

2004-2005-2006

The Parliament of the
Commonwealth of Australia

THE SENATE

Family Law Amendment (Shared Parental Responsibility) Bill 2005

(Amendments to be moved by Senator Fielding on behalf of Family First in committee of the whole)

- (1) Page 3, after line 11, after clause 3, add:

4 Review of operation of Act

- (1) Within 2 years of the day on which this Act receives the Royal Assent, the Minister must conduct a review of the operation of the effectiveness and implications of the amendments made by this Act in increasing the propensity of equal parenting.
- (2) The review required by subsection (1) is to be completed within 6 months of commencement.
- (3) The Minister must cause a copy of the report of the review to be laid before each House of the Parliament within 5 sitting days of that House after the day on which the Minister receives the report.

[review of operation of act]

- (2) Schedule 1, item , page 7 (after line 13), after section 60B, insert:

60BA Public Policy to be considered when applying Part

The Parliament of Australia, in recognising the fundamental need of every child to experience the love, guidance and companionship of both parents in an every day setting after their separation or divorce, declares that it is the public policy of the Commonwealth to maximise the time and involvement each parent is willing and able to contribute in raising their child or children after the parents have separated or dissolved their marriage and to encourage parents to share the duties and responsibilities of child-rearing to affect this policy.

[public policy statement]

- (3) Schedule 1, item 13, page 19 (after line 34), after section 61DB, insert:

61DC Orders made in disputes over where child lives

- (1) In disputes involving where a child is to live, the court shall make a parenting order according to the best interests of the child in the following order of preference:
 - (a) the child to live with both parents jointly; or
 - (b) the child to live with either parent; or
 - (c) the child to live with any other person determined by the court to be suitable and able to provide an adequate and stable environment suitable for raising the child.
- (2) In making a parenting order in favour of one parent, the court must consider among any other factors:
 - (a) whether one parent is more likely than the other parent to facilitate and encourage the most parenting time and involvement of the other parent; and
 - (b) whether or not each parent is able to provide the parenting time they request.
- (3) A parenting order may not be made on the basis of a parent's gender or race.

[orders in disputes over where the child lives]

- (4) Schedule 1, item 13, page 19 (after line 34), after section 61DB, insert:

61DD Statement of reasons for parenting orders

- (1) If a court does not order that the child is to live with both parents jointly, the court shall state in its decision the specific findings of fact upon which the order that the child not live with both parents jointly is based.
- (2) An objection by a parent to an order that the child live with both parents jointly or conflict between the parents is not a sufficient basis for a finding that the order is not in the best interests of the child.

[statement of reasons for parenting order]

- (5) Schedule 1, item 13, page 19 (after line 34), after section 61DB, insert:

61DE Modification of parenting order

- (1) In considering an application for the modification or termination of a parenting order the court shall recognise evidence of substantial or repeated failure of a parent to adhere to the parenting order.
- (2) The court shall include in its decision on an application made in accordance with subsection (1) the reason for modifying or terminating the parenting order if either parent opposes the modification or termination order.

[modification of parenting order]

- (6) Schedule 1, item 13, page 19 (after line 34), after section 61DB, insert:

61DF Presumption of parenting time

- (1) In an application for a parenting order in accordance with this Part, there is a rebuttable presumption that maximising the parenting time and the involvement which each parent is willing and able to contribute in raising their child is in the child's best interests.
- (2) Maximising parenting time is achieved by ensuring that:

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- (a) the parent is not denied the ability to spend as much parenting time as that parent is willing and able to contribute; and
 - (b) the parent does not have his or her requested time reduced when to do so would result in increasing the amount of parenting time the other parent contributes to exceed 50%.
- (3) The presumption in subsection (1) may be rebutted by demonstrating with specific reasons that it is not in the best interests of the child after consideration of clear and convincing evidence with respect to any or all relevant factors set out in subsection 68F(2).
 - (4) The burden of proof for rebutting the presumption of parenting time is on the objecting parent or party.

[presumption of parenting time]

- (7) Schedule 1, item 13, page 19 (after line 34), after section 61DB, insert:

61DG Domicile of child pending making of an interim parenting order

Unless it is shown on written application by either parent to the Registrar to be detrimental to the best interests of the child, the child as far as practical shall spend time with both parents equally during the time that the court considers an application on where the child shall live.

[domicile of child pending making of parenting order]

- (8) Schedule 1, page 32 (after line 4), after item 36, insert:

36A After section 67M

Insert:

67MA Change of domicile of a child

- (1) In the absence of an order to the contrary, a parent that has a child living with him or her as a result of a parenting order shall notify the other parent if he or she plans to change the location of the child for more than thirty days together with the reason for the change of location, unless there is written consent by the other parent to the change.
- (2) To the extent possible, notice must be served personally or given by certified mail, not less than forty-five days before the proposed change in location and proof of service of the notice required by this section must be filed with the court that issued the parenting order.
- (3) A parent who is notified of a change of location of a child may apply to the court to seek modification of the parenting order.
- (4) Failure to give notice of a change of location of a child or failure to show good cause for the change of location of a child may be factors to be considered in determining whether the change of location was changed in good faith.

[change of location of a child]

- (9) Schedule 1, page 32 (after line 6), after item 37, insert:

37A After section 67Y

Insert:

67YA Parent's right of access to records of child

Notwithstanding any other provision of this Act, unless the court orders otherwise, access to records and information relating to a minor child, including but not limited to medical, dental, law enforcement and school records, shall not be denied to a parent that does not have the child living with him or her.

[parents' right of access to records of a child]

(10) Schedule 1, page 32 (after line 6), after item 37, insert:

37B After section 67Z

Insert:

67ZA Malicious false accusations

- (1) Evidence of a malicious false report of child abuse or family violence is admissible in proceedings between parties relating to where the child lives or relating to parenting time and the court shall make a finding on the matter of a malicious false report.
- (2) Where a court makes a finding of a malicious false report of child abuse or family violence made before or during a proceeding in accordance with this Part, the finding shall be grounds for the court to restrict the parent-child relationship between the child and the person found by the court to have made the malicious false report.
- (3) If a court determines, based on the evidence presented to it, that an accusation of child abuse or family violence made during a proceeding is malicious and false and the person making the accusation knew it to be malicious and false at the time the accusation was made, the court may award reasonable costs, not to exceed all costs incurred by the party accused as a direct result of defending the accusation, against the person determined by the court to have made the malicious and false report. For the purposes of this Part, person includes a witness, a party, or a party's legal representative.
- (4) On application by any person requesting the ordering of costs against another party under this Part, the court shall issue a direction for the other party to show cause why the requested costs should not be imposed and shall schedule a hearing on the matter not later than 15 days after a direction is given in accordance with this subsection.
- (5) For the avoidance of doubt the remedy provided by this section is in addition to any other remedy provided by law.

[malicious false accusations]