15th July, 1991

The Hon. Justice Alistair Nicholson,
Chief Justice,
Family Court of Australia,
G.P.O. Box 9991,
MELBOURNE. VIC 3000

Dear Chief Justice,

The Brethren community proposes to make a submission to the Joint Select Committee on the Family Law Act in relation to the operation of the Act, the proper resolution of custody guardianship welfare and access disputes, the effective enforcement of rights and duties under the Act, the exercise of discretions by the Judges of the Family Court and, where it is relevant to the terms of reference of the Committee the operations of the Family Court.

A copy of the submission will also be forwarded to the Attorney-General as the Minister having responsibilities for matters concerning the operations of the Federal court system and the behaviour and conduct of Federal judges in the wider sense.

It is our understanding that you share with the Attorney General the responsibility for the maintenance of legal principles and a system of justice in the Family Court. A number of the matters to be raised in our submission and evidence to the Select Committee relate to the operation of the Court - and in particular the attitudes expressed by members of the Family Court bench towards our Church and community. We thought therefore appropriate to write to you expressing the areas of our concern both as a matter of courtesy and as a matter of urgency considering the timing of the Parliamentary Enquiry with our submission required to be lodged by 31st July, 1991.

We would be glad for the opportunity to meet with you in the event that you consider any of the matters set out require elucidation.

FAMILY LAW ACT: OBJECTIVES

Family Law must be seen against the background of the society in which it operates. Our submission will urge that it is timely to consider what societal objectives the Act and the Court was set up to achieve and what has been the result.

For example, it seems to us that quite inadequate regard is being paid to the fundamental principles as set out in Section 43 of the Act - particularly having regard to

- the preservation of the institution of marriage in its primeval sanctity.
- the widest possible protection and assistance of the family as the natural and fundamental group unit of society, and
- the protection of the rights and welfare of children.

.../2

This we believe a most valuable statement based on God's law which is fundamentally recognised in the Constitution of the Nation which was enacted "humbly relying on the blessing of Almighty God".

The basic confidence of the Australian people in the Constitution has been demonstrated in recent times in a most overwhelming way (1989).

This accords with the success of the Marriage Act introduced in 1961.

The concepts of the marriage law are upheld by us in the fullest possible measure and the signatories of this letter are all authorised marriage celebrants under Section 30 in the name of the Brethren.

The contrast is the operation of the Family Law Act which has been in conflict with thesefundamental objectives.

We appreciate the removal of fault and the impact of the legislation in social terms is seen by many as being a political issue. We disagree with this viewpoint - in particular we deprecate the attempt to place marriage on the level of an ordinary contract and the attempt to subvert the place of God in the natural order of creation. We will be addressing those issues in our submission to the Select Committee and while we would be happy to discuss our concerns in this regard with you, we have confined this letter to matters which we understand are in your domain.

BRETHREN-BACKGROUND & PERTINENT FACTS

A brief outline of the Brethren can be gleaned by reference to "The Brethren" - A recent sociological study by Professor B.R. Wilson.

Further background can be obtained by reference to "Many Faiths One Nation" P.P. 194-195, 200-202, this publication being prepared under the auspices of the Bicentennial Authority in 1988. Copies of both are attached for your perusal.

Specifically we consider the following facts to be relevant:-

(a) Of the marriages entered into amongst Brethren in the last 20 years there have been a total of only 6 divorces representing less than 0.5% of all marriages entered into during this period. This contrasts with the general divorce rate in Australia which is 16.1% for the population.

(b) Only 3 cases are reported of children born of Brethren families admitted to a shelter or emergency care accomodation over that same period. Less than 0.1% of children have been charged with any sort of offence in any court. All Brethren children complete secondary schooling.

(c) Less than 0.5% of the Brethren have been or or have applied for unemployment benefits.

.../3

(d) Most members of the Brethren are in fact brought up as Brethren members from birth and marry according to vows recognised and accepted by them within the Brethren community. A small number of members of the Brethren have joined the Church after marriage outside the Church.

FAMILY COURT CASES: INDIVIDUAL LITIGANTS: ATTITUDES TO BRETHREN

We emphasise that the matters we are raising do not simply relate to the individual treatment of members of the Brethren community who happen to have been litigants before the Family Court - although we have grave concerns about many aspects of those cases. Our primary concerns arising from these cases are:-

(a) the attitudes which have been expressed by the Court to the Church and community itself;

(b) the practices and attitudes of the Court in relation to matters which are fundamental to the beliefs of our members which have been apparent in those cases; and

(c) the principles we uphold as supported by Section 43 of the Act are the very principles for which we are being persecuted and maligned.

At this stage we have confined the material on which we have based our submission to those reported cases where members of the Brethren have been involved in completed litigation before the Family Court. We have not commented on either unreported cases or cases currently before the Court - although hopefully some of the latter category of matters will be concluded before we are called to give evidence to the Select Committee.

The particular cases which have given rise to our concern and the comments which have been extracted from those cases are:-

PLOWS	(1979) FLC 90-607 Ferrier J (1983) FLC 91-275 Full Court (Watson Emery and Haese JJ)
BAKER	11 and 12 November, 1986 Strauss J
SMITH	6 February, 1991 Anderson J
GRIMSHAW	29 May, 1981 Walsh J 20 February, 1982 Strauss J Full Court Appeal No 107/1981
FIRTH	(Cook J) (1988) FLC 91-971 Full Court (Simpson Joske and McCall JJ)
LITCHFIELD	19 March, 1987 Mullane J 9 October, 1987 Full Court (Joske Strauss & Yuill JJ)

CHURCH NOT A PARTY

The Church is and has not been a party to any of the cases cited above. It has no right to intervene nor to be heard or represented before the Court. Yet comments have been made in those cases - and like comments continue to be made - which reflect unfairly, inaccurately and improperly on the Church and our community.

.../4

Once those comments have been made - and the damage perpetuated particularly by the publication of judgments in legal and other reports - the Church has no right to appeal or challenge the erroneous, unsubstantiated and adverse criticisms which have been made from the positions of authority respresented by members of your Bench.

The comments set out in the annexed schedule have been made by a widespread cross-section of judges of geographically different registries of the Court and of varying levels of seniority and experience. We know of no other institution or group which has been the subject of such repeated criticism or comment by your Bench.

IMPACT OF ATTACKS ON INDIVIDUALS COMPOUNDED BY ATTACKS ON CHURCH

It is difficult to put aside the hurt done to individual members of the community involved in the specific litigation. That hurt is compounded by the broad nature of such comments, damaging the Church, and, if repeated in a non-privileged forum, would give us no option but to pursue our rights under the ordinary laws of defamation.

ABSENCE OF REMEDIES

We have been advised that resort to the law is not open to us in such cases - which is frustrating as we have always believed in operating within the law. Given the current levels of tenderness displayed by members of appellate courts to the behaviour of their judicial colleagues, appeal options have been proved to be equally futile.

CONCERNS AS TO THE FAMILY LAW JUDICIARY

Consistent with our deep-seated concern as to aspersions made by Justices Cook and Watson is the antipathy shown by Justice Strauss in the matters of Grimshaw & Baker. His Honor has made numerous claims as to his "knowledge and experience in Brethren cases" but in our view has shown in those cases a perverse attitude to morally corrupting influences brought to bear on our children.

Specific attention is drawn to the actual statements in these judgments appearing in Schedule 1 attached.

The patently defective reasoning in many judgments handed down aimed at liberating children from the Brethren lifestyle, and to turn them against the church has been an utter misconception by the Judges of the human issues involved.

Moreover the strictures against the innocent mother in favour of the errant father have totally misjudged the situation and the outcome.

There is one tragedy where a child was removed from his grandparents custody (amongst Brethren) and forced against his wishes by the Judge to be permanently in the custody of his errant mother. She is totally opposed to his lifestyle and actively denigrating both the grandparents and the faith.

.../5

Since residing with his mother he has been shown the transcript of the proceedings which includes the bitter, unjust and untrue comments made by the Judge against not only the Brethren lifestyle but the tenets of their faith, which has had the damaging consequences of turning him against what he personally experienced and was favourably disposed towards all his life up until that tragic day.

This is a serious result of the uncalled for bias of a Family Court Judge.

The judge's role in whatever jurisdiction must be for the upholding of fixed principles regarding right and wrong, good and evil. The perverse comments of your Justice Cook in the matter of Firth sets aside every fundamental tenet of those principles in the blatant upholding of a childs "right to be wrong". How can it be justified that law abiding, simple christians who cherish the moral order of the family are subjected to the false and godless tirade of this man who says "It is probable that the greatest single force working against the child's rights to be free may be the loving parent's ideal of adult rectitude".

PREJUDGING OF CASES: PERCEPTION AND REALITY

These factors cause us concern as to whether there is a prejudging of any issues by your Bench in litigation involving our members - particularly when any opposing party raises an issue about the Brethren or our beliefs and practices.

We certainly consider that there is the appearance if not the reality of such prejudging. We know from our perspective as senior members of the Church throughout Australia that members of our community do not feel that they face an impartial and unbiased bench when they come to the Family Court.

The same feeling is apparent when there are dealings with court counsellors employed by the Court as well as some lawyers (being as they are court officers) who act as separate children's representatives. Evidence of misrepresentation by these officers of the children's expressed wishes is of grave concern.

RESULT: LACK OF CONFIDENCE AND PREPAREDNESS TO ACCEPT THE COURT

The net result has been that the confidence of members of our Church has been severely shaken in approaching this Court (as compared with other arms of Government) and feeling that the exercise of justice is weighted unfavourably against Brethren. We are sure you will agree that in this most sensitive of all jurisdictions the perception of unfairness is particularly unfortunate. Our members are even less experienced in the ways of courts and the law than other members of the public. Their apprehensions and anxieties about their experiences affects not only the presentation of evidence by the individuals themselves but their subsequent preparedness to approach the Court on any matters where they have the right to expect help. As an example of this, we are aware of a number of cases where our members, having experienced a custody/access case, have simply transferred their property to their spouse rather than be involved any further in the degrading experiences they have suffered.

.../6

EXPRESSIONS/PREJUDICES

Those expressions of opinion set out in the attached schedule have been either unrelated to the individual members of the community before the Court in the particular case or seem to be a gratuitous expression of prejudices of the individuals concerned. The comments appear to us to be scarcely (if at all) founded on the evidence before the Court in those particular cases.

Some views (see the comments of Cook J. in FIRTH) have relied for their inspiration on authorities such as Oscar Wilde. We know of no basis for that individual's approach to life to be preferred by the Court. The only authority we have regarded as appropriate is the Bible - yet on one occasion (see the comments of Watson J in PLOWS) reference to the Bible was made in a manner replete with sarcasm and vitriol.

Quotations from the Bible are normally included but have been omitted from this submission for obvious reasons.

However scripture can be adduced to support our stand on every issue, and in spite of disregard of its own claim to inspiration scripture remains unchanged and cannot be broken.

ATTACKS ON MEMBERS OF THE CHURCH BEING PRESENT IN COURT

We would refer you to the comments of Mr. Justice Anderson in SMITH about the presence of members of our church in the court. There is no justification for an attack of this nature on persons who were not parties to the proceedings and who were there out of concern and assistance to the wife. We fervently and strongly assert the obligation of members of the Church to support each other in times of stress - such as litigation of this nature. The Family Law Act provides that the Court is not a closed Court. Members of the public, let alone the Church have the right to attend such proceedings without being the subject of such judicial criticism and supposition - again in this case also without foundation.

CUSTODY: DEPARTURE FROM UPBRINGING

One of the main areas of concern of the Brethren arises when a member of the community leaves his or her marriage and family in contravention of the marriage vows (which requires an unconditional committal that any children of that marriage be brought up in accordance with the scriptural teachings of Brethren and to continue in that pathway for life) and then bring custody proceedings. Such litigation of course represents an attempt by that party to have their children brought up in an environment and according to an ethos different from that in which the children (and usually their parents) have been raised - almost invariably since birth. The trauma of the children's exposure to this diametrically opposed lifestyle has not only been rejected by the Court as worthy of recognition but rather ignored as irrelevant and most likely imaginary.

.../7

FUTURE OF CHILDREN INVOLVED IN FAMILY COURT LITIGATION

One of the features of the Family Court is that it is not equipped (in other than the rarest cases) to carry out any follow-up study of children who are involved in custody litigation. Consequently the Court does not see the long term consequences of its decisions. We do. The Brethren and our members maintain a close contact with all such children. We know from the unsolicited comments of those children of the trauma of the appearance in Court, the litigation itself and the comments and findings of the Judges themselves.

Attached are statements from nine brethren children affected adversely by Court judgments in which their wishes were disregarded - see Schedule 2.

IMPACT ON CHILDREN

The bewilderment the children experience is only compounded by the attempt to justify the decision affecting their lives in terms of a court imposed situation supposedly designed to preserve their best interests. If the evidence of those children once they have reached adulthood can be accepted as a reflection of what the children themselves considered to be in their best interests (and we know of no better criterion suggested by the Court) then the Court determination in those cases has been an abject failure in determining what is in the best interests of the children concerned.

ENFORCEMENT ORDERS

It is of deep concern that warrant orders have been issued to force children against their strongly expressed wishes and conscience, to change their custodial position. This is seen as an unconstitutional imposition of the judge's own standards and his biased view of the Brethren, their beliefs and way of life, to reverse the chosen direction of these childrens lives.

This action by the Court does not reconcile with such instruments of government being God's ministers for good.

ENFORCEMENT OF MAINTENANCE PAYMENTS IGNORED

Without exception it has been experienced that when non custodial fathers blatantly violate the law in non-payment of court ordered maintenance that Judges have totally ignored this attested evidence when it is brought to their attention in the Court.

This is a basic denial of justice and has given authority to the fathers neglectful attitude to the financial plight of struggling mothers.

VIEWS OF CHILDREN AS TO THEIR BEST INTERESTS

It is also our concern that members of the Brethren community with children are not being permitted the opportunity to establish

.../8

as a paramount principle (as set out in the Act) that the welfare of the children is best preserved by being maintained within the lifestyles and belief systems which they have been brought up in since birth. We see the Court as being more concerned to protect the interests of the non-custodial parent than in promoting the best interests of the children concerned. This persistent approach is in direct abrogation and violation of Section 64 of th Act.

Much of this attitude flows from the judicial determination to minimize the weight to be given to (or even ignore) the wishes of the children. Often evidence of those matters has not been given. Alternatively that evidence once given has been discounted as being the product of an overbearing of the child's will.

TREND TO ACCEPT VIEWS OF CHILDREN

In adopting this approach the Family Court seems to be going against the trend in other areas of the law where there seems to be an acceptance that children are able to make an assessment - recognised by the Court - of matters which are threatening to them (e.g in areas of child abuse and sexual abuse cases).

It is our sad experience from those custody cases in which our members have been involved that such wishes expressed by children in relation to their views on matters outside the Brethren faith and lifestyle are not given full weight, apparently and usually on the basis that the children are regarded as not sufficiently mature to make an independent assessment.

Not only are these wishes ignored but the judiciary have slighted the testimony that a child has a conscience as to good and evil. This disregards a child's right to express his/her God-given conscience as enlightened by an upbringing which has focussed on the distinguishing between good and evil based on the Holy Bible

Clearly this involves a determination in each case of the relative maturity of the child concerned. Nevertheless it must be a fact that children brought up within a faith and a strong belief system will have that faith and those principles as their primary focus.

What the Court has done in many cases has been to deliberately seek to expose children to beliefs, practices and lifestyles completely contrary and foreign to their background and training. It is hard to see any better recipe for disaster in terms of disturbing the upbringing of children.

BRETHREN DEDICATION TO CARE OF FAMILY UNITY/CHILDREN

The corner stone of a healthy society is the regulation of order in the family home in accordance with the creatorial status of man and woman. Numerous social studies confirm the enduring value of the dedication of the mother to the home setting and the tender care of children. The family unit is one of God's primeval thoughts, and nowhere is this principle and its attendant provision of sympathy and succour held to as it is amongst Brethren.

Before any disturbance in a marriage reaches the level of a court, uniformly and unvaryingly there has been every effort

Notwithstanding the adherence to these foundational principles almost without exception it has been innocent mothers who have had to publicly endure the ridicule, sarcasm and denigration of a number of Family Court Judges over the past 12 years.

The excerpts from various judgments attached highlight the advantage unjustly taken by these judges to impose their belittlement on the very persons standing in integrity for the principles of moral value and strength that the Constitution envisaged.

CONCLUSION

It is acknowledged that serious issues are raised herein and it is for this very reason that we take the unusual step of addressing the Chief Justice.

The number of cases that have occasioned such grave concern are few comparatively in relation to the many simpler matters we have been able to settle at the non-judicial levels of the Government Systems where mostly we have experienced considerate treatment. Moreover we are not slighting cases where judges of your bench have acted fully in accord with right principle. Examples of these would be willingly given.

It is rare for us to approach such eminent levels of Government with pleas for intervention for relief but the depth of suffering in these cases we believe warrants your personal interest.

Our experience of the Court's attitude to the Church is not consistent with a highly distinguished record of service by the Brethren not only in military service but also a wide range of government service since Federation.

Government as such including the judicial arm is regarded by us as from God and is the occasion of unceasing prayer in recognition of the immense and at times awesome responsibility resting on men of like passions to ourselves. God's glad tidings are towards all men but harm to fatherless and widows draws out God's own judgment.

The writers are available to meet with your Honor at any time or any place suitable.

Yours sincerely,

BRUCE DAVID HALES
14 Clanalpine Street,
EASTWOOD. N.S.W. 2122
CONVENER

Submitted on behalf of the following marriage celebrants:-

Ross Ingram Martin - 13 Rosalind Court, ROSSMOYNE. W.A.
David Murray Duffield - 8 Naldera Street, GLANDORE. S.A.
John Roger Lister Salisbury - 11 Shadforth Street, WESTMEADOWS. VIC
Russell Sinclair Cox - 3 Sharps Road, LENAH VALLEY. TAS
Robert William Thorncroft - 2 Byrnes Street, NTH PARRAMATTA. N.S.W.
John David Pridham - 25 Quiros Street, RED HILL. A.C.T.
Stuart William Jensen - 18 Bernecker Street, CARINA. QLD