

# **Sole Parents' Union**

Submission No. <u>38</u>
Date Received.....

RECEIVED  
15 JUL 2005  
BY: LAA

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*NH*  
The Secretariat  
House of Representatives Standing Committee  
On Legal and Constitutional Affairs  
Parliament House  
Canberra ACT 2600

15 July 2005

## ***Family Law Amendment (Shared Parental Responsibility) Bill 2005***

Please find attached our submission on the abovementioned Bill. This submission takes into consideration the terms of reference of the enquiry, namely:

- a) Encourage and assist parents to reach agreement on parenting arrangements after separation outside of the court system where appropriate
- b) promote the benefit to the child of both parents having a meaningful role in their lives
- c) recognise the need to protect children from family violence and abuse
- d) ensure that the court process is easier to navigate and less traumatic for the parties and children.

Thank you for the opportunity to express our views on this matter. We would also appreciate the opportunity to support this submission in person at any hearings, meetings or other discussions held thereon.

Yours sincerely

Kathleen Swinbourne  
**President**

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Overall, the Sole Parents Union is concerned that this Bill is too focussed on the rights of parents over the rights of the child. We refer the Committee to our previous submission *A New Approach to Family Law*, attached hereto.

Below is our response to the specific amendments suggested in the *Family Law Amendment (Shared Parenting Responsibility) Bill 2005*.

### **Schedule 1 – Shared parental responsibility**

The Sole Parents' Union is supportive of the concept of shared parental responsibility, and strongly believes that all parents have a moral and legal responsibility to care for their children to the best of their ability. However, we have a number of concerns about the practicalities, the possible outcomes, of enshrining this as a presumption in law.

We are also very concerned that a number of the proposals focus on the rights of parents, and remove the concept of the best interests of children from the centrality of family law. This is a trend we would strongly oppose. The best interest of children **must** remain paramount when the court makes decisions about children.

New proposed *Section 61DA Presumption of joint parental responsibility when making orders* imposes on the court a presumption of what is in children's best interests. The court needs to be free to decide each case on its merits, and where, for whatever reason, shared parental responsibility is NOT in children's best interests the court needs to be able to make this decision.

#### **Recommendation**

##### **Remove Section 61DA**

Sole Parents' Union fully supports the use of parenting plans. We would add a proviso that parenting plans should not impinge on a child's rights to stability and security, and their ability to maintain their own social networks and school, leisure and sporting activities.

#### **Recommendation**

**At the end of Subsection 63C(2) add:**

**(2D) *The primary focus of a parenting plan must be the best interests of the child.***

***Parenting plans must consider:***

- (i) *Children's rights to stability, security and adequate and responsible care***
- (ii) *Children's own social networks and their ongoing ability to maintain such networks***
- (iii) *Children's school, sporting and other leisure activities***
- (iv) *Any other special needs of the child/ren***

We note that while Section 61DA specifically notes that an allocation of parental responsibility does not provide for a presumption about the amount of time children spend with each parent, many provisions of this Schedule refer specifically to time.

Section 63DA *Obligations of advisers* state specifically that advisers **must** inform parents that where practicable and in the best interests of the child/ren they could

consider the option of an arrangement of substantially shared time. This section does not specify any other type of parenting arrangement that must be communicated to parents. We are concerned that this will result in advisers trying to force parents, and children, into a regime that is not suitable for the individuals or family involved.

### **Recommendation**

**Amend Section 63DA(2)(a) to read:**

- (a) *Inform them of the range of parenting options that they can consider taking into consideration:*
- (i) *practicalities for their situation and the capabilities and needs of the individuals concerned*
  - (ii) *the best interests of the child/ren*

Section 65DAA *Court to consider child spending substantial time with each parent in certain circumstances* deals with the amount of time children should be ordered by the court to spend with each parent. The focus on time that children should spend with each parent completely ignores any other options for quality parenting after separation. In addition it places responsibility for maintenance of the relationship on the child/ren who will be forced to divide their time between parents, rather than on the parents where it belongs.

### **Recommendation**

**Amend Section 65DAA to read:**

*65DAA Court to consider parents spending time with child/ren in certain circumstances*

*If:*

- (a) *a parenting order provides (or is to provide) that a child's parents are to have parental responsibility for the child jointly; and*
- (b) *both parents wish to spend substantial time with the child;*

*the court must consider making an order for the parents to attend children's sporting games, school activities, leisure activities, or other places or activities where they can spend child-focussed time with their children.*

### **Recommendation**

**After paragraph 68F(2)(b) insert:**

*(ba) the willingness and ability of each of the child's parents to facilitate, and encourage, a close and continuing relationship between the child and the other parent where appropriate to do so;*

## **Schedule 2 – Compliance Regime**

Schedule 2 clearly demonstrates the current problems in the Family Law Act being parent rather than child focussed. There is no provision anywhere within this section to consider that contravention of an order may have been made by the child itself, and

what should happen in those circumstances. It would clearly not be appropriate to punish one party, or 'compensate' the other, where a child subject to an order makes an independent decision in contravention of that order.

### **Recommendation**

This section needs to be rewritten to take into consideration children's rights to refuse contact, even where it forms part of a parenting plan or a parenting order.

## **Schedule 5 – Removal of references to residence and contact**

The Sole Parents' Union supports all moves to encourage responsible parenting of, rather than merely contact with, children. We therefore support the changes in terminology from 'residence' and 'contact' to 'care'. We would suggest some minor changes to reinforce parental responsibilities rather than rights:

### **Recommendations**

**Amend Subsection 26B(1)(A)(a) to:**

- (a) a parenting order to the extent to which it provides that:**
  - (i) a child is to live with a person; or**
  - (ii) a person is to spend time with a child; or**
  - (iii) a person is to communicate with a child; or**
  - (iv) a person is to have parental responsibility, or a component of parental responsibility, for a child; or**

**Amend Subsection 37A(2A)(a) to:**

- (a) a parenting order to the extent to which it provides that:**
  - (i) a child is to live with a person; or**
  - (ii) a person is to spend time with a child; or**
  - (iii) a person is to communicate with a child; or**
  - (iv) a person is to have parental responsibility, or a component of parental responsibility, for a child; or**

**Amend Paragraph 65Q(1)(a) to read:**

- (a) a parenting order provides that:**
  - (i) a child is to live with a person; or**
  - (ii) a person is to spend time with a child; or**
  - (iii) a person is to communicate with a child; and**

**Amend Paragraphs 67K(1)(a) to (c) to:**

- (a) a person with whom the child is living under a parenting order; or**
- (b) a person who is to spend time with the child under a parenting order; or**
- (c) a person who is to communicate with a child under a parenting order; or**
- (ca) a person who has parental responsibility, or a component of parental responsibility, for the child under a parenting order; or**

**Amend Subparagraphs 67Q(a)(ii)and(iii) to:**

- (ii) a person with whom the child is to live under a parenting order; or*
- (iii) a person who is to spend time with the child under a parenting order;  
or*
- (iv) a person who is to communicate with the child under a parenting  
order; or*
- (v) a person who has parental responsibility, or a component of  
responsibility, for the child; or*

**Amend Paragraphs 67T(a)to(c) to:**

- (a) a person with whom the child is to live under a parenting order; or*
- (b) a person who is to spend time with the child under a parenting order; or*
- (c) a person who is to communicate with the child under a parenting order;  
or*
- (d) a person who has parental responsibility, or a component of parental  
responsibility, for the child under a parenting order; or*

**Amend Subparagraphs 68B(1)(b)(ii) and (iii) to:**

- (iii) a person with whom the child is to live under a parenting order; or*
- (iv) a person who is to spend time with the child under a parenting order;  
or*
- (v) a person who is to communicate with the child under a parenting  
order; or*
- (vi) a person who has parental responsibility, or a component of parental  
responsibility, for the child; ;or*

**Amend Paragraphs 68M(3)(b) and (c) to:**

- (vii) a person with whom the child is to live under a parenting order; or*
- (viii) a person who is to spend time with the child under a parenting order;  
or*
- (ix) a person who is to communicate with the child under a parenting  
order; or*
- (x) a person who has parental responsibility, or a component of parental  
responsibility, for the child; ;or*

**Amend Section 70Fto:**

***Subdivision C parenting order means a parenting order to the extent to which it  
deals with:***

- (a) whom a child is to live with; or*
- (b) who is to spend time with a child; or*
- (c) who is to be responsible for a child's day-to-day care, welfare and  
development*

**Amend Subsection 70L(1) (paragraph (a) of the definition of responsible person)  
to:**

- (a) with whom the child is supposed to live under the order; or*
- (aa) who is supposed to spend time with the child under the order; or*
- (ab) who is supposed to have contact with the child under the order; or*

**Amend Paragraph 70M(3)(a) to:**

- (a) with whom the child is supposed to live under the order; or*
- (ab) who is supposed to spend time with the child under the order; or*
- (ab) who is supposed to have contact with the child under the order*

**Amend Paragraphs 70ND(a) to (c) to:**

- (a) a parenting order that deals with whom a child is to live is taken to include a requirement that people act in accordance with section 65M in relation to the order; and*
- (b) a parenting order that deals with who is to spend time with a child is taken to include a requirement that people act in accordance with section 65N in relation to the order; and*
- (c) a parenting order that deals with who is to communicate with a child is taken to include a requirement that people act in accordance with Section 65N in relation to the order, and*
- (d) a parenting order to which section 65P applies is taken to include a requirement that people act in accordance with that section in relation to the order.*

**Amend Subsections 70NE3 to:**

*(3) A person (the respondent) is taken to have had a reasonable excuse for contravening a parenting order to the extent to which it deals with who is to spend time with a child in a way that resulted in a person and a child not spending time together as provided for in the order if:*

- (a) the respondent believed on reasonable grounds that not allowing the child and the person to spend time together was necessary to protect the health or safety of a person (including the respondent or the child); and*
- (b) the period during which, because of the contravention, the child and the person did not spend time together was not longer than was necessary to protect the health or safety of the person referred to in paragraph (a)*

*(3A) A person (the respondent) is taken to have had a reasonable excuse for contravening a parenting order to the extent to which it deals with who is to communicate with a child in a way that resulted in a person and a child not having the communication provided for under the order if:*

- (a) the respondent believed on reasonable grounds that not allowing the child and the person to communicate together was necessary to protect the health or safety of a person (including the respondent or the child); and*

- (b) *the period during which, because of the contravention, the child and the person did not communicate was not longer than was necessary to protect the health or safety of the person referred to in paragraph (a).*

**Amend Paragraph 11B(1A)(c) to:**

- (c) *Relating to a Central Authority within the meaning of the regulations applying on behalf of another person for a parenting order that deals with the person or person who are to spend time or communicate with a child if the outcome of the proceedings is that the child is not to be returned under the Convention.*

**Amend Paragraph 111B(4)(d) to:**

- (d) *subject to any order of a court for the time being in force, a person:*  
(i) *who is to spend time with a child under a parenting order;*  
*or*  
(ii) *who is to communicate with a child under a parenting order;*  
*should be regarded as having a right of access to the child.*

**Amend Section 111CW to read:**

*111CW Court proceedings dealing with who spends time with a child*

- (1) *A court hearing proceedings under Part VII(Children) or regulations made for the purposes of section 111B dealing with:*  
(a) *who is to spend time with a child; or*  
(b) *who is to communicate with a child;*  
*must admit into evidence and consider the findings (if any) of a competent authority of a Convention country on the suitability of a parent as a person to spend time with or communicate with the child.*
- (2) *The court may adjourn the proceedings pending the outcome of a request by a parent of the child to a competent authority of a Convention country for a finding on the suitability of the parent as a person to spend time with or communicate with the child.*
- (3) *On the application of a parent who is an Australian resident seeking to, or to continue to, spend time with or communicate with the child, a court may*  
(a) *admit evidence; and*  
(b) *make a finding on the suitability of that parent as a person to spend time with or communicate with the child; and*  
(c) *specify conditions on which the person is to spend time with or communicate with the child*

**Amend Paragraph 117A(1)(a) to:**

- (a) *a court has found, for the purposes of Division 13A of Part VII, that a person has, by taking a child away from another person, or by not allowing a child to spend time with or communicate with another person, or by refusing to spend time with or communicate with a child, contravened a parenting order to the extent to which the order provides that:*
- (i) *a child is to live with a person; or*
  - (ii) *a person is to spend time with a child; or*
  - (iii) *a person is to communicate with a child.*

**This Schedule must contain a provision which respects a child's right to refuse to spend time with, or communicate with, a person, whether a parent, other family member, or other person who is the subject of a parenting plan or parenting order.**



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January 2005

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*A New Approach to the Family Law System  
Implementation of Reforms  
Discussion Paper*

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Thank you for the opportunity to comment on the discussion paper *A New Approach to the Family Law System*. The Sole Parents' Union has a number of comments on the discussion paper, and suggestions of ways to improve the family law system.

The Sole Parents' Union welcomes a genuine attempt to make the family law system less adversarial, and strongly supports the focus on mediated arrangements over litigation. However, despite numerous discussions, consultation processes, and changes to family law over the years, we are concerned that this paper is still *parent* focused rather than *child* focused. A major effort needs to be made to change the focus of discussions to place children's best interests at the centre of family law, particularly for residence and contact orders.

### **Residence/contact orders**

Sole Parents' Union recognizes there are a number of problems with residence and contact orders. However, we disagree that they are biased against fathers, or that the major problem is breaches of orders and lack of enforcement. Instead, we suggest that the major problem with the orders is the way in which they are written, and thought about by all parties.

While acknowledging that in some cases before the court, residence and contact orders need to be specific and detailed, in most other cases orders can and should be flexible and able to be easily changed. With a move to a less adversarial way of making arrangements, we suggest a complete change in the way these agreements are written and thought about.

Currently, the onus for ensuring compliance with orders rests with children, or the residence parent. Orders are such that contact time specified therein is perceived as that time, and the only time, that children will make themselves, or be made, available to the non-resident parent. Conflict arises between parents about "my" weekend, phoning at non-specified times, exact drop-off and pick-up times, and if or how these can be altered. If arrangements are changed they are often done on a tit-for-tat basis, with exact hours exchanged.

Instead, we would suggest that in order to truly place children's best interests at the centre of family law this situation should be reversed. In most cases where agreements are made by consent specified time should be construed as the *minimum* time non-resident parents will make *themselves* available to their children, rather than vice versa.

This places the onus on the parent to take responsibility for adapting to children's needs, rather than making children fit in with theirs. Children should not be forced to spend time with a parent where the parent does not adapt to the child/ren's schedule, such as taking them to sporting activities or friends' birthday parties, being able to care for them when they are sick, etc. This does not preclude children spending time periods of time in the home of each parent, or with extended family.

Both children and parents would be free to alter arrangements where necessary, and non-resident parents would be encouraged to be available to children at other times, such as attending school functions, sports activities, contact by telephone, etc. At the same time, it allows for children to

spend time with each parent, while maintaining a steady, secure home base.

The onus for maintaining relationships then rests clearly with the parents rather than the children. Unless orders specify that parents will NOT contact children at other times, regular and ongoing contact should be encouraged through a variety of means, rather than merely enforcing children's time in each household.

Making arrangements flexible rather than rigid, and allowing for regular review would also prevent many problems with breaches of orders. For those couples unable to reach agreement and maintain flexibility a more specific contact plan will be required. If necessary this could be a court ordered or court sanctioned arrangement.

### **Parenting plans**

The Sole Parents' Union strongly believes that parents are always parents, regardless of whether their children are living with them. For this reason, we oppose any move to change the language of the Family Law Act to specify "parenting time", as this presumes "non-parenting" time, which is clearly a misnomer.

It is extremely important that where the situation allows, parents are encouraged to maintain contact with their children and be actively involved in their lives. This could be by telephone or email, through involvement with their children's leisure and sport activities, attendance at school functions etc. Schools are an important source of information regarding children's activities and should be encouraged, and resourced appropriately, to supply 2 copies of reports, newsletters, etc so that both parents can be kept informed of what is happening with their children's education.

Again, we would stress that the focus of parenting plans should be the parents' responsibilities to the children, not vice versa. Therefore it is not appropriate to specify what time children should spend with each parent, nor with other significant people in their lives. Such a focus could result in the clearly ludicrous, and unintended, consequence of children having to keep visiting diaries in order to keep track of their responsibilities and movements. Rather the focus should be on how parents and others will maintain contact and relationships with children, and what their responsibilities to the children are. This could include, but not be limited to, things such as:

- Financial responsibilities of each parent
- Religious education
- Schooling
- Celebration of significant events and traditions, such as Christmas, birthdays or religious holidays
- How major decisions affecting the children will be reached
- Health and medical arrangements (ie family doctor, emergency contacts, etc)
- Parenting methods and responsibilities across households
- How each parent will maintain relationships between children and their own parents or other family members
- Provision of large items such as computers
- How often the plan will be reviewed

### **Shared custody**

The Sole Parents' Union is strongly opposed to any presumption of a particular model of residence/access as being held up as the ideal for all families. A rebuttable presumption of joint custody is one such model that is not suitable for everybody, or even for the majority. While we would encourage lawyers, counsellors, etc to discuss shared custody as *one* option to be considered, we would stress that this is only one option amongst many that parents can consider. We would oppose any move to make this, or anything other than children's best interests, a starting point for discussions.

One problem with setting up shared custody as a perceived ideal is that it can then raise expectations that may be inappropriate. There are already too many statements that focus on parental rights rather than children's needs and placing a rebuttable presumption in law suggests that this is about rights. While the majority of parents are caring, responsible and interested in their children, this is by no means the case across the board. Some cases might not necessarily involve violence or abuse, but parents might be neglectful, or angry enough to want to punish the other parent for terminating an unsatisfactory relationship. There are real dangers that presumptions of shared custody as an ideal may cause more conflict than it resolves. Where parents have poor relationships with their children due to neglect, lack of interest, or irresponsible parenting care needs to be taken in deciding what is best for children.

### **Family Relationship Centres**

A centre where separating couples can go to obtain information about family law, parenting plans, counselling and mediation is a welcome addition to the current family law system. We would recommend that such a centre be situated within the current system, rather than as a separate entity outside it. Combining this with the Family Court and Magistrates Court would provide a true one-stop shop, where parties can be advised of all their options and referred appropriately.

In addition to the family relationship centres, the Family Court should be enabled to provide more conflict resolution, counselling and mediation services, and to run programs such as that currently being trialled to allow judges conduct trials outside the rules of evidence.

Prior to setting up these centres, there are a number of things that need to be considered.

- A national Family Relationship Centre network will be expensive to operate. Community organizations who currently provide these services, and will do so under the new measures, need to be appropriately resourced to ensure that they are able to continue to provide a high quality, appropriate service. Having properly trained staff, and appropriate on-going training regimes in place should be a requirement of obtaining funding for individual organizations. These should be best-practice, rather than minimum standards.
- Appropriate measures need to be put in place to screen out those cases where there is violence and/or abuse, and to ensure that women's and children's safety is paramount.
- Care needs to be taken if, or when, resourcing religious-based organizations to act as

family relationship centres. It needs to be clear, in written contracts, that the centres are to provide resources and support for families, and are not to counsel couples to make decisions based on moral convictions of the provider organization.

- We are concerned about excluding lawyers from the process. If the agreements made in these sessions may be used as part of either a consent order or family law litigation, then both parties need access to legal advice. We suggest that even where parents agree, they are informed of their rights to obtain legal advice.

Under no circumstances should attendance at sessions be made compulsory, or be a requirement of applying for child support. Many parents make their own parenting arrangements in an amicable manner. To force them to attend unnecessary sessions could exacerbate tensions at a stressful time, and create more problems that it solves.

### **Preventing Separation**

Sole Parents' Union stresses that healthy family relationships are possible, and in many cases easier, within separated families. Parental separation does not necessarily equate to family dysfunction. Indeed, in many cases families are better off and more functional when the parents separate and conflict is reduced. Pre-marriage education, together with less of an emphasis on marriage as a panacea and the ideal situation for all to aspire to would reduce the stress on couples to get married, or to stay married, inappropriately. Given the high possibility that marriages will end, acceptance of divorce would also help to prevent a sense of failure which can lead to increased conflict between separating couples.

We have strong concerns about organisations with moral views about marriage, and ideological problems with separation and dissolution of marriages being allowed to run such centres. Unlike the tendered out employment services, there are faith and cultural proscriptions which could impact on couples trying to resolve irreconcilable differences, and such auspices could be inappropriate.

### **Measuring success**

The discussion paper mentions an implementation review after 12 months but does not provide any indication as to how the success of the family relationship centres will be measured. We strongly believe that such measures and key performance indicators need to be developed prior to implementation, and would welcome an opportunity to discuss this further.

## **CHANGES TO THE LAW TO SUPPORT SHARED PARENTING**

Cases which come before the court are generally the most difficult, with entrenched conflict, and are unlikely to be able to be resolved amicably. Couples who appear before the court are more likely to have had violent or abusive relationships, or to be generally unable to work together in their children's best interests. If all other options have been exhausted and counselling, conflict resolution, and/or mediation has proven to be unworkable, the court process will be used as a final option to enforce an arrangement between parents. It is highly unlikely that in these circumstances couples will be able to agree on shared parenting, or consult amicably.

There is a danger in including concepts such as equal shared parental responsibility and equal or substantial time in law. Such concepts run the very real risk of ignoring the sometimes substantial power imbalances between couples in many cases. Cases that reach the court need to be treated differently from those that are able to be settled either between the parties or through a process of mediation, and judges need to be able to decide each individual case on its merits, without any prescribed 'ideal'.

### **Equal shared parental responsibility**

As mentioned above, the Sole Parents' Union is strongly opposed to a rebuttable presumption of joint custody in family law. We would as strongly oppose a recommendation of shared custody as a starting point for discussions, for the reasons mentioned above.

Shared parenting and shared custody are not synonymous and should not be confused.

Equal shared parenting is a concept that sounds good in theory but in practice means very little. Even where couples live together decisions and responsibilities are not necessarily equal. To try to enforce such a regime on those cases which go to court, without any definition of what constitutes 'equal' will be extremely difficult, if not impossible, and definitely not in the best interests of the children.

The only starting point for decisions made by the court should be the best interests of the children, not any specified ideal parenting arrangement. The court needs to be free to decide whether in fact one parent is better able, and therefore permitted, to make decisions on their own.

The practicalities of imposing a joint decision making regime are also extremely difficult. Some decisions need to be made immediately, and are therefore better made by the parent on the spot at the time. For others it could be difficult to get parents together at a mutually agreeable time. If parents cannot even speak to each amicably, it will be extremely difficult to get them to make decisions together, or to focus on their children rather than each other.

### **The requirement to consult**

As mentioned, those cases which go before the court are unlikely to be able to amicably consult and agree on major issues. Where there is entrenched conflict it is unlikely that any order to consult will be able to be implemented and there is a likelihood that such an order can be used by one party to continue to harass the other. Initial court orders should include decisions on major issues, together with circumstances that might arise where one parent is authorized to make decisions on their own, as well as circumstances where both parents need to be involved in decision making. Any changes to ordered arrangements, or circumstances where both parents are required to be involved are likely to need the assistance of either the family relationships centres or the court itself.

We note that the discussion paper states that "consultation does not just mean informing the other parent about a decision that has already been made." We would point out that it also does not mean saying no to every request the other parent makes.

### **Equal shared parenting time**

Sole Parents' Union cannot stress our opposition to this concept enough. The court needs to be able to judge each case on its merits and make decisions in the best interests of the children. Any parenting model which is held out as preferable to others limits the court's ability to make individual decisions.

This model, and substantially shared parenting time is one which is generally made to appease one or the other parent, rather than a genuine attempt to improve relationships and do what is best for children. We suggest that the capacity to delegate decision making to the more competent parent should be able to be made where the other parent was shown to be obstructive or lacking in ability to assess the needs of the child.

### **Compulsory dispute resolution**

Sole Parents' Union recommends that where couples can be kept out of court this should be encouraged. At the same time, the safety of women and children needs to be made paramount. It is therefore important that any cases which involve violence and/or abuse are carefully screened and referred appropriately. Given the secretive nature of some violence and abuse, particularly child abuse, we cannot stress strongly enough the necessity of ensuring *adequate* safeguards for women and children.

While not specified in the paper, we are concerned that some individuals or organizations could interpret this as being compulsory for all parties, and try to refer couples unnecessarily. We would oppose any moves to make mediation, counselling or dispute resolution compulsory for all separating couples. Many couples make decisions regarding themselves and their children amicably, and a requirement for them to attend these sessions could increase tensions at an already stressful time, creating more problems than it solves.

### **Changes to terms used in the Family Law Act**

As stated, we are opposed to a change in the language from 'residence and contact' to the term "parenting time". Parents are always parents, regardless of whether their children live with them. The term 'parenting time' implies 'non-parenting time', which is clearly a misnomer and could discourage parents from maintaining contact with their children outside those times they are physically present.

### **Changes to enforcement provisions in the Family Law Act**

This is an issue that has been raised on previous occasions and to which the Sole Parents' Union has already responded. Our response to this issue raised in the *Family Law Amendment Bill 1999* is set out hereunder:

*"While recognising the three stage process proposed to promote compliance with parenting orders, the Sole Parents' Union is concerned that in reality this will operate only as a sanction against residence parents who, for whatever reason, might contravene contact orders. Indeed, this is shadowed in the second reading speech, wherein the Attorney-General refers to the "main problem" that "in many cases contact order compliance in particular is seen as optional".*

*This does not take into account that according to research conducted by Rhoades, Graycar & Harrison (The Family Law Reform Act 1995: can changing legislation change legal culture, legal practice and community expectations? April 1999) many interim contact orders are made inappropriately and are in fact overturned on going to trial. It would appear that the presumption that children have a right to an ongoing relationship with both parents is becoming an obligation on behalf of the child, and is being confused with a father's right to see their child(ren).*

***We are extremely concerned that children's safety is being jeopardised by the current moves, and that this will be further jeopardised by the implementation of punitive sanctions for contravention of contact orders.***

*Contrary to popular mythology, women do not en masse maliciously withhold contact. On the contrary, research shows, and experience of the Sole Parents' Union would confirm, that generally women would encourage a closer relationship between children and their father, even in cases where domestic violence has been an issue. This would indicate that in the vast majority of cases where contact is withheld, it is done so for a reason, that is, that the residence parent has strong and real concerns for the safety of the child(ren) and/or herself. It would appear reasonable therefore that rather than a concentration on compliance, an investigation into how contact orders are made in the first place would be appropriate.*

*Threats of punitive sanctions are often used by violent ex-spouses as a continuing means of harassment and control. This is shown in the previously mentioned Rhoades et al research, which suggested that many Form 49 applications are brought by unrepresented contact fathers, and that many are unmeritorious and used as mechanisms to harass residence parents. There was also a concern about the amount of court time wasted in dealing with these applications. If the changes proposed in the Bill are implemented, there is a very real concern that the numbers of unmeritorious Form 49 applications will increase, with a corresponding increased burden on court time. This will also result in an increase in harassment of women via the mechanism of the court. Should there be an obligation to impose punitive sanctions parents will be punished for trying to protect their child(ren).*

*This is equally true of orders which compensate for contact foregone as a result of a contravention. If a contravention is made because of a genuine fear for the safety of the child(ren) and/or the residence parent, this needs to be able to be taken into account by the court before imposing any penalty.*

***It is imperative that the Family Court retains its discretion to decide whether to impose punitive sanctions for breaches of contact orders.***

*The assumption underlying these proposed changes is that breaches of contact orders are straightforward matters which can all be dealt with in the same manner. Clearly, this is not true. Breaches are made for a variety of reasons and the Family Court must retain its*



*ability to deal with each case on its individual merits.”*

**Provisions from overseas models**

Sole Parents' Union recommends that the government examines the Canadian model with regards to residence and contact and best interests of the children. We would also recommend that the New Zealand model of a presumption of no contact in cases of violence be examined to ensure safety of children.

We are concerned that the Florida model recommended places a requirement on children to ensure ongoing contact even where it might not be appropriate.

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