

6 May 2018

The Executive Director
Australian Law Reform Commission
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REVIEW OF THE FAMILY LAW SYSTEM

Thank you for the opportunity to provide a submission in response to the issues paper for this important review.

I would like to make the following general comments as part of my submission.

Family Law should be about supporting children and families, and strengthening relationships between parents and their children.

Although legislative changes to the Family Law Act (FLA) since 1975 have purported to do this, sometimes the outcome of changes have fallen short of laudable intentions. In addition the Family Law system is still conducted predominantly through an adversarial litigious lens, which pits parent against parent and unwittingly brands the child as an item of their property for them to argue over who owns that property.

The FLA is framed in terms of the child's rights and the best interests of the child however the significance of these principles is at odds with the baseline requirement for the child to spend equal time with each parent. If the FLA is about children's rights and their best interests, an assumption that spending equal time with each parent is in the best interests of the child, without knowing whether that is in fact the case for each child, is inconsistent with those principles. As a Family Dispute Resolution Practitioner (FDRP) I know that parents consistently misconstrue the statement about equal time and believe that the child must spend equal time with each parent regardless of the impact of this on this child and even when it is clear that the child is struggling with the equal time regimen.

The legislative changes to the FLA introducing the concept of equal time have undone advances that have been made for children's rights. In mediation parents will often talk about their children as if they are a item of property. It is not unusual to hear parents say something like "they are half my kids so I'm entitled to have them half the time" or worse.

So whatever changes are made it would be important that they are framed so that they disabuse parents of the belief that they "own" half their child and expectations based on that belief.


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