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Family Mediation Centre

**Review of exposure draft of Family Law Amendment (Shared Parental Responsibility) Bill 2005.**

Thank you for the opportunity to comment. Given the time constraints, the following comments are in summary form, and reflect priority issues from our perspective, rather than being exhaustive.

Schedule 1.

*Objects of Part VII*

Agree

*Compulsory attendance*

Agree, including phasing in provisions.

*Exceptions*

Agree

*Special requirement*

Agree in principle, subject to further consideration re practice implications.

*Presumption of joint parental responsibility*

Agree

*Operation of joint parental responsibility*

Agree – helpful to have ‘major long term issues’ defined.

*Obligations on advisers*

Agree in general, noting that this does reflect some change in practice with regard to informing parties re the possibility of the child spending ‘substantial time’ with each of the parties. Noted that, in relation to the following section on ‘Substantial time’, the court “must consider whether both parents wish to spend substantial time with the child and whether..(other considerations)”. It is recommended that this consideration (re the parents’ wishes) be added to the factors which the advisor must also consider when informing the parties, alongside questions of practicality and best interests. Such an approach ensures consistency with the court, and in any event seems appropriate.

*Substantial time*

Agree.

*Parenting plans and parenting orders*

Agree.

*Effect of parenting plans.*

Agree. Creative approach, which empowers parents.

*Best interests of the child.*

Agree. The two tier approach is helpful – provides clarity and focus.

*Role of grandparents and other relatives*

Agree

*Children’s wishes and views.*

Agree

*Aboriginal and Torres Strait Islander children*

Agree.

## Schedule 2

### *Clarification of the standard of proof*

Agree

### *Strengthening of the parenting compliance regime*

Agree

### *Parenting plans*

Agree

## Schedule 3

### *Principles guiding the court*

Agree

### *General duties and powers of the court*

Agree

### *Aboriginal and Torres Strait Islander amendment*

Agree

## Schedule 4

### *Terminology*

Agree with the distinction between relationship counselling and dispute resolution.

Agree with the distinction within dispute resolution, according to whether or not advice is provided. However query the use of 'facilitative', whilst accepting that it is part of 'NADRAC' terminology. In terms of 'clear English', and everyday usage, 'mediation' is generally well understood. Another approach would be to maintain the mediation (no advice)/conciliation (advice) distinction, within dispute resolution, as is the case currently.

### *Approved organisations*

Agree, provided that, in relation to the 'for-profit' sector, parties are not excluded due to an inability to pay.

### *Distinguishing services*

Agree

### *Requirements to provide information*

Agree

### *Court orders to attend...services*

Agree

## Schedule 5

Agree.

## Comments

1. We recognise that the whole focus of this legislation is on children's matters (parenting). Nevertheless it is our experience that parties often present with a mix of matters, covering both children and property/finance. We expect that the Family Mediation Centre will continue to present a family dispute resolution service to meet both classes of matters. The practice implications of this reality require consideration. For example, a family dispute resolution

practitioner may provide 'advisory dispute resolution' in relation to children's matters (provided s/he is appropriately authorised), but may only provide 'facilitative dispute resolution' in relation to property matters. It is important that the parties understand 'what is going on when'. There are also procedural and administrative implications when dealing with a 'mix' of presenting matters in dispute. We have developed means of addressing these issues in the field. We simply request that those who are responsible for implementation of the Bill, once enacted, have regard to this reality, and consult further if necessary.

2. Overall, the exposure draft of the above Bill is an excellent piece of work, and those responsible are to be commended.

Max Wright  
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The Family Mediation Centre is an organisation approved by the Attorney General to provide both mediation and counselling services under the Family Law Act 1975.