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BY LACA

**FAMILY LAW AMENDMENT (SHARED PARENTAL RESPONSIBILITY) BILL  
2005**

I appreciate the opportunity to provide a submission on the Family Law Bill 2005. Given the extremely tight timeframe I regret that my submission can only provide a snapshot of some of my main concerns about aspects of the Bill. I do realise that my comments will carry little weight as I am a mother. I also understand that the Bill is the result of men's demands for "rights" and is the latest in a long line of action taken by the Australian Government in demonising women and mothers (particularly those who are single). In this hostile environment and with the uncertainties in the Bill, especially around guaranteeing protection for women and children from ongoing violence and other forms of harassment and abuse, I would never have another child. Other women that I have spoken to have said the same. To do so would be foolish in the circumstances as one mistake can result in either a life sentence and restricted freedom or an early meeting with the grave.

Overall, I am not confident that the proposed changes in the Bill will deliver improved outcomes for separated families, particularly for those with a history of entrenched conflict, violence and abuse. As this is the main client group of the Family Court, it is critical that the provisions in the Bill work well to address the needs of this client group. Whilst I commend the Bill in terms of its attempt to acknowledge such matters, it is simply just that - an acknowledgment. In the end, they are words on paper, words that will be interpreted by individual judges in any way they wish. The reality is that those with strong controlling instincts will relish the opportunity to continue to dish out abuse under the guise of "joint parental responsibility".

At this juncture, it is noted that joint parental responsibility is not to be legally enforced for **in-tact families**. This means that the Australian Government believes in endorsing one set of rules for in-tact families and another for separated ones - all in the name of the now misused term, "the best interests of the child". This anomaly raises many questions, including "what of the child's interests in in-tact families where fathers are rarely home and do not spend time with their child(ren)? Is this in the interest of the child?"

I also commend the Bill's attempt to reduce the formality of the Family Court. I am especially pleased to hear that the court is to consider the impact of proceedings on children. It is noted, however, that the court's consideration of such matters does not automatically translate into action. How matters are handled by individual judges will be critical in meeting the aim of this part of the Bill.

## SNAPSHOT OF MAIN CONCERNS

- There is an important area affecting the welfare of a child which has been totally overlooked in this Bill and this is the need to take into account children with special needs. Some characteristics of children with special needs can mean that they are unable to separate from their primary carer. To force such a separation is cruel, state-sanctioned abuse and likely to cause a high level of stress and anxiety for the child. An **additional provision** needs to be inserted into the Bill to guarantee the protection of such children. Such a provision must not be permitted to be lessened and undermined in favour of competing provisions describing the "child's best interest" to spend time with both parents. I refer to my own child's trauma on and off over a period of [REDACTED]. Under existing family law I have had to watch on helplessly as my child ran away, hid in cupboards and became hysterical about leaving [REDACTED] familiar surroundings and carer to go on contact. On one occasion, my ex-husband [REDACTED] [REDACTED] in an effort to force [REDACTED] to go on contact. In response my child said that [REDACTED]. As "the mother", I was not permitted to intervene as I would be viewed as "obstructive" and "unduly influential" in relation to my own child. I was not allowed to comfort and support my child's wishes. To me, this makes me an "uncaring" parent but to the family law system (and government), this makes me a "good" parent. My other child has experienced stress as [REDACTED] has grown up witnessing these appalling incidents. There was never any consideration to the fact that I alone had raised my children as their father left when they were tiny babies. There was "acknowledgment" from the family court that my child could not cope with changes in routines and has substantial needs around [REDACTED] care, however, this mattered for naught. It did not matter that the court found that my child's father did not understand the needs of this child. The "right to contact" principle wiped these concerns out in one stroke of the pen. I have also endured punishment in the Family Court over these kinds of incidents. On one occasion, I was told by a judge [REDACTED] and on another threatened that the children may be removed from my care. The whole thing has been truly insane and the impact has been significant. As my child grows, one can only wonder if [REDACTED] will consider legal action against all those who thought that they know what was best for [REDACTED]. In the end, forced contact over a period of years has been detrimental to my child's relationship with [REDACTED] father.
- The Bill does not contain an express provision specifying that it is **not** in a child's best interest to have contact with a parent who has abused or likely to abuse in the future. Other events which occur (ie. witnessing violence towards the other parent or other close person) should also qualify as providing a presumption of **no contact**. To address this an **additional principle** needs to be inserted into the Bill that presumes there is no benefit to a child to spend time with a person who has, or is likely to have caused harm to the child, both directly or indirectly through witnessing violence of another person close to the child. That the current situation produces outcomes where children have been forced to have ongoing contact with parents who have abused them or have no understanding of a child's needs is an appalling situation. This

reality must end with this Bill. The Government has a duty and obligation, through determining and passing laws, to guarantee the safety of every child that goes through the family law system. It needs to give the benefit of the doubt to the child and not the parent. Nowhere in the Bill is there a list of circumstances where the court can determine that **no contact** with a parent should occur. If this is not addressed, then the message is clear that **all children** (even those who have been abused by a parent) must spend time with their abuser.

- I do not support separating young children from their mothers. The Bill needs to be amended to make it clear that a young child should not spend substantial periods of time away from its mother (unless, of course, the child is at risk). Consider a couple separating shortly after the birth of a child (as in my case).
- Nowhere in the Bill is there a requirement that a parent must comply with a standard of care in spending time in caring for his /her child. An **additional provision** in the Bill needs to be inserted to say that where a parent has not had care of a child previously then the presumption is that they not have primary care for the child after separation. Substantial change in a child's usual care arrangements is likely to be detrimental to the welfare of that child.
- The Bill needs to make it clear that there should be a presumption against "substantial time" with a child if the parent is unable to directly engage in the care of that child. To pass the child from one parent (with capacity to care) to the other with limited capacity is a pointless exercise. Further, as separated fathers tend to repartner more quickly and often than separated mothers, the Bill needs to make it clear that the father's new partner **does not count** as a substitute to the father.
- The question about parents wanting substantial time is likely to be one of the key provisions which will ensure the current (and probably increased) workload of the Family Court. Many battles are likely to be fought around this, particularly among those parents with strong controlling instincts.
- The Bill needs to include an **additional principle** to indicate a presumption **against** making an order for joint parental responsibility and substantial time and even consider **no contact** in cases of **high conflict**. My ex-husband and I do not agree on anything. This has been found by the Family Court and yet, we are still expected to agree. Over a period of [REDACTED] I have been required to account for my actions to both my ex-husband and the Family Court. I have had to answer questions on a whole range of things - why I give my children vitamins etc. I have been subject to ongoing abuse and harassment and had my words and actions recorded and filed away by my ex-husband in preparation for the next court battle. I have been punched to the ground (with my child in my arms). I have had to put up with constant emails, phone calls and letters in the post filled with threats and abuse. Threats of taking me back to court unless I agreed to his demands. I have had to deal with his confrontations in front of the children and so on. It has been unbearable and quite miraculous that I have survived what I believe to be **lawful, state-sanctioned abuse**.

- The enforcement of "joint parental responsibility" is likely to ensure that separated parents will rarely (if ever) be able to relocate and live their lives as free individuals. Such a restriction, however, is already well entrenched under the operation of existing family law. The 2005 Bill will guarantee that no mother with primary care for a child will be able to move unless her ex-husband permits her to do so. Women will need to be forewarned (through an **accurate** education campaign) that if they have a child and wish to end the relationship, for whatever reason, they will not be free to move, other than to down the street or around the corner or closer to the father, of course.
- The introduction of "joint parental responsibility" is likely to be interpreted by the Family Court as the overriding principle of the proposed new family law and this will (as is currently the situation) take precedence over the need to protect people from abuse.
- Situations may arise where a child is required to remain on a special diet [REDACTED] and to take certain vitamin supplements. My ex-husband does not agree with the assessment of our family medical practitioner and has challenged this in the Family Court. Although I have an order requiring him to comply with medical advice, at the end of the day, my ex-husband does what he wants. The Bill seems to indicate that these sorts of decisions may fall within the category of a "day-to-day" decision. This means that my ex-husband can continue to ignore such advice as he can feed the children what he likes when they are spending time with him. This does not benefit the children and may, in fact, contribute to their longer term illness and/or disease. **There is nothing that I can do to stop this and I must, in the name of father's rights and law, continue to send the children on contact so that he can exercise his right to decide what the children eat when they spend time with him.** As a mother under the current family law system, it is almost impossible to bring breach proceedings in these types of situations as they are difficult to prove and again, I will be attacked for doing so.
- There are potential problems with the rights of all other extended family members. After everyone has had a piece of the child's time, will the child ever feel it belongs anywhere and will it ever have time for him/herself? I do not support opening the floodgates on potential applications, especially in highly conflictual families. Take the example of my ex-husband's child from a previous relationship. This child was left in the care of my ex-husband's step-father and during the period we were out, he sexually abused this child. We did not discover this until several years down the track. To make it easier for such persons to gain access to children is unacceptable. It should also be noted, once again, that the Australian Government does not force **intact** families to permit their children to visit extended families. Does this mean that these parents are failing their children? I strongly resent the Government telling me what is best for my children - who they should see, when and where.
- It is noted that there are to be no apparent restrictions on forcing shared parental responsibility on fathers who just walk away from their child. What penalties will

the Government impose on such parents? I expect none because in the end, parenting responsibility is only for the benefit of fathers who want this. For those who do not, then this seems to be okay - so much for the focus being on the child and its rights to know and be cared for by both of its parents. What rights did my child have when father walked out to pursue his career in another city? Not a single one. Why could I not force him to remain in the same city? Why can he be free and live wherever he wants but I cannot?

- I do not agree that a "step-mother" or "step-father" should be considered a relative.

## **OTHER COMMENTS**

### ***Compulsory attendance at Family Dispute Resolution***

- There is the likelihood that the principle that parties should attend family dispute resolution to resolve disputes will **override** the exceptions to this requirement.
- I have strong concerns that those assisting parents to resolve disputes will either provide potentially misleading information and coerce parties to agree on the understanding that the result could be worse should the matter proceed to court. To avoid this (and I apologise if this is indicated in the Bill) I would suggest that service providers provide an approved package of information for clients at least two weeks prior to commencement of counselling session. The parties should be fully educated about the true meaning of the law.

### ***Exceptions to attendance at Family Dispute Resolution***

- I have major concerns about the requirement to "prove" that violence or other abuse took place. Many women do not even report violence. In my case, my husband [REDACTED] After the clean up and no witnesses, how does the Australian Government propose that I put the case to the Court to advise that this occurred when the perpetrator (professional man) simply denies it? Should the onus be on the victim to prove abuse, I expect that many abused women will not be able to satisfy the Family Court that certain events took place and will, therefore, be forced to deal and potentially share parental responsibility with a person she cannot communicate with. And when breaches occur, under the proposed new law then the mother is likely to lose her child as she will be demonised by the court as not "facilitating" a relationship with the other parent. This scenario is not fanciful - it is a real likelihood under the proposed changes.
- What would be the point of having "exceptions" to attending FDR when the Family Court can apparently override this and order such a process? In cases of violence or abuse, no victim should be forced or coerced to sit and negotiate with the perpetrator of that violence or abuse.

### *Compliance regime*

- The distinguishing feature of the compliance regime is that it is focused on punishing and abusing mothers, as the majority primary carers of children.
- A second distinguishing feature is that there is no mention of breaching a parent who fails to attend to turn up and spend time with a child - usually fathers. The reality is that it is up to fathers to decided what happens. If he wants to see the child, the mother must comply but if he does not want to spend time with the child, she and the child can do nothing but accept his decision.
- I am strongly **OPPOSED** to the imposition of jail terms being served by parents. This is a clear ideological obsession about the need to force mothers to hand over children (even when the child does not want to go). It is telling that the Australian Government is seeking to jail mothers in this situation when even some child abusers escape jail terms!

Thank you.

