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BY LACA

*NAH*  
To:  
Committee Secretary  
House of Representatives Standing Committee on  
Legal and Constitutional Affairs  
Parliament House  
CANBERRA ACT 2600  
AUSTRALIA

Via email: [laca.reps@aph.gov.au](mailto:laca.reps@aph.gov.au)

Re: FAMILY LAW BILL'S 23/06/2005 EXPOSURE DRAFT - SUBMISSION

Dear Sir/Madam,

Below are *important notes* and *specific comments* made by our group and are hereby submitted to the Committee for consideration before enactment.

#### IMPORTANT NOTES:

##### **Shared Parenting or Combined Parenting?**

The term 'shared' implies a division, namely, who is doing what, whilst 'combined' implies cooperation in all aspects.

##### **Child Specialist?**

Child specialist implies a paediatrician. How about "Court Family Advisor"?

##### **Orders made in Favour of Parents?**

The term 'order...made in favour of that person' shifts the focus to the parent and depicts winners and losers in a case. It is inconsistent with the evolving approach that the Family Court focuses on the child point of view and makes orders that are always in favour of the child and not in favour of a parent.

##### **Substantial Time with Both Parents. When?**

The Act should provide a guideline, see Ryan FM in *T & N* [2001] 31 FamLR 281 and Scarlett FM in *FNK & FRW* [2004] FMCAfam 185.

##### **Living With, Residing, Custody. Spending Time, Contact, Access. New Approach Needed.**

The expression 'person spending time with the child' focuses on the person rather than on the child. The expression 'living with' and 'spending time with' as substitute to 'residence' and 'contact' would be better coined as 'be with' (As further below for the suggestion in that regard). Further, using two different expressions for two

amounts of time entrench the imbalance of power and the fight for the 'living with' title would ever continue.

**A Person to Spend Time with a Child or a Child with a Person?**

A number of mistakes in later paragraphs render the meaning of a 'person who spends time with a child' as pedophile. Focus issue forgotten (though unnecessary if the term "be with" is to be used).

**Deputy Registrar?**

There is some information that the title Deputy Registrar is or is to become obsolete.

**Which Court?**

It would be a good idea to allocate the 'Specialist' the power to advise in which court to commence proceedings.

**SPECIFIC COMMENTS:**

Page	Lines	Is	Should be	Reason
1	5-6	<i>(Shared Parental Responsibility)</i>	<i>(Combined Parental Responsibility)</i>	The term 'shared' implies a division, namely, who is doing what, whilst 'combined' implies cooperation in all aspects.
3	2	Shared	Combined	As above
3	10	Jointly	Combined	As above
3	19	..., concerning the care...	...,for the care...	The word 'concerning' implies that there are other aspects of parenting that are not parents' duty.
4	5	parents jointly share...	both parents have the duties and ...	The term 'shared' implies a division, namely, who is doing what, whilst 'combined' implies cooperation in all aspects. Further, the terms 'joint', 'shared' and 'combined' are not necessarily interchangeable. They

				are understood differently by different people. The Act must have a single term
4	8	parents should agree...	both parents should cooperate in such matters that are concerning the future...	The legal term 'should agree' is not logical and not enforceable.
5	1	Currently not exists.	<i>Combined Parental Responsibility</i> – has the meaning given by subsection 61DA.	The terms 'joint', 'shared' and 'combined' are not necessarily interchangeable. They are understood differently by different people. The Act must have a single term with a clear definition for it.
5	16	(e) significant changes to the child living arrangements.	(e) the child's living arrangements.	A living arrangement is a major long-term issue, not just the changes to it.
10	5	Presumption of joint parental responsibility...	Presumption of combined parental responsibility...	The terms 'joint', 'shared' and 'combined' are not necessarily interchangeable. They are understood differently by different people. The Act must have a single term.
10	9 -10	...child's parents have parental responsibility for the child jointly.	...child's parents have combined parental responsibility for the child that is, that both parents must co-operate and consult each other in all matters concerning the care, welfare and development of the child.	As above.

10	31	...to have the parental responsibility for the child jointly.	...to have the parental responsibility for the child combined.	As above.
10	32	...presumption of joint parental responsibility...	...presumption of combined parental responsibility...	As above.
11	23	...for a child jointly-the form...	...combined for a child-the form...	As above.
13	12	...for the child jointly under the plan...	...for the child combined under the plan...	As above.
14	4	(d) a family and child specialist.	(d) a Court Family Advisor.	Child specialist implies a paediatrician.
14	16	...for a child jointly-the form...	...combined for a child-the form...	The terms 'joint', 'shared' and 'combined' are not necessarily interchangeable. They are understood differently by different people. The Act must have a single term.
15	22, 26, 35	...is <i>made in favour</i> of that person...	...is <i>made at</i> that person...	The expression 'in favour' of a parent defeats the purpose of the whole approach of the 1995 Amendment Act and this Bill's focus on the best interest of the child. It implies winning and losing parents in a court case rather than a child focused outcome.
15	34	...for a child jointly-the form...	...combined for a child-the form...	The terms 'joint', 'shared' and 'combined' are not necessarily interchangeable. They are understood

				differently by different people. The Act must have a single term.
Sec 64(C) of Act	Not in Draft	Parenting orders may be made in favour of parents...	Parenting orders may be made at parents...	The expression 'in favour' of a parent defeats the purpose of the whole approach of the 1995 Amendment Act and this Bill's focus on the best interest of the child. It implies winning and losing parents in a court case rather than a child focused outcome.
16	17, 21	...presumption of joint parental responsibility...	...presumption of combined parental responsibility...	The terms 'joint', 'shared' and 'combined' are not necessarily interchangeable. They are understood differently by different people. The Act must have a single term.
16	31	...parental responsibility for the child jointly;	...combined parental responsibility for the child;	As above.
16	Not in Draft	-----	(3) In order to determine whether it is reasonably practicable for the child to spend substantial time with each of the parents a court have regard to the section 68FA.	There is no legislated guideline for determining substantial time with each parent, and little caselaw neither. As below for a proposed 68FA section in order to alleviate this situation.
17	16	...joint parental responsibility	...combined parental responsibility	The terms 'joint', 'shared' and 'combined' are not necessarily interchangeable. They are understood differently by different people. The Act must

				have a single term.
17	20	...for the child jointly	...for the child combined	As above.
18	13	...for the child jointly with another person;	...for the child combined with another person;	As above.
Not in Draft	Not in Draft	-----	<p>68FA How a court determines whether it is reasonably practicable for the child to spend substantial time with each of the parents</p> <p>When determining whether it is reasonably practicable for the child to spend substantial time with each of the parents a court may have regard to:</p> <p>a) The parties' capacity to communicate on matters relevant to the child's welfare.</p> <p>b) The physical proximity of the two households.</p> <p>c) Are the homes sufficiently proximate for the child to maintain friendships in both homes?</p> <p>d) The prior history of caring for the child. Have the parties demonstrated that they can implement a substantial time with each parent without undermining the child's adjustment.</p> <p>e) Whether the parties agree or disagree on</p>	<p>Ryan FM in <i>T &amp; N</i> [2001] 31 FamLR 281 and  Scarlett FM in <i>FNK &amp; FRW</i> [2004] FMCAfam 185</p>

			<p>matters relevant to the child's day to day life. For example, methods of discipline, attitudes to homework, health and dental care, diet and sleeping pattern.</p> <p>f) Where they disagree on these matters, the likelihood that they would be able to reach a reasonable compromise.</p> <p>g) Do they share similar ambitions for the child, for example religious adherence, cultural identity and extra-curricular activities?</p> <p>h) Can they address on a continuing basis the practical considerations that arise when the child lives in two homes? If the child leaves necessary school work or equipment at the other home, will the parents readily rectify the problem?</p> <p>i) Whether or not the parties respect the other party as a parent.</p> <p>j) The child's views and the factors that influence those views.</p> <p>k) Where the siblings live.</p> <p>l) The child's age.</p>	
24	14-15	...in a person not spending time with the child (or the child not living with a person for a particular period)	...in the child not being with a person for a particular period)	The expression 'person spending time with the child' focuses on the person rather than on the child. The expression 'living with' and 'spending time

				with' as substitute to 'residence' and 'contact' would be better coined as 'be with' (As further below for the suggestion in that regard).
24	20	...order compensating a person for time lost...	...order compensating the child for time lost...	Orders are made to benefit the child rather than a parent.
24	25	...order compensating person for time lost	...order compensating the child for time lost	As above.
24	28-30	...compensates the person referred to in paragraph 70NEAA(d) for time the person did not spend with the child (or time the child did not live with the person)...	...compensates the child for time the child was not with the person referred to in paragraph 70NEAA(d)...	As above.
25	27-29	...compensates a person for time the person did not spend with the child (or time the child did not live with the person)...	...compensates a child for time the child was not with the person ...	As above.
26	6-8	...resulted in a person not spending time with the child (or the child not living with a person for a particular period)...	...resulted in the child not with a person for a particular period...	As above.
27	27-28	...resulted in a person not spending time with the child (or the child not living with a person for a particular period)...	...resulted in the child not being with a person for a particular period...	As above.
27	31-32	...compensate the person for the time the	...compensate the child for the time the child	As above.



		person did not spend with the child (or the time the child did not live with the person)...	was not with the person...	
28	30-32	...compensate a person for the time the person did not spend with the child (or the time the child did not live with the person)...	...compensate the child for the time the child was not with the person...	As above.
29	4-6	...resulted in a person not spending time with the child (or the child not living with a person for a particular period)...	...resulted in the child not being with a person for a particular period...	As above.
43	14	<i>family and child specialist has...</i>	<i>court family advisor has...</i>	Child specialist implies a paediatrician.
56	3, 4, 5, 6, 21, 22, 23, 25, 28, 30, 33, 34	family and child specialist	court family advisor	As above.
57	3, 7, 9, 10, 14, 18, 33, 34, 35	family and child specialist	court family advisor	As above.
58	3, 4, 11, 12, 18, 21, 22, 30, 31, 34, 35	family and child specialist	court family advisor	As above.
59	2, 13	family and child specialist	court family advisor	As above.

59	18	...the specialist...	...the advisor...	As above.
61	5	family and child specialist	court family advisor	As above.
65	17, 18	family and child specialist	court family advisor	As above.
69	6, 7, 16, 23, 24, 26, 29	family and child specialist	court family advisor	As above.
70	2, 6, 10, 11, 12, 26, 29, 30	family and child specialist	court family advisor	As above.
71	1,2, 8, 18, 19, 28,29	family and child specialist	court family advisor	As above.
72	12	family and child specialist	court family advisor	As above.
72	13	...a Deputy Registrar...	-----	Isn't the term Deputy Registrar done away with?!
73	11, 15, 17, 20, 27, 29, 32, 33	family and child specialist	court family advisor	Child specialist implies a paediatrician.
74	9, 11, 14,	family and child specialist	court family advisor	As above.
76	4	family and child specialist	court family advisor	As above.
77	18, 23, 33	family and child specialist	court family advisor	As above.

79	5, 6, 20, 30	family and child specialist	court family advisor	As above.
80	2, 3, 7, 8, 9, 10,	family and child specialist	court family advisor	As above.
82	12	family and child specialist	court family advisor	As above.
83	18, 19, 26, 31, 32	family and child specialist	court family advisor	As above.
84	1, 2, 16, 24,25, 33, 34	family and child specialist	court family advisor	As above.
85	16,17, 31	family and child specialist	court family advisor	As above.
86	8, 9, 12	family and child specialist	court family advisor	As above.
90	32	family and child specialist	court family advisor	As above.
91	20, 21	family and child specialist	court family advisor	As above.
92	8	...the child is to live with the person...	...the child is with the person...	The terms 'live with' and 'spend time with' do nothing to alleviate the implied imbalance of power. The simple verb 'be' is most appropriate in all occasions.
92	18,19	(i) the child is to live with...; or (ii) the child is to spend time with...; or (iii) the person is	(i) the child is to be with the person or persons; or (ii) the person is responsible...	As above.

		responsible...		
93	3, 4	...“the child is to spend time with”.	...“the child is to be with”.	As above.
96	20	<i>made in favour</i> , in relation...	<i>made at</i> , in relation...	The expression ‘in favour’ of a parent defeats the purpose of the whole approach of the 1995 Amendment Act and this Bill’s focus on the best interest of the child. It implies winning and losing parents in a court case rather than a child focused outcome.
97	2, 3, 20, 21	(i) the child is to live with...; or (ii) the child is to spend time with...; or (iii) the person is responsible...	(i) the child is to be with the person or persons; or (ii) the person is responsible...	The terms ‘live with’ and ‘spend time with’ do nothing to alleviate the implied imbalance of power. The simple verb ‘be’ is most appropriate in all occasions.
98	7, 8	...for time that a child did not spend with the person, or for time that a child did not live with the person”.	...for time that a child was not with the person”.	As above.
98	16	<i>made in favour</i> , in relation...	<i>made at</i> , in relation...	The expression ‘in favour’ of a parent defeats the purpose of the whole approach of the 1995 Amendment Act and this Bill’s focus on the best interest of the child. It implies winning and losing parents in a court case rather than a child focused outcome.
99	28, 29	...who the child is to live with...not live with a parent...	...who the child be with...not be with a parent...	The terms ‘live with’ and ‘spend time with’ do nothing to alleviate

				the implied imbalance of power. The simple verb 'be' is most appropriate in all occasions.
100	11, 15, 16, 18, 23, 32, 34	...who the child lives with...is to live with...a child lives with...the child is to live...the child is to live with...with who the child lives with.	...who the child is with...is to be with...a child is with...the child is to be...the child is to be with...with who the child is.	As above.
101	3-12	Section 65N	This section is unnecessary.	As above.
102	3, 4, 18, 19	...a child is to live with...spend time with...	(one subsection) ...a child is to be with...	As above.
103	21, 23	...the child is to live with...to spend time under...	(one subsection) ...a child is to be with...	As above.
103	32	...the child is to live with...	...the child is to be with...	As above.
104	1	...the child is to spend time with...	(Unnecessary)	As above.
104	15,17, 26, 28	...the child is to live under...the child is to spend time under...	(One subsection) ...a child is to be under...	As above.
105	1	"spending time with and communicating".	"communicating"	As above.
105	5, 7	...the child is to live under...the child is to spend time under...	(One subsection) ...a child is to be under...	As above.
105	15-34	Section 68P	(Unnecessary)	As above.

106	1-14	Section 68P	(Unnecessary)	As above.
107	2-3	...a person is to spend time with a child...	...a child to be with a person...	As above.
107	26	Whom the child lives with, who the child spends time with...	Whom the child is with...	As above.
108	10, 11	(a) whom the child is to live with; or (b) whom a child is to spend time with...	(One subsection): (a) whom the child is with...	As above.
108	18	...person or persons to spend time with a child...	...child to be with a person or persons...	As above.
108	26, 27	(i) with whom the child is supposed to live; or (ii) who is to spend time with the child; or	(One subsection): (i) with whom the child is supposed to be; or	As above.
109	19, 20	(a) with whom the child is supposed to live under the order; or (aa) whom the child is supposed to spend time with under the order; or	(One subsection): (a) with whom the child is supposed to be with; or	As above.
110	1, 3	(a) with whom the child is supposed to live under the order; or (aa) whom the child is supposed to spend time with under the order; or	(One subsection): (a) with whom the child is supposed to be with; or	As above.
110	17-22	...with whom a child is to live with...to spend time with...	(One subsection): ...with whom a child is to be with...	As above.

110	34	..a child is to live with...	...a child is to be with...	As above.
110	35	...a person in whose favour the order was made...	...a person at whom the order was made...	The expression 'in favour' of a parent defeats the purpose of the whole approach of the 1995 Amendment Act and this Bill's focus on the best interest of the child. It implies winning and losing parents in a court case rather than a child focused outcome.
111	6	...the child did not live with the person...	...the child was not with the person...	The terms 'live with' and 'spend time with' do nothing to alleviate the implied imbalance of power. The simple verb 'be' is most appropriate in all occasions.
111	6	...the person in whose favour the order was made...	...the person at whom the order was made...	The expression 'in favour' of a parent defeats the purpose of the whole approach of the 1995 Amendment Act and this Bill's focus on the best interest of the child. It implies winning and losing parents in a court case rather than a child focused outcome.
111	9-21	Subsection (3)	Unnecessary.	The terms 'live with' and 'spend time with' do nothing to alleviate the implied imbalance of power. The simple verb 'be' is most appropriate in all occasions.
112	3, 10, 19, 28	the child is to live with a person; or...is to live	the child is to be with a person; or	As above.

		under...is to spend time with		
113	3	Paragraphs 111B(4)(b) and (d)	Should be combined to reflect that the verb "to be" may mean overseas "custody" or "access".	As above.
113	25-34	Section 111CW	Should relate only to persons the child communicate with.	As above.
114	20, 21	(i) a child is to live with a person; or (ii) a child is to spend time with a person; or	(one subsection): (i) a child is to be with a person.	As above.