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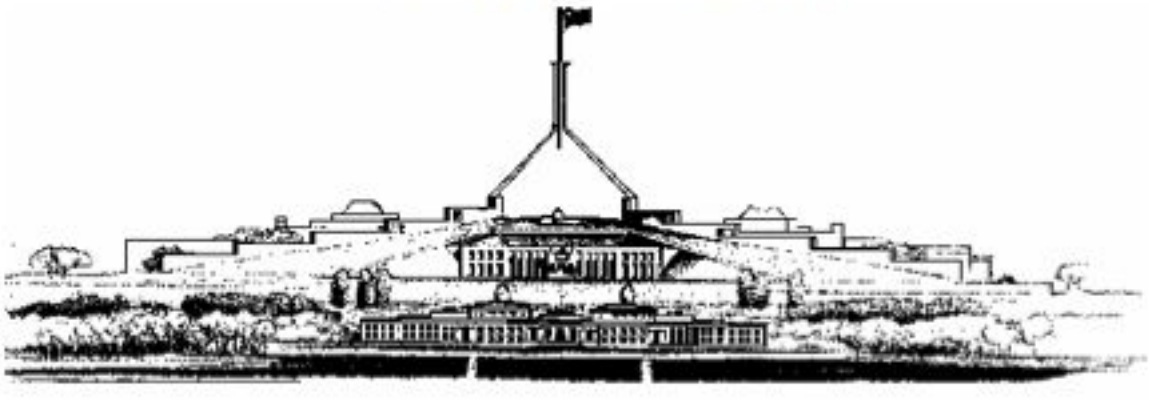

HOUSE OF REPRESENTATIVES

BILLS

Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011

Second Reading

SPEECH

Thursday, 26 May 2011

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

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Questioner		**Responder**	
Speaker	Simpkins, Luke, MP	**Question No.**	

Mr SIMPKINS (Cowan) (12:41): I welcome the opportunity to make some comments today on the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011. As members of parliament, when we meet with our constituents it is rare that we meet people who are in a more tense, difficult or even extreme situation emotionally than those who come to speak to us about problems with broken marriages and relationships, particularly where that impacts upon relationships with children from the marriage or relationship. Also, the media reminds us, too frequently, that there are occasions where kidnapping and violence towards children are linked to relationship breakdowns. We all cannot imagine why anyone would choose to harm a child as a result of these sorts of breakdowns within families and relationships.

For us, this means that we must legislate and examine every opportunity for reform so that parents and couples have options for the best support and so that levels of enmity and stress can never be factors in the fate of children. That is why in 2005 and 2006 I applauded the changes that the then Attorney-General, the Hon. Philip Ruddock, introduced into this place under the Family Law Amendment (Shared Parental Responsibility) Bill 2005. In that legislation the first 15 family relationship centres were provided for, including the one that operates in Joondalup, not far north of Cowan. The legislation also provided for 50 new services, including 33 early intervention services, which commenced delivering effective relationship services for families. These were the centrepiece of the $397 million family law reform package designed to address the reality that one million children had a parent living elsewhere than with them and that one in four of the children in separated families saw their non-resident parent once a year or not at all.

In 2006, 51,375 divorces were granted, according to ABS figures. In 2007, there was a big drop down to 47,963. I believe that is the biggest drop in recent history. In the concern to reduce the adversarial nature of divorce proceedings, particularly where they involve child custody, family support services were set up nationwide to provide dispute resolution services before divorce cases go to court. These services were set up as not just an entry point to the family law system but to provide case assessments, referrals and practical assistance to parents and also guidance and assistance before there were significant problems in relationships. The initiative, as I said, commenced with 15 family relationship centres and 33 early intervention services, including men and family relationship services, family relationship counselling, family relationship education and skills training services and specialised family violence services. There were also post-separation services, including four services under the Contact Orders Program, seven children's contact services and six family dispute resolution services.

As I said before, the family relationship centres were designed to assist families in strengthening their relationships, providing support and assistance to people in all stages of relationships, including marriage, parenting and the difficult times around separation. It was said at the time that these centres and the initiatives overall were designed to assist families throughout their relationships and not just to assist them through separation and divorce. Certainly I have met many people who have been assisted in achieving workable parenting arrangements through these initiatives, which have helped parents maintain contact with their children. As the then Attorney-General, the Hon. Philip Ruddock, said at the time of these changes, the changes:

… reflected the Government's determination to ensure the right of children to grow up with the love and support of both of their parents…. We want to help parents sit down with each other and talk about what is best for their children, rather than immediately entering into the adversarial legal system.

However, today I wish to direct my remarks toward this bill, the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011. I of course welcome the opportunity to participate in the debate, because I am committed to an outcome of better and more functional legislation to assist my constituents in these family law matters. Yet I would say that there are parts of this bill that are a step backwards and not the step forward we should always be looking for.

To begin, I would question the need to insert the new subsection to section 60CC of the Family Law Act. Already section 60B lays out the best interests of the child and, in conjunction with section 60CA, clearly demonstrates interpretation of the best interests of the child. What the government seeks to do here is to insert a series of subjective examples of behaviour into the

Family Law Act. I do not see the justification of trying to prescribe details for multiple circumstances, when the paramountcy of the best interests of the child is already enshrined in the existing legislation.

With regard to identification, inquiry and reporting on family violence and child abuse, what I would say is that across this nation we are used to seeing stories of children at risk. The risk can be the risk of violence, the risk of neglect, abuse or sexual abuse. In our streets, in our suburbs, in our towns and in our communities there are children at risk right now. There are children who are being abused, and that is a reality. What is also true, certainly in my view, is that anyone and everyone who is aware or who suspects that children are at risk are duty bound to take action. It is not right that we sit back and merely say, 'There is an agency that is responsible for that.' I reject as well ideas such as, 'The court can decide that, so I do not need to be involved.' These are wrong.

It is without doubt the responsibility and the duty of any adult to do what needs to be done to ensure the safety of children in these circumstances. That being said, there is still a requirement for an examination of how legislation can achieve improvements to identifying and responding to pertinent safety concerns. It is right that child welfare agencies, children's lawyers, dispute resolution practitioners, family consultants and family counsellors will have their participation and accountability improved by this bill. I am therefore happy that this is part of this bill.

What I am very unhappy about is the proposed changes regarding false allegations of abuse and violence. Under the Ruddock reforms, section 117AB of the act provided for mandatory cost orders where a party knowingly made a false allegation or statement in the proceedings. This very important reform was introduced by the Howard government and it was greatly welcomed by the people of Australia, particularly if they were affected by court matters where false accusations were made as a bargaining point. To me this change is not a good one, but it shows the great Labor traditions where individual responsibility and accountability are discouraged.

If you look at this sort of situation carefully, it is very clear what should happen. The scenario is this: a person makes an allegation that one of the parents or a former partner has abused the children. Sometimes these are allegations of the worst kind, and I mean, of course, child sexual assault. That allegation must be investigated and, if proven, there should be a lengthy custodial sentence for the person responsible. However, if the allegation is not proven, then consideration should be given to perjury charges or defamation charges against the person who made the allegation originally. It is one or the other, child molester or liar, and there should be accountability for the guilty, based on the proof of such offences. Obviously these matters need to be proved, and among the proofs is the concept of intent. That being said, this was not the way that was chosen, but instead a determination of court costs was made for those who were found to have made vexatious allegations.

This is clearly covered in the stringent requirements of section 117AB, where it applies only if a person has knowingly given false evidence. But instead this legislation will once again take the requirement to prove allegations away. This is a terrible error that will need to be fixed by us when we return to government unless it can be amended today. I think that what is proposed here represents a trampling of the rights of one party and it will potentially damage the relationship between children and one of their parents. I also take this opportunity to express my concern with the repeal of the friendly parent provision. I believe that, when you examine the provisions of section 60CC, you will see that they provide for courts to determine the interests of the child in such family law matters. It is my view that it is all there in section 60CC(4).

It has been said that the reason this particular amendment has been brought forward is that the existing provisions discouraged the reporting of violence, but there was in fact no statistical information to suggest that this was the case. Although the Chisholm report made that assertion, the Family Law Council described that criticism as not much more than gossip. I would also say that the criminal justice system, and in some ways the whole justice system, is the focus of many complaints in my door knocking. Ultimately the view of so many of my constituents is that judges and magistrates do not reflect community standards or expectations. I suppose that, if you are used to being pretty much god in a courtroom for many years and you only live in the best suburbs, the workings of the real world for the majority of law-abiding Australians are something that happens at a great distance from your personal reality. Perhaps those who are so often described as learned need to be a little more experienced with the outer suburbs of our cities.

The trouble with the amendments in the bill that the government is bringing forward is that they seek to unwisely unwind the objectives of the 2006 reforms. It was certainly the case that those reforms helped to build strong healthy relationships, prevent separation and encourage greater involvement by both parents in their children's lives after separation, whilst also protecting children from violence and abuse. They were there to help separated parents agree on what is best for their children rather than litigating, through the

provision of useful information, advice and effective dispute resolution services, and also to establish a highly visible entry point to other services and to help families to access those other services. I think that when you look at the figures on the reductions in divorces immediately following the 2006 reforms, despite what others may say, there is certainly an indication that there was great value in what was achieved by the then Attorney-General, the Hon. Phillip Ruddock, and the government.

I will conclude by saying that I have every confidence in the reforms of 2006. I cannot help but feel the attacks on these reforms are based on an ideology detached from the realities of real Australia, out in the suburbs where most Australians live. The changes to the friendly parent provisions and, most unhelpful of all, the changes to the cost order provisions represent a decision by the government to accept the ideology and not look at these matters in a balanced way. A lot of people in this country will come to regret this matter if we cannot achieve a better result when the coalition's amendments come to be voted upon. What the government should do is listen to reason and not ideology.