SECTION 121: FAMILY COURT PRIVACY/SECRECY PROVISIONS

Senator Waters: *You suggested that s.121 of the Family Law Act be amended to improve transparency. Currently, all final Family Court judgments are published online, but anonymised to protect children and parties from intimate details of their lives being made public.*

- *What is it that you want to change about the current restrictions?*
- *Do you think that it could be harmful for a child for those details to be made public?*

For Kids Sake: We refer the Senator to the section of our submission to this family law inquiry on this specific subject, and to our additional comments below, with regards to changes to section 121 that are needed to best protect children.

Yes, in some instances, it may be harmful for children for details of their family law proceedings to be made public. But we need to start viewing this – and all family law-related issues – from the perspective of a child. What do we mean by saying "made public"? Do we mean non-anonymised publication in a newspaper or mainstream media?

From a child's perspective, their family law case effectively becomes "public" the moment their parents separate. It happens when their friends know or talk about it; when school teachers or other parents become aware of it; when they're mentioned in social media or schoolyard gossip. This does not happen as a result of mainstream media publication. Section 121 can do, and does, nothing to stop a child's family law case from becoming public to those who matter most to a child.

In terms of evidence, there is no evidence of a net benefit of s121 to the best interests of kids – there is merely a presumption that children should not have their cases discussed in mainstream media and a further presumption (not generally supported from international evidence) that media will be irresponsible and incapable of self-regulation with respect to what's appropriate to publish.

One of the few, but most definitive, pieces of evidence that we have on the specific issue of whether or not mainstream media publicity is harmful to a child comes from one of the most high-profile of all Australian cases – that of the so-called "Italian sisters". The evidence is that the now-grown children were not harmed specifically by the quite extreme levels of publicity in that case. In fact, one or more of the sisters have stated that the mainstream media publicity did not have a big impact on them and, in fact, they welcomed the opportunity of being able to air their views publicly and potentially help others. In the absence of other relevant evidence, such comments should be given significant weight.

Furthermore, if we believe that publication of the details of family separations is so harmful to children, then should we not be legislating to ban such publication for all families across the board, not merely for that small percentage that happen to be involved in family court proceedings? At present, the media is not restricted from reporting on the majority of family separations and divorces – those that don't involve family court proceedings – and many of these are far from amicable. Yet, are our newspapers full of inappropriate details of these family breakdowns? They are not.

"Section 121 does nothing to stop a child's case from becoming public to those who matter most to a child."

By contrast, there is significant evidence of net harm to children caused by section 121. This section of the legislation does not protect children; it harms every child involved in family law proceedings by protecting the system from essential scrutiny. Much, much greater harm to children is caused by family court proceedings themselves than by any mainstream media reporting on them.

There is incontrovertible evidence of incompetence, unfairness, idiosyncrasy and harm to children caused by the current family law system. This results, in part, from the fact that there is:

- No accreditation for family law professionals;
- No agreed, essential training;
- No routine monitoring of family law professionals;
- No feedback available or provided to family law professionals; and
- No readily accessible complaints process, even for egregious misconduct.

The fact that, on top of these and many other failings in basic accountability, the family court shrouds itself in secrecy by actively wielding section 121 as a defence against the exposure of incompetence, makes this a dangerous and harmful institution.

Great harm is done to every single child, thousands every year, by having a system that's above the law, unmonitored, unscrutinised, uncontrolled, and immune to complaint. This huge, known and existing risk far outweighs the potential risks of inappropriate journalism in perhaps a few cases should section 121 be relaxed.

"Section 121 does not protect children; it harms every child involved in family law proceedings by protecting the system from scrutiny and effectively hiding professional misconduct. Much, much greater harm to children is caused by family court proceedings themselves than by potential mainstream media reporting on them."

RECOMMENDATIONS

For Kids Sake's policy position is, once again, based not on any pre-existing prejudice or ideology, but on the best available evidence.

ESSENTIAL, BASIC CHANGES

There are strong arguments and evidence in favour of the following, relatively conservative changes to s121 and *For Kids Sake* supports legislative changes such that:

- Family law professionals and professional witnesses should be named in judgments;
- Any family law professional or professional witness involved in proceedings may be named and their conduct (or misconduct) may be made public (providing that family members involved remain anonymous); and
- Restrictions on public discussion of family law matters be automatically lifted once all children involved reach the age of 18 or are no longer alive.

MORE MAJOR, RECOMMENDED CHANGES

For Kids Sake recommends greater changes than these to the current restrictions. Based on the best available evidence, and world's best practices and recommendations, we believe that children's best interests would be best served by rescinding s121 in its entirety and replacing it with a simple, legislated requirement that professional media publication must adhere to published Media Guidelines that could be adapted regularly without requirement for further legislative change.

Such guidelines could initially be simple – for instance, allowing for a degree of self-regulation by the media or publication based on 'national interest' criteria – but they could be tightened immediately in the event that a media outlet overstepped acceptable boundaries or that self-regulation was not working satisfactorily.

The risk here is minimal and the benefits great: every single child would benefit from the easing of restrictions on reporting of family court matters. It would, for the first time in 44 years, open the family courts up to the type of monitoring and scrutiny that is present, and recognised as essential, in almost every other avenue of life. The safety and wellbeing of children demands the removal of the extreme restrictions created by the current section 121 of the Family Law Act 1975 (Cth).