Committee Secretary,
Senate Legal and Constitutional Committees,
PO Box 6100, Parliament House,
CANBERRA. ACT 2600.

19 August 2011.

Dear Committee Secretary

Re: Rebuttal of Additional response to questions on notice provided by Justice for Children on 11 July 2011 (PDF 2434KB)
Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011

I am writing to rebut the "evidence" that shared parenting forces children to live with paedophiles submitted on notice by Justice for Children.

I respectfully point out that this submission cites caselaw made 30 years before the shared parental responsibility amendments were enacted and quotes irrelevant UK judgements in which supervised contact was ordered to protect the father from further child sexual abuse allegations.

For your information the WA Premier has provided a draft commitment that they will not adopt the changes if passed.

In <u>Robins v Ruddock (FCA) 2010</u> – In 2006 the father pleaded guilty to downloading child pornography [voyeurism not abuse]. The Tasmanian Department of Child and Family Services **concluded that he did not pose an ongoing risk** to his two children. They were returned to live primarily with the Father by the **Mother's agreement**. In 2010, days before another trial and <u>after</u> the children's lawyer recommended the existing arrangements continue, the child made disclosures of inappropriate behaviour. A change of residence followed which permitted overnights only if supervised by another adult as recommended by **two doctorate psychologists**.

Importantly the finding was unacceptable risk and not "a clear and present actual risk" or that sexual abuse occurred.

<u>Rivas & Rivas</u> [2010] FMCAfam 55 – Pornographic material of the children found – unacceptable risk finding - children to spend such time with the father **<u>as may be agreed between the father and the mother</u>**, provided that the entirety of that time is spent in the presence of the father's mother. The Mother wanted the children to have contact but the contact centre in Devonport could not facilitate this long term.

<u>Asikas & Morikas</u> (FMC) - Not found on Austlii (Not in the CCH or AGIS Plus Text or CaseBase Lexis Nexis)

Murphy & Murphy [2007] - evidence was neither sufficient nor satisfactory to support definite positive or negative findings on the issue of past sexual abuse – **interim orders** made - graduated re-introduction of unsupervised time with safeguards including a short period of supervised contact and post-order monitoring and review to appease the Mother's concerns.

Excerpts highlighted in yellow in the Briggs submission refer to
46. D'Agostino **(1976)** 30 FLR 509
47. L [1989] 2 Fam LR **(UK)** 16

Ms Briggs claims that *"These judgements demonstrate that the family law decision-makers do not regard placing children in the care of convicted child sex offenders as being against their best interests"* must be rejected - allegations are not proof and "unacceptable risk" is not a finding of fact that sexual abuse has occurred. And supervised contact is not shared parenting.

I would refer the Senate to peer-reviewed research by Dr Jane Rawls in which a male research assistant posed as day care worker with young children. All interactions were filmed. 25% of the children reported being sexually abused by him - including genital touching, the man putting his hands under their upper clothing, of him touching their bottoms, and of him making them touch his - which the video showed did not occur [and likely explains the sudden decrease in male pre-school teacher numbers].

And the results could easily have been worse. Depending on the way questions were asked, the children's total accuracy of recall about a variety of situations at their first set of interviews ranged from 13 per cent to nil.

What was especially frightening was that errors appeared to evolve over time with repeated interviews and, for many, were first reported when diagrams of body parts were used. "
http://www.thefamilylawdirectory.com.au/article/false-sexual-abuse-allegations-child-interviews-the-family-law-directory.html

In conclusion I respectfully submit as final points to this enquiry,

(i) the Shared Parental Responsibility amendments were passed with Bi Partisan support only a short time ago in response to the most ever submissions received by any parliamentary inquiry.

(ii) This is the first amendment to the family law Act that has not had Bi Partisan support

(iii) There has **not been one case of substantiated child abuse in a court ordered shared parenting arrangement** since these amendments were implemented

(iv) The large study undertaken through survey of over 20,000 respondents by the Australian Institute of Family Studies in 2010, which found no increase in family violence, has barely been considered.

(v) There is no evidence, beyond anecdotal, that the Shared Parental Responsibility amendments have not adequately protected children.

(vi) There is no evidence that the proposed amendments will achieve its objective of reducing the incidents of Family Violence. In fact the implementation of such laws in other nations has caused 40% of children to be fatherless.

In my view the proposed amendments, in their current form, will most certainly involve children of separating parents in vastly more complicated, litigious, lengthy, costly, conflictual and hostile separations than Australians have witnessed before - ironically manufacturing the child harming conflict the Bill purports to protect children from.

Yours faithfully

Howard Beale
CAE Engineer,

Email: