

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
ATTORNEY-GENERAL'S DEPARTMENT

Output 1.1

Question No. 2

Senator Stott-Despoja asked the following question at the hearing on 31 October 2005:

What assurances can the Department make that the *Shared Parental Responsibility Bill*

- a) will not increase the risk that family members will be exposed to violence and abuse?
- b) will not create even greater pressure on women, fearing violence or abuse, from reporting those concerns in the family law system, and can the Department outline its reasons for advising the Attorney-General's office against introducing penalties for supposed 'false allegations' of violence or abuse?

The answer to the honourable senator's question is as follows:

(a) The Shared Parenting Bill contains a range of provisions designed to protect family members from the risk of violence. In the Bill the need to protect children from the risk of violence or abuse has been elevated as a primary factor, along with the right of children to have a meaningful relationship with both their parents, in considering the best interests of children. While the Shared Parenting Bill introduces compulsory participation in family dispute resolution as a prerequisite for an application for parenting orders, this requirement will not apply if there is a risk of child abuse or family violence, and in other specified circumstances. In addition, the proposed presumption of equal shared parental responsibility will not apply in cases involving violence or abuse. In those cases, the court will also not be obliged to consider the child spending equal or substantial and significant time with both parents. The proposed less adversarial approach to children's proceedings outlined in Schedule 3 of the Bill will also provide a new case management approach that will better focus on children and will ensure that issues of violence and abuse are dealt with at an early stage in children's proceedings.

(b) In relation to the first part of (b) see the answer to (a) above. With respect to penalties for false allegations, recommendation 10 of the House of Representatives Standing Committee on Legal and Constitutional Affairs Report on the exposure draft of the Shared Parenting Bill was that the *Family Law Act 1975* be amended to include an explicit provision that courts exercising family law jurisdiction should impose a costs order where the court is satisfied that there are reasonable grounds to believe that a false allegation has been knowingly made. After consultation on the discussion paper, *A new approach to the family law system*, the Government withdrew a cost provision that was limited to a false allegation made in the context of relying on one of the exceptions to compulsory dispute resolution. However, the Government supports the recommendation of the Committee given the higher test that the court be 'satisfied on reasonable grounds that a false allegation has been knowingly made'.