



Public Consultation: Family Violence Bill
Family Law Branch
Attorney-Generals' Department
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Family Law Amendment (Family Violence) Bill 2010

Sole Parents' Union welcomes the opportunity to respond to the Family Law Amendment (Family Violence) Bill 2010 Consultation Paper. We fully support prioritisation of the safety of children in the Family Law Act, but have some concerns about the specific changes proposed.

Our first concerns on the discussion paper is the objective in paragraph one of

"...continuing to support the concept of shared parental responsibility and shared care where these are safe"

Sole Parents' Union fully supports the concept of shared parental responsibility. We strongly believe that both parents have a continuing responsibility to support their children in the best way they can. The specific form that care takes, however, should be decided by parents. The Family Law Act should not prioritise any one form of parenting arrangement over another.

Rather than shared responsibility, it is the reference to equal or substantial times as written into the Act that is the problem. This reference means that judges must consider this form of care over and above any other, and can set up an expectation by parents that shared custody will be awarded by the court regardless of their wishes. Parents can feel coerced into settling for shared custody against their better judgment, and against the best interests of children.

Shared parental care, in the form of equal or substantial time as written into the Act, is extremely difficult to set up and maintain, even in families who freely choose that model. Research shows that even with the best intentions, most shared custody arrangements revert to a primary care arrangement within a few years. For those cases where the arrangement is court ordered, or where parent(s) feel coerced into agreement, there is

likely to be high levels of conflict and low levels of cooperation between the parents. In those cases there is more likely to be a focus by both parents on sticking to the letter of the court orders, leaving no capacity for the flexibility needed to maintain a shared custody arrangement effectively. Even without the addition of violence or abuse this results in poor outcomes for children, and is definitely not in their best interests.

Sole Parents' Union, together with a number of other organisations, has raised the issues in this paper previously. We would refer you to our previous submission on *Family Law Amendment (Shared Parental Responsibility) Bill 2005* dated 15 July 2005 (attached).

We are very dismayed that if we oppose the proposed Bill children and women will continue to be put in danger, and that is an unacceptable situation. However by supporting the Bill in its current form the problems that have been created by ad hoc changes to the Family Law Act will continue.

These problems have been documented in the *Evaluation of the 2006 Family Law reform*, the *Family Courts Violence Review* and the *Improving responses to family violence in the family law system* report, as well as various other research reports identified in the *Family Law Amendment (Family Violence) Bill 2010* discussion paper and elsewhere.

In order to address all the problems of the Family Law Act, prioritise safety for women and children, and truly put children's best interests back where it belongs as the principal consideration of the Act, Sole Parents' Union is calling for a complete overhaul of the Family Law Act.

Although we do not think that the discussion paper provides the best option for amending the Family Law Act, and would prefer to see the Act overhauled, we have responded to each of the matters in the discussion paper below:

Convention of the Rights of the Child

Sole Parents' Union fully supports the inclusion of this clause in the Act. We would stress however that the Convention is about the **rights** of children to a meaningful relationship with both parents. It is not about children's **responsibilities** to have such a relationship, nor about parent's rights to their children. We are strongly of the opinion that these are often confused, and children are forced into a relationship that is not in their best interests purely because of a biological connection.

Prioritising safety in the two primary considerations

Sole Parents' Union has strong concerns about the "twin pillars".

The primary consideration, and only pillar, of the Family Law Act should be the best interests of children. This is the original intent of the Act and should be restored as its focus.

Making decisions in the best interests of children allows judges to consider a number of factors that are outside the current important but limiting focus on violence and abuse as the only consideration in judging where and how children should live.

There are many factors to be considered when deciding children's best interests. Their right to live safely and free from violence and fear are principal in this, but they also have a right to maintain their social networks; have stability and surety in their care; maintain school, sports and other activities; have any other particular needs are met.

Sole Parents' Union therefore calls for the removal of all references to equal or substantial time as a preferred model for parenting after separation.

Redefining 'family violence'

Sole Parents' Union supports the expansion of the definition of violence as defined in the discussion paper.

Identifying 'abuse' of a child

Sole Parents' Union supports the expansion of the definition of abuse as defined in the discussion paper.

Strengthening advisor obligations

Sole Parents' Union supports amendments to require advisors to encourage parents to consider the best interests of children as the paramount consideration when formulating parenting plans and family structures after separation. We would stress that such a consideration would preclude advisors from offering any specific model as an ideal structure for all families.

We would therefore oppose any prioritisation of a consideration of equal or substantial time, or shared custody, as the first consideration. This should only be offered on the same basis as any other type of parenting arrangements.

Bringing evidence of violence and abuse to court

Sole Parents' Union supports the requirement for filing of a Notice of Child Abuse or Family Violence in those cases where allegations are raised. We also support the requirement for the court to deal with such cases promptly.

We would stress that this requirement must be in conjunction with the removal of disincentives to raise allegations of violence and/or abuse.

Requiring parties to disclose involvement of child welfare authorities

Sole Parents' Union supports the requirement for parties to disclose to the court if there is a care order in place, or if the child/ren have been the subject of notification to or investigation by child welfare authorities.

We are however concerned that this does not address the problems inherent in a system where family law issues and children's matters are dealt with in separate courts and by separate authorities.

We would recommend that the federal courts and state/territory child protection authorities work more closely to address the issue of child protection in family law matters.

Removing disincentives to disclosing violence

Sole Parents' Union strongly supports the immediate removal of the 'friendly parent' provisions of the Family Law Act as well as removal of mandatory cost order provision in Section 117AB.

Research shows that these sections of the Family Law Act have had the effect of preventing victims from raising allegations of violence, thereby putting women and children at greater risk of ongoing or even increased victimisation.

We also support the requirement of the courts to inquire about past or future risk or previous experience of the children in relation to child abuse or family violence. We would stress that this should include experience of children in witnessing violence against a parent.

Immunity for costs orders for state and territory child welfare authorities

Sole Parents' Union supports the provision of immunity from cost orders for child welfare authorities and officers of state, territory or commonwealth who intervene to become a party to proceedings under the Family Law Act at the request of the court where the officers act in good faith in relation to the proceedings.

Sole Parents' Union would welcome the opportunity to discuss the issues raised in this submission in person, or take advantage of any other consultation opportunity available.

Yours faithfully,

Kathleen

**Kathleen Swinbourne
Chair**