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Secretary
Legal and Constitutional Affairs Committee
Parliament House
Canberra
ACT 2600

Attention Ms Joanne Towner

Dear Ms Towner

Inquiry by the Legal and Constitutional Affairs Committee into Shared Parenting Bill, 2005

Following on the oral evidence presented to the Legal and Constitutional Affairs Committee in Canberra on 25 July 2005, the LFAA would like to make the following additional comments.

Outcomes from family law

The LFAA has expressed the view to both HORISP and this Committee that *overall outcomes* from the operation of the family law system established in Australia in 1976 are not satisfactory. A situation where, after 30 years of the Family Law Act, 1,000,000 children live away from the care, guidance, and protection of their natural fathers in a population of only 20,000,000 is no longer acceptable to most Australians.

Purpose of the new legislation

The HORISP Committee, which investigated the issues in 2003, arrived at a view in many ways similar to the LFAA. That Committee concluded that divorced or separated parents "should *start with an expectation of equal care"*.

However, the proposed legislation arising out of the government's reaction to the HORISP report appears to have been subject to considerable influence by some elements of the legal profession and the counselling sector which have vested interests to protect and enhance.

The new legislation should not, in the LFAA's view, be primarily about providing more funding to existing institutions. Nor should it be about additional work being created for particular professions as a result of more complex legislation. The new legislation should be about enabling both parents to play a full and proper role in the lives of their children. It should also be about a fundamental change to the culture of the Family Court, which shapes as well as makes so many decisions affecting families. It is adults that make the decision to divorce, not the children, and children

should not be punished by court decisions that favour one parent and depreciate the value of the other.

The new legislation should not be fixated on the concept of "shared parental responsibility". That concept is already included as an integral part of existing legislation, and covers part only of the full reality of parenting. An example of the exercise of "shared parental responsibility" could be someone living on the other side of the world, who never sees his/her child, expressing an opinion about which type of school the child should go to. There is a lot more to parenting than that.

The new legislation should be primarily about *shared parenting*. That is something quite different. It means, amongst other things, spending a considerable amount of time with the child, so that both the parents and the children can jointly and fully participate in the pleasures and opportunities for personal growth as well as the responsibilities and duties of parenthood and childhood. Children are not a separate species from their parents, and they also have responsibilities and duties appropriate to their ages, which will enable them to grow up to be good citizens.

All those involved in the preparation of the new legislation relating to family law would be well advised to pay close attention to the many opinion surveys carried out in the last couple of years which make it clear that Australians think that divorce/separation should be followed by shared parenting of the children involved.

Substantial time

The LFAA, Parents Without Partners, the Fatherhood Foundation, and Dads in Distress, amongst many others, are of the view that the formulation "substantial time" in the proposed new legislation is inadequate and unsuitable, and must be replaced by "equal time" as a starting point for discussion, if the legislation is to have a beneficial effect.

If "substantial parenting time" were chosen as the criterion for time sharing in the legislation, a great deal would depend on the meaning of "substantial". It would be essential that the phrase be properly explained in the Bill, or at least in the Explanatory Notes. The explanation would need to refer to something like "40% or more" of the total parenting time. That could, in appropriate cases, be averaged over a much longer period than just a few weeks or months. It would be necessary to make clear that "substantial time" was not a reference to the standard 7% or so granted in so many cases at present.

"Paramount" versus "primary"

There is a fundamental question about what the word "paramount" is supposed to mean when referring to "the best interests of the child".

According to the dictionary ("Australian Concise Oxford Dictionary"), "paramount" means "supreme; in supreme authority". In the context of family law, it is the wrong concept. In any group of human beings, especially one as closeknit as a family, to have the interests of one individual as supreme over the interests over all the others is a nonsense.

Literally interpreted, it means that the Family Court is entitled, and is indeed *instructed,* to be unconcerned about severe hardships imposed on a parent who shares time with the child, if there could be seen to be some slight supposed resulting advantage to the child, however small. The question is, in what other area of life would such an absurd and unjust trade-off even be seriously considered. The formulation is evidently gender-ideological in origin, and designed to in practice favour the interests of the supposed "natural parent" against the other parent.

Given the present formulation, Courts frequently disregard the effect *on the child* of the decisions they make which downgrade, depreciate, and trivialise the role of the parent referred to (hitherto) as the "non-custodial" or "non-resident" parent. This is at the root of many of the problems created by the Courts. For a Court to hand down a decision that results in a man taking his own life out of despair, because he has been cut out of the lives of his children for no good reason, is not in the best interests of his child.

The fact that the Court apparently does not, in this day and age, make any planned and coordinated effort to find out about the consequences of its own decisions is, in the LFAA's view, almost incredible. In almost any other area of human activity, employees who did not seek out or take notice of feedback on the effects of their performance would soon be out of a job.

The word "paramount" is not in accordance with the UN Convention on the Rights of the Child, is essentially nonsensical, and should be changed to conform to the correct wording in that Convention; that is, the interests of the child should be regarded as "a primary consideration".

Domestic violence

In spite of claims to the Committee to the contrary, domestic violence is not the main issue in family law.

The handling of domestic violence issues both in legislation and by the courts can, however, be an important issue, because of its impact on families. The proposed new family law Bill needs to be considered in the light of domestic violence legislation passed or about to be passed in the States and Territories.

It is unnecessary, in the LFAA's opinion, to include a reference to family violence in section 60B(2) of the new (Commonwealth) legislation, given that that the subject of domestic violence is already well covered in other sections of the Act. The Chief Justice of the Family Court has also expressed a similar view in her evidence to this Inquiry.

The attention of the Committee has already been drawn to domestic violence legislation in the ACT and Western Australia. From past experience, it seems very likely that that legislation will be used in the vast majority of cases against men. Information on further developments, this time in Tasmania, has been provided in a submission to the Committee by the Catholic Women's League Tas., which notes that, "The 'Safe at Home' Program now operating in Tasmania (which) *allows for*

arrest and imprisonment on the word of a complainant is not very conducive to reasoned discussion". The Tasmanian legislation appears to have been heavily influenced by gender ideologues, and it is evident that no married adult male is any longer safe at home in Tasmania.

Statistical claims about domestic violence

Some of the submissions to the Inquiry opposed to shared parenting have been presenting some very odd-looking statistics on domestic violence in defence of their position. For example, one such submission (No. 20) claims that:

> "The Australian Bureau of Statistics (1996) Womens' Safety Survey indicates that single previously partnered women experienced the highest incidence of violence, with *42%* reporting experiencing violence mainly from former partners.'

But at page 11 of the relevant publication, "Womens Safety Australia", it is reported that, "The likelihood of a woman experiencing violence … differed according to whether she had a partner or not … Among women who were not married, those most at risk of violence were women who had a previous partner. *4.8%* of these women experienced violence from their previous partner in the previous 12 month period."

The 4.8% is evident from the published results, but where is the 42%?

The same submission claims that:

> "One in four children experience violence and abuse through witnessing violence against their mother or step-mother by their father or step-father".

But the submission fails to mention the (at least equal) amount of violence by mothers against fathers, and the greater amount of violence by mothers against children. A study that we are aware of that covers the witnessing of violence by parents (Mwamwenda 1997) indicates that in that case children were *nine times* more likely to witness violence by their mothers than their fathers.

In spite of the tremendous, dedicated, and wonderful parenting efforts being made by a very large number of single mothers in difficult circumstances, single parent families headed by the female parent are, in many cases, dangerous places for children.

The submission also says that:

> "Women and children are at greatest risk of increased violence, including murder, immediately following separation."

But the submission fails to point out that the same thing is true of "men and children". The Committee should be very wary of the phrase "women and children" wherever it appears, since in most cases the statements made are equally valid for "men and children." For example, the statement that "most victims of domestic violence are

men and children" is equally as valid as the statement that "most victims of domestic violence are women and children".

The submission also fails to mention that the suicide rate for men after separation is many times than the rate for women.

The submission further claims that:

> "Communication breakdown, followed by violence and abuse issues, are the main reasons for divorce".

But that summary gives a misleading impression as far as violence is concerned. The results of in-depth research (Sanford Braver and Diane O'Connell, 1998) indicate that, in families with children, typically, mothers' reasons for divorce are, in order:

1. Gradually growing apart
2. Serious differences in lifestyles
3. Not feeling loved or appreciated
4. Spouse not able or willing to meet major needs
5. Emotional problems of spouse
6. Husband's extramarital affair
7. Severe and intense fighting
8. Frequently felt put down
9. Spouse not reliable
10. Problems and conflicts with roles

One has to go to Cause No. 16 in the list to get to "violence between you and the spouse", and even in those cases the violence is not necessarily one-sided.

We have not yet checked out the other statistics given in the submission in question.

As an indication as to what men think about the Government's TV advertising campaign on the subject of domestic violence, here is one view, recently posted on an international list.

> "Our television programmes over the last few nights had been inundated with Australian government advertisements accusing men in a very crude and sexist way of domestic violence. Here is an example. (Voiceover with a picture of a young man): "It was only shoving - I don't beat up on women." Deep authoritative male voice in reply: "Yes you do." Meanwhile the advertisement says nothing about women who shove men - and perhaps in the context of the advertisement it could have even included this hypothetical guy's partner. The not-so-subliminal message is that if a couple shove each other, then only the man is to blame. I am still intensely annoyed by the advertisements' authority-driven political correctness which seeks the moral high ground but is actually closer to bullying. The hypocrisy just gets under my skin."

The Government's advertising program is, in the LFAA's view, biased and misleading, and not a proper use of taxpayers' money. This view has been put to Ministers on several occasions. The question is - why does the Government not run a

properly objective and balanced advertising campaign against *all* domestic violence. Such a program would actually be useful, and would earn respect because it would be recognised to be honest (which the present program arguably is not). The LFAA has no interest in the pursuit of an ideological approach, but is concerned only with the actual reduction of violence within families, for the benefit of all *family* members.

Relationship centres

We agree with Shadow Attorney-general Nicola Roxon's reported comments that the Government "must reveal what requirements and qualifications would be set for staff running the centres and how the Government would make sure staff were trained to prevent and deal with violence".

Persons who have an ideologically-based and factually wrong view that domestic violence is overwhelmingly perpetrated by men are unsuitable persons to be screening for domestic violence and should not be employed in the new centres, as they may end up doing more harm than good.

Direction of cases by judges

The LFAA remains to be convinced that judges should be given greater powers to direct the running of cases, if they are likely as a result to prevent parents from giving evidence about their status as victims of violence because the judge believes that, as a man, the witness must surely be the "perpetrator" of any violence.

See statements relevant to this issue made by Family court staff.

"Professional development" courses

The LFAA continues to be concerned about the nature and effects of the "professional development" courses being provided to Family Court personnel in relation to domestic violence.

Questions which come to mind include - who are the persons providing these courses, and what are their qualifications, judgement, backgrounds, and agendas.

The community generally must be able to have confidence that judges are being provided with correct information about both the phenomenon and the issues.

The LFAA would appreciate it if the Committee would take the above views into account in its deliberations.

Yours sincerely

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President

J B Carter
Adviser

Lone Fathers Association of Australia (Inc.)
7 August 2005