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Fathers misread 'joint' parenting

Michael Pelly

FAMILY Court Chief Justice Diana Bryant has described the contentious shared parenting laws as "problematic" and the expectation of fathers as "a concern" as the government embarks on three inquiries into family violence.

The Chief Justice also says punitive costs orders for those who raise false allegations of violence have been counter-productive and that women fear being branded "unfriendly".

Her comments yesterday followed the announcement on Friday that former Family Court judge Richard Chisholm will head a review of the entire family law system, with an emphasis on how it handles violent situations.

The Australian Law Reform Commission has also been asked to develop a national legal framework to tackle family violence and the Institute of Family Studies is due to deliver its reviewing of the shared parenting laws in December.

Attorney-General Robert McClelland has cited the case of three-year-old Darcey Freeman, who was thrown from Melbourne's Westgate Bridge by her father in January, as a reason for the review. There has been considerable disquiet over the Freeman case inside the Rudd government. Leading the charge has been Housing and Status of Women Minister Tanya Plibersek, former shadow attorney-

general and Minister for Health Nicola Roxon and the Minister for Families, Housing, Community Services and Indigenous Affairs Jenny Macklin.

Chief Justice Bryant said "nothing was raised before the court about violence".

She said there were many ways to bring concerns of violence to the attention of the court. "A Form 4 (which gives notice of child abuse or family violence) was not filed and there was nothing on the file to suggest one had tried to be filed."

The Chief Justice said the shared parenting provisions of the act — section 65DAA and 61DA — were "problematic".

But she said the principal issue concerned perception of the reforms, which created a presumption that the best interests of the child were served by a meaningful relationship with both parents after divorce.

However, at the time of the 2006 reforms, it was sold to the public as an "equal time" provision rather than a starting point that could be altered due to the circumstances of the case.

"It is problematic in that it is creating problems in the community because people do not understand the act," the Chief Justice said. "It's not seen as a concern inside the court, but the expectations are the parties are a problem."

This was backed by senior

family lawyers who said the fathers in particular came to them with firm expectations.

"We have these terrible expressions, which say there shall be a presumption of joint responsibility," said Stephen Winspear of the Victorian Law Institute.

"That is not joint time but as soon as it says the word 'joint' people jump on it and think they have got all these rights. You have to be careful; language is dangerous," he said.

The editor of *Australian Family Lawyer*, Ian Kennedy, agreed: "The sausage is fine. It's the sizzle that is causing the problem."

The head of the family law section of the Law Council, Geoff Sinclair, drew attention to section 117AB of the Family Law Act which deals with costs orders where false allegations are made.

"It should not be there," said Mr Sinclair. "It may stop people raising issues they are legitimately concerned about."

Chief Justice Bryant also said it "may have led to misunderstandings and may dissuade women from raising issues of violence and abuse".

"There is also concern that they might be branded 'unfriendly' if they raise allegations of violence and that they don't pursue them because of that," she said.