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## FAMILY PATHWAYS

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4<sup>th</sup> July 2005

The Secretary  
House of Representatives  
Standing Committee on Legal and Constitutional Affairs  
Parliament House  
Canberra ACT 2600

Dear Sirs,

*Thankyou for the opportunity to comment on the proposed changes to the Family Law Act 1975 that are due to be passed in the senate in the near future. It is extremely important to gain feedback from the ground floor where the impact of any legislation is truly felt by the real people.*

*I began to read the changes with much excitement and anticipation waiting for the sweeping changes that were promised in 'Every Picture Tells a Story' to revolutionise family law in the modern world. I read and waited, read and waited. My end result was of disappointment as it is the same wild brumby that has been brought in, renamed a bronco and given a new set of shoes, a brushdown and is about to be released again.*

*While this is no doubt a step forward as any reform is, I feel the committee has completely missed the opportunity to change the whole culture of family breakdown and the problems that have been created by the courts and the legal systems control of the processes. While the proposed changes may initially be seen to be embraced by the lawyers, the courts and all the other associated groups (over 15) it will only be a matter of a couple of years before the whole system will be back where it is now. They are an ingenious lot when it comes to self preservation and it smells of a appeasement to the Family Courts and the lawyers*

Children's "wishes to views", "custody to residence to spending time with" are only shuffles not significant steps in the direction of change. Mediation, counselling and expert witnesses will still be the same people with the same habits and the same outcomes however you describe the concept. While there are many excellent changes I wish to outline the issues that urgently need addressing.

To explain why these need addressing, let me suggest that the lawyers, particularly in regional areas are very closely associated with court staff, family reporters, domestic violence services, counselling services such as Interrelate, community legal services, women's services, disability services, legal aid and many other government funded agencies who are controlled by a group, in Dubbo for example, called the "Welfare Mafia". They control employment, what is done and what reports are given to the hierarchy. Anyone who does not follow their control, is honest and wants to do the right thing by the people, are excluded. These difficulties also occur in other centres I understand such as Toowoomba and Rockhampton to mention a few. It is a huge problem. Most of these areas are long held Federal Liberal/National Party seats with the major problems coming from federally funded groups. My experience is that both Ian McFarlane and Job Cobb show the same disinterest in the average person preferring to support the management of these completely inefficient groups.

Many of the changes seem little different to the *Family Law (Reform) Act 1995* which left the major social change left to be done by the courts. This was clearly a failure.

While the establishment of the Family Relationship Centres are an excellent idea, restricting them to a few already established or perhaps entrenched groups is a better description, is clearly a recipe for failure. It would be much more effective financially for the government and for the people to have an accreditation program with groups claiming the costs of the mediation and Pre Action Agreements. It would also be in line with the governments National Competition Policy. No competition can only breed corruption.

We have already had a number of cases where lawyers are manipulating the new Pre Action Procedures to circumvent the mediation. Particularly when representing mothers they would make an application for final orders with no application for interim orders, just an interim agreement which is not binding. After a time a refusal to hand over the children occurs followed by an argument and a phone call to the police for a domestic violence order. Being a person who assists parents mainly impecunious men through the courts I have had a number of cases of this in recent times all from the same group of lawyers.

These particular lawyers have gained a position to be able to hand pick the family reporters and mediators and get the court staff to appoint them. I have observed two lawyers walking through the courts prior to the commencement of the hearings and arrange the results with deputy registrars in particular and to some extent Judges no doubt. My experience with trying to gain approval from the courts to do mediation and run our contact services has met with complete obstruction from the Judge Administrator

and Counselling management. This will surely continue as the Law Society are not interested in these issues either.

There is no change to Section 121, which permits more scrutiny of the Family Court system. It remains a closed shop where the courts can do as they like and get away with it. Only the wealthy can appeal to the High Court. Even the Children's Court does not have this obscurity. There needs to be an avenue for public scrutiny through the media for particularly self represented people in the public interest of justice.

There appeared to be little change in the area of enforcement of parenting orders. Over the years this has been an absolute farce with most lawyers telling people that they are wasting their time as they are unlikely to get through and it will cost them \$3,500. While there contravention needs to be proven beyond reasonable doubt particularly where criminal charges are sought there needs to be a provision for deliberate breaches of not delivering children which is within reasonable probability. If shared parenting is the starting point it needs to be enforceable. The proposal does not appear to provide this. Local Arbitration or mediation could be an avenue for this so that it could be done quickly and cheaply with issues of reversal of residence orders for repeat offenders as is the case in New Zealand.

There also need to be some provision for children to be able to participate in mediations or be interviewed by the judge for a "true" indication of what the position is. The provision of the necessity to remove the rules of evidence is a starting point but can be manipulated in many cases.

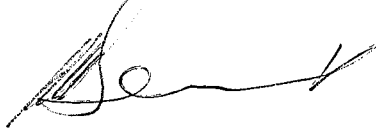
The whole culture of family dispute resolution needs to be changed from that of the tradition adversarial system to one of alternate dispute resolution. There is little or no mention of the Pre-action procedures in the act and the enforcement that a "genuine effort" must be made to resolve the issues prior to court. There needs to be statutory provision to penalise those who refuse to do so. There needs also to be provision to be able to revisit this area which is currently not in place.

To miss this opportunity to address the underlying problems will no doubt prove to be a very expensive exercise for any government not on y for the expense that they have already gone to to conduct a very effective enquiry but to have to go through the same exercise in ten years time. The only difference next time is that the public will push to have the Family Court and it's associated services shut down by a very disgruntle public. You might say that this may not concern the current government, this may be true as they may not be the government at that time.

Please consider this carefully as the current social problems that the current system has caused will not go away unless the opportunity to create litigation and continue the adversarial approach is not addressed. It is going to take two generations to repair our family attitudes. Leave it and it will take four.

I would like to have the opportunity to discuss these issues personally to expand upon the whole concept.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Paul Bennet', with a long horizontal flourish extending to the right.

Paul Bennet