

# **FAMILY LAW REFORM ALLIANCE OF AUSTRALIA**

## **A MANIFESTO FOR CHANGE**

The FAMILY LAW REFORM ALLIANCE of AUSTRALIA is an umbrella organisation representing a number of organisations which are concerned that the current Family Law is not beneficial to the interests of children and is leading to many injustices and inappropriate determinations, including the serious abuses of children and in some cases their deaths.

Research and Governmental Reviews of the Family Law over more than a decade have consistently shown that the Family Law is seriously flawed and dysfunctional and is erratically administered by the Family Courts.

The most serious defect in the Family Law is that it emphasises the rights of parents to custody and contact with a child, regardless of whether a parent has been abusive to the child, including the abuse which occurs during intimate partner violence.

In the application of the Act in Family Courts, evidence is often disregarded of whether a parent has acted responsibly towards the child in the past by taking an active and supportive role in the child's life, has a meaningful relationship with the child, and has financially maintained the child. The Family Courts also ignore the need for children to have their paramount needs met for safety and security with a primary caregiver, and to preserve their social relationships within their peer groups and community.

In effect children's lives are being seriously harmed by legal provisions requiring 'Shared Care' of the child to an extent which causes severe disruption to the child's life and insecurity in their living arrangements.

It is the view of FAMILY LAW REFORM ALLIANCE that in determinations regarding the care of children that paramount importance must be given to providing children with safety and security with their primary caregiver, and that the child's wishes and feelings are given very a high weighting in any such determinations.

In furtherance of these concerns regarding the Family Law and its administration by the Family Courts, we consider that the following reforms are urgently necessary :-

- The Family Law should be CHILD-CENTRED and focus on the NEEDS, WISHES, AND RIGHTS of the CHILD;
- All matters regarding THE CUSTODY and CARE of children after parental separation shall be dealt with by a CHILDREN'S CARE TRIBUNAL with a Panel comprised of a judicial Head assisted by two experts in Child Protection and Domestic Violence. The Tribunal to be assisted by a senior legal counsel to assist in the examination in an inquisitorial manner of the evidence submitted by or in regard to the respective parents;
- There must be a presumption in the Family Law that the child has a right to express their wishes and feelings concerning custody and contact arrangements, Such presumption is rebuttable only if there is clear and convincing evidence that the child

is unable to do so, or wishes to waive this right. The child should have the right to present their views either verbally in person, by Statutory Declaration, or to appoint and be accompanied and assisted in their presentation by an independent advocate of their own choosing, and who may or may not have legal training;

- A comprehensive and thorough assessment be made of each parent's prior involvement in the child's life and upbringing, whether a 'meaningful relationship' exists between the parent and the child, and extensive details of how each parent proposes to meet the child's physical, emotional, social, and educational needs if they are awarded custody of or contact with the child;
- All allegations of abuse of the child by either parent or third person(s), including the inherent abuse which occurs during incidents of intimate partner violence by a parent, must be referred to the Police and State Statutory Child Protection authorities for competent and thorough investigation and their findings must be made known to the Tribunal prior to any determinations regarding the care of a child and contact arrangements with the non-resident parent. The paramount consideration in such matters must be the safety and protection of the child and whether the child may be at risk of any form of physical, emotional, or sexual harm or of neglect in any such arrangements. Where the evidence obtained in such investigations indicate a need for a criminal prosecution, this should be considered by the police with a view to such a prosecution, and thereafter such evidence be provided to the CHILDREN'S CARE TRIBUNAL in order to assist in custody and contact determinations by the Tribunal;
- In matters concerning the geographical location where the child lives, the child's wishes and feelings, and the reasonable and practical convenience of the primary caregiver must be given the highest weighting in determinations as to where the child shall live;
- That when determinations are made by the CHILDREN'S CARE TRIBUNAL in the 'Best interests of the Child' that this is qualified by a statement of how such determinations are measurably and demonstrably to the benefit of the child;
- Changes to the system of Child Maintenance so that it is separated from the custody/contact determinations of Family Courts, thereby removing the motivations to seek custody/contact in order to reduce or remove child maintenance payments.
- Increase the element of teaching about domestic violence and child abuse in training programmes for social workers, police, judiciary, and legal representatives engaged in Family Law;
- The Federal government introduce a single law regarding the protection of children from abuse and exploitation to replace the existing and variant State laws, and a single national definition of child abuse. Such national legislation to be implemented and administered by State authorities with oversight and monitoring by Federal government to ensure uniformity in the quality of services and standardisation of practices;

- The full implementation of the Rights of Children as set out in the United Nation Convention on the Rights of the Child and embodiment of such rights in all Federal and State laws relating to children in full accordance with the intent and spirit of the U.N. Convention.
- The appointment of a independent Children's Rights Ombudsman to act as an external representative for children, where there are allegations that their rights have been violated or disregarded;
- More transparency and clarity in the administrations of the CHILDREN'S CARE Tribunal than is currently permitted under Section 121 of the Family Law Act in order that expert testimony can be examined by external professionals in the relevant and respective professional community. The purpose of which is to ascertain that such expert evidence conforms to the accepted knowledge base of that profession and does not include theories or practices which are the subject of professional contention or dispute and are supported by scientifically conducted research and peer review.

**Family Law Reform Alliance**  
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