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BY: *WAE*

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

Submission No. <u>48</u>
Date Received .....

Dear Sir/Madam

**Family law changes proposed by the Government**

Attached is a submission by the LFAA to your Committee's inquiry into family law changes proposed by the Government.

We would be happy to meet with your Committee to discuss our comments, and to provide any further material that you would like to receive.

Yours sincerely

B C Williams BEM JP  
President

15 July 2005

**COMMENTS ON THE PROPOSED FAMILY LAW  
AMENDMENT (SHARED PARENTAL RESPONSIBILITY) BILL  
2005**

**(a) Minister's Press Release**

Statement in Minister's Press Release	Comment
<p>Proposed changes to the Family Law Act 1975 will recognise the right of children to know their parents, as well as to be protected from harm.</p>	<p>There are many good features in the proposed legislation, including, but not limited to:</p> <p>recognition of "shared parenting" as the basic thrust of the amendments;</p> <p>recognition of the primary importance of children having a meaningful relationship with both their parents;</p> <p>the dropping of the concept of "residence" in favour of "parenting time";</p> <p>rewarding a co-operative parenting attitude on the part of parents;</p> <p>requiring the make-up of parenting time lost through departure from previously agreed arrangements; and</p> <p>the establishment of the new Family Relationship Centres.</p> <p>There are, however, quite a number of areas where significant further strengthening is still required. Two key areas here are the need to explicitly acknowledge the full equality before the law of men and women as parents, and the need to enforce court orders. There are also quite a number of areas where the proposed legislation is at present too negative, notably in its references to alleged violence.</p>
<p>The Bill introduces a new presumption of joint parenting responsibility to promote parents consulting together on important parenting decisions such as where a child goes to school.</p>	<p>This presumption is already present in existing legislation. However, the Court will now be required in future to consider the presumption in making its judgements.</p> <p>To render the presumption effective will</p>

	<p>require a change in <i>attitude</i> on the part of both the Family Court and the legal profession.</p>
<p>The Bill makes the primary factors when deciding the best interests of the child the right of children to know their parents and be protected from harm.</p>	<p>S60B should read –</p> <p>(1) The objects of this Part are:</p> <p>(a) to ensure that children receive adequate and proper parenting <b>from both their parents</b> ... potential; and</p> <p>(b) to ensure that parents fulfil, <b>and are permitted to fulfil</b> their duties ... their children ...</p> <p>(2) The principles underlying these objects are:</p> <p>(ii) children have <b>the right, where their parents are separated, to equal contact with both parents, and to communicate on a regular and frequent basis</b> ... welfare and development.</p> <p>The proposed new provisions 60B, 65DAA, and 68F in the legislation should make appropriate reference to “equal time” as a starting point. The reference to “substantial” is not adequate.</p> <p>“Regular” contact should read “regular and frequent”.</p> <p>The “paramountcy” doctrine in the existing Act is formulated in too extreme a manner, and this has, in a quite fundamental way, led to the Family Court often failing to deliver justice to the parties.</p> <p>The wording in the 1989 UN Convention on the Rights of the Child should be adopted, viz., “The best interests of the child are to be a <i>primary</i> consideration”.</p> <p>There should be an appropriate reference to the likely effects of proposed Court orders on the <i>parents</i>. The interests of</p>

	<p>members of a family are intertwined.</p> <p>There is excessive emphasis, in the proposed definition of “the best interests of the child”, on domestic violence issues (see also below).</p>
<p>Requires parents to attend dispute resolution and develop parenting plans before taking a parenting matter to court, with exceptions including situations of child abuse and violence</p>	<p>A majority of Australian magistrates surveyed have indicated that DVPO’s are “sometimes” or “often” used by the applicant party as a device to gain an advantage in a separation. In the light of this reality, it is not appropriate for mere allegations of domestic violence or abuse to be taken as sufficient reason for avoiding dispute resolution. The LFAA has seen evidence suggesting that the rate of unfounded allegations may be as high as 85%.</p> <p>Violence should only be taken into account where the person accused has been found guilty. The definition of violence at present is too vague, and the reference should be to “serious violence” (S60I and J).</p>
<p>Improves enforcement of parenting orders through the ability to impose cost orders, bonds, make-up time, and compensation.</p>	<p>The proposed new enforcement mechanisms are potentially useful. However, what is needed is not “improvement”, but a revolution. At present the Family Court is either unable and/or unwilling to enforce its own orders on contact. Courts that do not uphold the rule of law are, arguably, not really courts at all.</p> <p>The new legislation is fundamentally deficient in not <i>requiring</i> that effective mechanisms be in place to ensure that the Court’s orders are enforced. Based on past performance, and with inadequate Court resources, there can be little confidence that the new provisions will represent a significant improvement. It is very likely that the Court will largely continue with its previous practices.</p>

	<p>The Court must in future become a genuinely “helping court” in relation to provision of parenting time, rather than, as often at present, a hindering court. To allow custodial parents to avoid censure for denying parenting time, by proffering a “reasonable excuse” with a low standard of proof, is inadequate. This might be significantly overcome if “reasonable” were to be taken to include an adequate offer of compensation covering time make-up and cost. “Reasonable” should read “reasonable and convincing”.</p> <p>Provisions in the legislation on the standard of proof required in dealing with contraventions need to be clear.</p> <p>Courts should be empowered and formally encouraged, in appropriate cases, to make statements that parties before them have made false and misleading statements. Where perjury has occurred, charges must be laid, and if proven, costs should be awarded against the guilty party.</p>
<p>Requires parents, advisers, mediators, and the courts to consider substantially sharing parenting time in appropriate cases.</p>	<p>An instruction to “consider” matters, by itself, may mean little. For the process to have value, there must be significant incentives to respect and, where necessary, enforce the rights of the children to be parented by both their parents.</p> <p>There appears to be no reference in the legislation to unjustified relocation (S68F 1 (1)). This is a major issue, which should be dealt with.</p>
<p>Better recognises the interests of children in spending time with grandparents and other relatives.</p>	<p>This will only be effective if the changes referred to above are also implemented.</p>

The Government has also responded to concerns about family violence and child abuse.

Family violence and child abuse is certainly a significant issue.

However, some of the groups giving excessive prominence to these concerns distort the issue by (1) claiming that men/fathers are by far the main perpetrators of domestic violence and child abuse, and (2) using an inappropriately wide definition of "violence". They appear to do this, in part, for ideological reasons, and in order to block any change to legislation that currently favours their control over children and family assets.

Their claims are largely false. Women are just as likely as men to engage in domestic violence, and rather more likely to abuse children. The rate of child abuse in families headed by a single mother is *ten times* the rate for intact families. To assign children to such single-parent families can be dangerous for the children, removed from the protection of their other natural parent.

In this context, the LFAA is concerned at the inaccuracy of the claim made in a speech by a senior officer of the Family Court to the recent LFAA Conference on Family Law that "women are almost always the victims (of domestic violence)".

If it is a view also held by Judges of the Family Court, there is a major credibility gap between the Family Court and (1) the many fathers who have themselves or their children been the victims of unacknowledged violence and/or abuse and (2) the many fathers who have had false allegations of abuse and/or violence made against them and as a result lost contact with their beloved children.

For the facts on domestic violence, the Committee is referred to a number of

	<p>papers and other documents prepared on the subject, including a letter to the CEO Family Court. <b>These documents are attached to this submission.</b></p> <p>It would be desirable for Family Relationship Centres to, inter alia, provide courses to women and men on how to avoid being violent and manipulative or attempting to emotionally abuse their partners in breakdown situations.</p> <p>Parental alienation syndrome should be identified as a major and serious form of child abuse.</p>
<p>A proposal to make cost orders against people who falsely allege violence to avoid attending family relationship centres was withdrawn.</p>	<p>The proposal to make cost orders against people who falsely allege violence should be pursued, and extended to false allegations of domestic violence made for any reason.</p>
<p>Family Relationship Centres.</p>	<p>Supported in principle. But these Centres will not be effective without the changes in the law indicated above.</p> <p>It will, inter alia, be necessary to establish what kind of people are proposed to be appointed to the tender evaluation panels for the new services (i.e., their views, backgrounds, and agendas), and to ensure they are not gender and/or ideologically biased, as is so often the case at the present.</p>
<p>The proposed legislation will help separating parents sit down at the table and agree what is best for their children.</p>	<p>An agreement made about what would be in the best interests of the children is fine in principle, but it is also necessary to have <i>effective</i> court backup to ensure that these agreements are complied with.</p> <p>It needs to be appreciated that children would in most cases welcome substantially equal time with both parents with enthusiasm.</p>

**(b) Other points**

<p>“Entrenched conflict” is not included in the legislation as a ground for avoiding dispute resolution.</p>	<p>Supported.</p>
<p>Additional parenting plans can be developed after court orders are made.</p>	<p>Supported in principle, where appropriate.</p>
<p>Hearsay evidence.</p>	<p>Hearsay evidence should not be permitted in the Family Court.</p>
<p>Persons who separated before the introduction of the new legislation?</p>	<p>It is not clear what is to happen to these cases. The principle should be retrospective for parents who previously indicated they wanted a shared parenting arrangement.</p>
<p>Financial arrangements where one parent is gaoled or working to pay off fine.</p>	<p>All payments of FTBC, etc. should be directed to the non-offending parent.</p>
<p>Perjury cases.</p>	<p>Sufficient funding should be provided to the relevant authorities to make possible the proper prosecution of suspected cases of perjury.</p>
<p>Kidnapping of children.</p>	<p>It should be made a serious criminal offence for one parent to remove a child from another parent without that parent’s written permission or without a final order of a court.</p> <p>Parents should not be permitted to move a great distance away and thereby hinder parenting by the other parent.</p>
<p>Selected judicial functions to be delegated to other court officials.</p>	<p>Supported in principle.</p>



Legal aid.	The legislation should be placed in a context where legal aid will in future be provided equitably to both parties.
DNA testing.	The legislation should be placed in a context where paternity testing will in future be affordable, available when sought, and routine for all births.

B Williams  
President

J B Carter  
Policy Adviser

15 July 2005