28th June 2005

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

Response to the Family Law Amendment Bill 2005

General Comment
The proposed amendments to the current Family Law system are likely to improve the current situation and will hopefully bring about a cultural change in the way that parents deal with Children's matters during separation.

The result of the Governments proposed legislation is likely to provide a significant improvement in the lives of many thousands of Children and their parents and extended families.

Any system may not, in practice, be found to work as was expected in theory and regardless of whether the Government adopts any or all of its proposed amendments or any or all of the below suggested changes, the most important aspect of the legislation is that it be closely monitored to ensure it achieves its objectives, and where found wanting, changes are made with haste.

Children's lives are affected dramatically by separation. Psychologically scarred Children turn into dysfunctional members of society.

Children in low conflict separations that have support from parents, relatives, friends and their general environment have been shown to lead as productive and balanced a life as Children from families that have not separated.

Below are comments and suggestions to further improve the proposed legislation.

Point 1

Practitioners
Practitioners in the field of Family Law, whether they be from the social or legal fields, tend to be drawn to Family Law as a result of their own personal past experiences. This leads to a personal bias, often subconscious, in dealing with clients.

There are many examples, but rather than present a number of these, suffice it for the moment, that it be agreed that bias, conscious or subconscious is possible and probable.

A mechanism needs to be put into place to review the recommendations of practitioners, for example, should the national average of recommendations by Clinical Psychologists be, that in 70% of cases that Child(ren) continue to spend the majority of their time with the mother, but a single practitioner is recommending this in 90% or in 50% of cases, then that practitioners results need to be reviewed urgently.

Practitioner bias is a problem with the current Family Court system and extends to all areas, from court staff to counsellors, Psychologists and Judges.

Let us not forget, that in order for our Children of today to grow into the best possible adults of tomorrow, they must be presented with the best possible outcome from parental separation.

While practitioners may think that they are solving problems by being biased towards women or men, fathers or mothers, they are in fact, damaging Children and this needs to be addressed on an ongoing basis.

Point 2
Expediency of Services
The Government needs to endeavor to provide appointments for counselling services to parents in dispute within 3 or 4 days and at the outside within 2 weeks.

Escalations of tension in parenting relationships arise rapidly where there is a delay in addressing areas of dispute.

The Government has a tendency to understaff all Government services. While this makes economical sense in many areas, it does not in parenting dispute resolution, where the old adage "a stitch in time saves nine" is far more appropriate.

This principle needs to be practiced not only in initial counselling sessions, but in ongoing counselling. Disputes generally arise in the first three to six months and

if dealt with quickly, disperse and parents are able to work through their initial anger and grief of separation and move forward with their lives.

If not dealt with quickly, then disputes quickly escalate and the end result may be years of conflict.

The Government needs to view separating parents as genuinely good citizens and parents, who are going through a particularly psychologically disturbing process, rather than as citizens determined to cause as much angst to all and sundry as is humanly possible.

During times of separation, the emotional pain can turn shy, retiring accountants into raging, drunken rugby players.

The sooner dispute resolution can be undertaken, the less the risk of disputes escalating, and in the end, this is a financially cheaper option, as well as it being in the best interests of the Child(ren) and their families.

Point 3
Allegations of Violence
This has not been adequately addressed by the proposed legislation.

Allegations of violence or sexual or other abuse, are easy to make and will generally be believed by the Family Court and various Government bodies, regardless of legislation requiring only substantiated claims be taken into account.

The ONLY simple way to stop false allegations, is to provide for penalties for people who can be shown to have made knowingly false allegations.

As with any crime, the more severe the penalties, the less likely someone is to offend and the punishment should fit the crime.

It is suggested that false allegations have a particularly detrimental affect on the accused parent and particularly on the Children, who are often coerced into falsely testifying against one parent.

It is suggested that one parent is attempting to hinder or cease entirely, the relationship between the Children and the other parent and that a fitting punishment would be to remove the Children from the care of the falsely accusing parent.

At first thought, this may appear abhorrent, to use Children as a reward and/or punishment, however, this sends the message, to both parents and Children, that the Government (and society), will not tolerate parents who do not have an

understanding that Children need a relationship with both parents and that those who are willing to deliberately psychologically damage their Children, to aid their own agendas, have proven themselves unfit to be primary caregivers.

One of the major problems with the current Family Court system is the lack of penalties for those that do not act in the best interests of their Child(ren).

This is shown by the slow increase in the severity of penalties over the period of the Family Court, as it slowly learns that the severity of penalties is directly linked to the incidence of compliance.

Point 4
50-50 Custody

50-50 custody is still not the default position.

While 50-50 custody may not actually be in the best interests of Children in situations where parents separate amicably, it has the effect of making dispute resolution easier, as it reduces the feelings of losing by one parent, usually the father.

If 50-50 custody was the default position, many fathers would agree to this, only to, in a few weeks to months, give up this position as they discovered that it was not really what they wanted. If given the option of being able to retrieve their position of 50-50 custody at the end of each school term, this would further encourage fathers to relinquish 50-50 custody.

The effect of this would be that the father would voluntarily give up time with the Children, in both his best interests and those of the Children, but would not feel that he had lost a dispute.

This would result in much less conflict between parents.

Point 5
Restricting the ability to change the Child(ren)'s place of residence
Parents have not been restricted from moving.

This is one of the most distressing experiences for Children.

Children suffer through separations at the best of times, but changing environments entirely, school, friends, home and generally the move will be away from a parent and relatives, drastically increases the emotional suffering of Children and of the absent parent and relatives.

Parents need to understand that having Children involves responsibilities. Those responsibilities extend to ensuring that Children have a continuing relationship with the other parent, in the event of separation.

Parents should be restricted from moving out of the school catchment area that the Children were attending at the time of separation, without the express written permission of the other parent.

This still gives parents a number of suburbs in which they can live, should they need to be more economical with their living arrangements.

Arguments that this has been addressed by provisions in the Joint Parental Responsibility section of the proposed amendments, will not be upheld by the Family Court and even if, in some circumstances they were, it needs to be beyond the interpretation of the courts.

If something is clear and beyond interpretation, then there can be no disputes.

Disputes arise when two people interpret legislation differently and a third party is then required to adjudicate.

Removing the ambiguity will remove the likelihood of disputes arising.

Point 6
Joint Parental Responsibility
Joint parental responsibility is not likely to work where parents are in conflict.

It can be expected that the court will side with the parent that has the majority of care, except in cases where that parent is clearly acting against the best interests of the Child. Effectively meaning that the custodial parent will be the one that makes all decisions regarding the child's future.

As in Point 5, this is too ambiguous to avoid disputes.

Point 7
Instructions Issued to Third Parties
Provisions for penalties need to exist for parents who issue instructions to third parties regarding issues of joint responsibility where those decisions have not been jointly reached.

Point 8
Best Interests of the Child

Too much discretion has again been given to the Family Court in determining the best interests of the Child.

While this would appear a sensible way of operating, history has shown that the Family Court ignores the intent of the legislation and rules with an imaginative interpretation of legislation, to the detriment of Children and their families.

The Family Court should only be allowed discretion in certain areas and then only in certain circumstances.

The best interests of the Child should be determined by a Clinical or Counselling Psychologist(s) and not by a member of the Legal Profession.

Point 9
Wishes of the Child
Taking into account the wishes or views of a Child.

It is a relatively simple matter for one parent to exert complete and total influence over a Child. It is virtually impossible for even an experienced Clinical or Counselling Psychologist to determine accurately a Child's views, as a Child can truly and deeply believe that their wishes are their own and not realize the extent of their parents coercion.

A Child under the age of 15 should not be allowed to choose no contact with a parent as an option, unless there have been substantiated incidents of harm towards that Child by that parent.

A Child attending Primary School should not be allowed to choose which parent to live with, unless both parents agree to the Child's wishes.

Point 10
Penalties
Again the Family Court has been given too much discretion in determining penalties for breaches.

The Family Court, mistakenly, has been and continues to be, of the view that imposing penalties on a parent harms a Child.

While this is true, not imposing a penalty allows the parent to continue to act against the best interests of the Child, whereas, should a penalty be clear and unarguable, then parents tend to not infringe in the first instance.

Point 11
Expert Witnesses
Only suitably qualified practitioners should be allowed to enquire and produce reports into the operations of the family (Family Reports).

This should be limited to Clinical and Counselling Psychologists and if necessary, these practioners should be allowed to refer to specialists in other areas, eg. Psychiatrists.

Currently this is not the case, with the end result that reports are being presented to the court that are not accurate.

Point 12
Registration of Clinical and Counselling Psychologists
A program should be set up to train and then register Clinical and Counselling Psychologists in conducting and presenting Family Reports.

This is a very specialist area and some of the Clinical and Counselling Psychologists currently use outdated and inaccurate methods.

General Comments
The legislative amendments are well meaning and will no doubt improve the current situation.

It will be particularly useful as a guideline to parents who separate in an amicable manner and those that have minor conflicts.

Depending on the availability and timeliness of services, it is likely that large numbers of parents that, under the current system, would have become embroiled in lengthy and entrenched conflict, are able to resolve their differences quickly and return their lives and those of their Children and extended families, to some semblance of normality.

A lack of understanding of the nature of human beings during separation is still shown within the legislation by the number of ambiguous areas and the total amount of the legislation.

Legislation needs to be simple and concise with no room for ambiguity. Parents involved in the stress of separation are generally unable to make clear and rational decisions.

The amount of legislation and the ambiguity of some areas will mean that, even clear thinking members of the judiciary, will vary on its interpretation.

A lack of understanding of the roles and qualifications of Counsellors, Social Workers, Psychologists, Clinical and Counselling Psychologists and Psychiatrists further hinders the legislation.

Currently all of the above are able to conduct and present Family Reports. Only Clinical and Counselling Psychologists are qualified (and there is some conjecture over whether Counselling Psychologists are suitably qualified).

This is an alternative to the proposed legislation:

1. Child(ren) that are under 2 years old to spend the majority of time with their mother. The only time to be spent with their father will be 2 hours each Tuesday and Thursday nights and 3 hours each Saturday and Sunday.
2. Child(ren) over 2 years old that do not attend Primary School to spend the majority of time with their mother. The only time to be spent with their father will be Tuesday and Thursday nights and Saturday night through to Sunday night. Each parent to have the right to have the child for one full weekend every 2 months.
3. Child(ren) of Primary and Secondary School age to spend Wednesday nights and Friday night through to Monday morning and be dropped off at school, with/by their father. The rest of the time to be spent with their mother. The mother to have the right to have the child for one full weekend every 2 months.
4. Child(ren) of Secondary School age to have their wishes taken into account, but the minimum amount of time that they must spend with each parent is one weekend per fortnight.
5. Alternate arrangements for Christmas and Easter.
6. Child to spend Mothers day with the mother and Fathers day with the father and the parents birthdays with the appropriate parent.
7. The Child(ren) to spend alternative birthdays with the father.
8. School holidays to be shared equally.
9. Parents to be able to relinquish their contact arrangements, but those arrangements are able to be reinstated at the end of each school term should the parent so desire.
10. Parents are not able to move the Child(ren) outside of the catchment area of the school that the Child(ren) was attending at the time of the separation, without the express permission of both parents.
11. The mother to drop off the child at the fathers and the father to drop off the child at the mothers, except where pickup or drop off is done at a school or care centre.
12. Each parent to pay their own costs of maintaining contact.
13. Each parent to have access to all school, medical and any other records of their Child(ren).
14. Parents to have joint responsibility for major long term decisions.

15. If parents cannot agree on major long term decisions, then the decision to be made by application to a Tribunal of 1 Clinical Psychologist. The costs of which to be paid for by the parent whose decision is not upheld.
16. The Child(ren) be allowed to travel interstate during school holidays, provided that contact with the other parent is not compromised without their permission.
17. A parent that fails to see a Child(ren) more than once in a School Term or 10 week period, to forfeit the right to prevent the other parent from moving outside of the school catchment area, including that the other parent may take the child interstate to live, provided that Grandparents, should they have regular contact with the child, agree.
18. A parent that fails to see a Child(ren) more than once in a School Term or 10 week period, to forfeit the right to have input into the major long term decisions on the Child(ren)'s future.
19. All and any of the above can be changed by mutual, written agreement on a specific form.
20. In the event that the parents do not agree on the above, then the parents must attend mediation.
21. In the event that mediation fails, the parents can apply to a Tribunal of 3 Clinical Psychologists, who must rule on "The Best Interests of the Child". The Tribunal to have the ability to investigate any or all aspects of the Family, as they see fit.
22. The ability to appeal to the Family Court, after a period of 12 months, if the parents do not agree that the decision of the Tribunal was in the best interests of the child. The Family Court to rule on "The Best Interests of the Child" and if they make any changes to the Tribunal's decision, they must give the reasons why they believe the Tribunal erred.

The above allows for a simple system, easily interpreted even by distressed parents, that can be changed easily by those in agreement. Mediation is attempted and if unsuccessful, then qualified behavioural scientists make a collective decision on what is best for the child. An avenue of appeal still exists.

I would like to take this opportunity to thank the Government for (finally) reforming the Family Law system.

Despite it appearing to still have areas which could be improved, the proposed legislation should prove to be a drastic improvement on the current system.

Yours faithfully,