



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES

Main Committee

APPROPRIATION BILL (No. 1) 1999-2000

Consideration in Detail

SPEECH

Tuesday, 22 June 1999

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

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Date Tuesday, 22 June 1999
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Questioner
Speaker Cox, David, MP

Source House
Proof No
Responder
Question No.

Mr COX (Kingston) (8.12 pm)—Lack of availability of legal aid for family law is one of the issues frequently raised by my constituents—and I am very glad that the Attorney-General is here tonight and may give them some kind of a response.

I am finding that the sense of injustice that people feel when they have been inadequately represented leads to resentment that compounds the problems of coping with the economic and social difficulties resulting from divorce. Last week I invited representatives of the South Australian Legal Services Commission, the Noarlunga Community Legal Service and some non-custodial parents to a meeting in my office. Also present were some of my colleagues, including the member for Lilley, who is shadow minister for family and community services; the member for Gellibrand, who, early in her legal career, was an associate to a High Court judge; Senator McKiernan; and the members for Chifley and Shortland. They all have an interest in this area. As well, there was as an adviser from the office of the shadow Attorney-General. Together we discussed the problem of the lack of resources for legal aid.

The Howard government, in its first budget, cut legal aid funding. Commonwealth dollars for legal aid have been frozen for three years, and the South Australian Legal Services Commission has been receiving the same number of dollars, regardless of inflation, increasing costs and growing demand.

The Noarlunga Community Legal Service has one lawyer devoted to family law. The budget that that lawyer has to work with has also remained static for some time. The resources devoted to assisting low and lower middle income Australians with family law matters are severely limited. If one of the parties in a family law matter is working, they are probably not eligible for legal aid. Being represented in a contested matter is likely to wipe out any remaining savings and put them seriously into debt. After going a short distance down this track, they are compelled by their financial circumstances to take the decision that, if they are forced to continue with the litigation, they will do it without representation. Most would prefer to come to a settlement with their ex-partner, and that is the way that most family law matters are settled. But one of the unfortunate aspects of family law is that it takes only one party to decide that they do not wish to agree to a settlement to create a dispute that will be settled only by litigation. The result, if one party is eligible for legal aid and the other is not and must therefore go unrepresented, is extremely one-sided.

The party who is properly represented will be in a position to maximise their position. The party forced to represent themselves, often in the mistaken belief that their logic and reason will prevail, finds they cannot achieve what they believe is any measure of justice. They will be lost in the procedure and process of the court. They find that what they believe to be sound and reasonable arguments have no relevance in the proceedings. They are unable in that environment to counter the arguments put on behalf of their ex-partner by counsel.

Whatever the merits of their case, they are left with a profound feeling of injustice and powerlessness. This is not the small claims court. We are not talking here about small issues, where proper legal representation is unnecessary. The issues at stake are the wellbeing of children, the division of houses, superannuation and any other assets which the family have accumulated. These are the most important legal issues most people will have to deal with in their lifetime. The consequences have a dramatic effect on their lives for years to come. Where superannuation assets are affected, the consequences will extend into retirement. The Howard government's cuts to legal aid funding have compounded the problem.

I am not suggesting that the Commonwealth should write an open-ended cheque to the legal services commissions around Australia to fund both sides of every vexatious family law matter. I recognise that law reform is a complex area but I would like to propose two possible solutions for examination. The first is for the Family Court to provide a legal advice service for those who will be going into court unrepresented, so that they understand a little better what they are facing. This could operate in the same way that the court requires counselling and mediation in an attempt to avert unnecessary trials. The Family Court needs to ensure that, where

one party is represented at public expense, if the other is to go unrepresented they should at least receive some appropriate advice.

The second possibility is more far reaching, but would not require any addition to government outlays. If only one party is to receive legal aid, the other should have the right to representation, the reasonable taxed costs of which should be a first charge against the assets of the marriage before they are divided. The extent of litigation paid for in that way would have to be strictly limited, perhaps to the representation necessary to obtain one interim and one final order. All other applications, appeals and enforcement orders would be excluded from the provision. I believe that paying for representation in this way would be a further incentive, in most cases, for both parties to agree on a settlement. It would be more likely to provide an outcome, even in difficult cases, which both parties would accept and so avoid further litigation.