

Family Court and Child Support Agency

Australian Christians places great importance on truth and fairness operating in all relationships. The search for justice is etched throughout human history. From Hammurabi's famous legal code, Plato's declaration that a society without morality and justice was spiritually diseased, Cicero's theory of natural law, Jesus' moral maxim now referred to as the Golden Rule, to fourth century Rome where Emperor Justinian defined justice as "the constant and perpetual will to give every man his due." All these principles are embodied in the spirit of the Charter of Universal Rights (1948) which states, "All human beings are born free and equal in dignity and rights.

They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." It reflects the ideal standard and the values of a liberal-democratic society. In matters relating to the Family Court and Child Support Agency, Australian Christians agrees generally with views expressed by the Shared Parenting Council of Australia. [1]

Although statistical data is difficult to locate, and data previously available on the Internet has been removed, informal statistics indicate that more than 70 Australians (over 50 distressed fathers, 10 distressed mothers and 7 distressed children under the age of 18) commit suicide every week as a direct result of trauma suffered through Australian Government agencies such as the Family Court and the Child Support Agency.[2]

Clearly, this situation is unacceptable and reform of these public institutions is necessary to ensure that truth and fairness prevail in all decisions made by these bodies. The ratio of male to female suicides indicates that gender bias may exist in decisions arrived at by the Family Court. If so, the Court is in violation of Articles 7 and 16 of the United Nations Universal Declaration of Human Rights,[3] to which Australia is a signatory.

Therefore, Australian Christians' Family Court and Child Support Agency Policy recommends the following course of action:

As every child has the right to both a mother and father, gender bias must not exist in the Court arriving at its decision, in accordance with Articles 3 and 18 of the United Nations Convention on the Rights of the Child,[4] unless genuine domestic violence is a militating factor.

Each case must be determined on its merits.

Both spouses must have equal access to Legal Aid, based upon a suitable eligibility test.

If assumptions or presumptions are made in arriving at a judgement, such assumptions or presumptions must be rigorously tested.

Perjury laws must apply in the Family Court as they do in other jurisdictions. Currently, the Family Court is in violation of Article 12 of the United Nations Universal Declaration of Human Rights.[5]

Although legislation governing Domestic Violence Protection Orders (DVPOs) is state-based and generally similar, not all conduct that may constitute grounds for the making of DVPOs constitutes a criminal offence. For example, 'economic abuse' must no longer be classified as 'Family' or 'Domestic violence'. [6]

Time with children must be equally shared, in a manner that is most beneficial to the psychological and emotional needs of the children, in accordance with Articles 5 and 9.3 of the United Nations Convention on the Rights of the Child.

Driving to collect and return children must be equally shared and the changeover location must be equally convenient to both parents.

Centrelink family benefits must be equally split when parenting is shared. Children must not be used as a bargaining commodity for monetary gain by either parent.

In cases involving child support, DNA analysis must be permitted to establish paternity, regardless of the jurisdiction in which the analysis has been performed.

Assets must be split equally in all cases of marriages exceeding three years, at the time separation occurred. In all cases of marriages of less duration than three years at the time separation occurred, what each spouse brought into, and contributed to, the marriage must be considered in arriving at a fair judgement of dispersal of assets.

Furthermore, in all marriages of whatever duration, individual spouses' superannuation savings remain individual property and are not deemed to be common assets if both have worked during the duration of the marriage. Therefore, in such cases superannuation savings must not be dispersed between the parties. However, if one spouse has performed the role of homemaker during the marriage then the other spouse's superannuation must be treated as a joint asset and be allocated between the spouses as other joint assets. If either spouse has not been in the workforce for a specified time, superannuation must be allocated between the spouses on a pro rata basis.

Decisions arrived at by Family Court judges must have reasonable transparency. Therefore, judges must provide a written explanation for a decision in which shared parenting time is seriously diminished. Also, current penalties spouses face if speaking post-judgement about their case must be rescinded.

Likewise, psychological reports must have reasonable transparency. Reports of court-appointed psychologists must be subject to audit by an external psychologist annually to ensure absence of bias and conflict of interest, in accordance with Article 10 of the United Nations Universal Declaration of Human Rights.[7]

As the Family Court always seeks to act "in the best interest of the child", it is incongruous that the opinion of children who are of age to express their feelings adequately is not solicited to a greater degree, as the children would be more aware than anybody else of the parents' behaviour, care, attentiveness, cooperativeness and availability. Therefore, the child's opinion must be given considerable weight in the Court's decision regarding custody matters, in accordance with Article 12 of the United Nations Convention on the Rights of the Child.[8]

The current exorbitant cost of the appeals process must be made more affordable for spouses wishing to appeal a decision of the Court, and the current time restriction must be expanded to enable a well-researched appeal to be formulated and presented.

[1] Shared Parenting Council of Australia, <http://flwg.com.au/guide/pg/spca>

[2] 'Family Law Death Toll', <https://jamesjohnsonchr.wordpress.com/family-law-death-toll/>

[3] United Nations Universal Declaration of Human Rights, <http://www.un.org/en/universal-declaration-human-rights/index.html>

[4] United Nations Convention on the Rights of the Child, <http://www.ohchr.org/EN/Professionalinterest/Pages/CRC.aspx>

[5] United Nations Universal Declaration of Human Rights, <http://www.un.org/en/universal-declaration-human-rights/index.html>

[6] Domestic violence laws in Australia June 2009,
https://www.dss.gov.au/sites/default/files/documents/05_2012/domestic_violence_laws_in_australia_-_june_2009.pdf

7 United Nations Universal Declaration of Human Rights, <http://www.un.org/en/universal-declaration-human-rights/index.html>

[8] United Nations Convention on the Rights of the Child,
<http://www.ohchr.org/EN/Professionalinterest/Pages/CRC.aspx>