs ‘Joint’ shared parental responsibility

1.15 We agree with the several submissions that raised the concern that the change from the term ‘joint shared parental responsibility’ to ‘equal shared parental responsibility’ will contribute to false expectations about the effect of the changes made by this Bill.

1.16 Given the nature of parental responsibility, which is not a quantifiable thing that can dissected into two equal parts, ‘joint’ is clearly the more accurate, plain English word to describe what is intended. In an environment of many self-represented parties, the use of clear, unambiguous words must be a priority.

1.17 We do not agree with the majority that the problem could be solved by providing a definition of the term, especially as the majority makes no attempt to offer such a definition.

Recommendation 2

1.18 Labor Senators recommend changing the term ‘equal shared parental responsibility’ wherever it appears in the Bill to ‘joint shared parental responsibility’.

Senator Trish Crossin

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