



Shared Parenting Council
of Australia

Submission

on the

Family Law Amendment (Shared Parental Responsibility) Bill 2005

to the

Senate Inquiry - Senate Legal and Constitutional Committee

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Introduction

The Shared Parenting Council of Australia welcomes the opportunity to make this submission for the Senate Inquiry - Senate Legal and Constitutional Committee (“**The Committee**”) in relation to the Family Law (Shared Parental Responsibility) Bill 2005 (“**The Bill**”) and direct our submission to the Committee’s terms of reference detailed in Hansard 8 February 2006 Appendix 3 And Appendix 4:

Specifically, the reasons for referral/principal issues for consideration:

Terms of Reference

Appendix 3 Hansard p84

- *Further analysis required as to why the existing control of division of parenting by courts is not considered adequate; Hansard p84 Appendix 3*
- *Concerns that this bill will see parents’ interests take precedence over the best interests of children; Hansard p84 Appendix 3*
- *The effect of introducing shared parenting as a starting point will jeopardise the safety of some children and their family members; Hansard p84 Appendix 3 and,*
- *How the new system would provide the right support for Indigenous communities, among other issues Hansard p84 Appendix 3.*

Appendix 4 Hansard p84

Significant changes with potential implications for families, women, children and men.

- *Are changes in the best interest of children? Hansard p84 Appendix 4*
- *Will changes ensure safety of children and their family members? Hansard p84 Appendix 4*
- *Will changes meet the needs on indigenous and culturally diverse communities? Hansard p84 Appendix 4*
- *Will changes meet the needs of rural and remote communities? ” Hansard p84 Appendix 4*

Executive summary

The Shared Parenting Council recommended changes to the Legislation

1. That all the 59 recommendations of the House of Representatives Standing Committee on Legal and Constitutional Affairs tabled in August 2005 are implemented fully in additional legislation and through additional working committees to review the specific tasks identified in the recommendations and further inquiries indicated.
2. That the Bill be amended to include provisions to allow cases to be reported providing the anonymity of the parties is maintained on a similar basis to the New Zealand legislation where a wider range of persons are entitled to attend hearings and that restrictions on publication of reports of proceedings under the Act are relaxed, permitting wider publication of those reports while still protecting the privacy of the families involved. See appendix 4 and 5.
3. That the Bill be amended to require publication of the reasons for a Judges decision where Shared Parental responsibility is NOT ordered. Publication either to the appropriate legal site or to the parties in the case or both.
4. That the Bill be amended to require publication of the reasons for a Judges decision where shared parental responsibility has been ordered but the apportionment of time is less than applied for under section 60DAA. Publication either to the appropriate legal site or to the parties in the case or both. See appendix 4 and 5 for examples of Legislation or Bills that contain wording to this effect.
5. That the Bill include a primary policy statement as follows:

“The Parliament of Australia in recognising the fundamental right of every child to experience the love, guidance and companionship of both parents after their separation or divorce declares that it is the public policy of the Commonwealth to assure minor children of an equal opportunity and relationship with both parents, after the parents have separated or dissolved their marriage and to require parents to share the rights, duties and responsibilities of child rearing to affect this policy.”
6. That the Bill be amended to allow for a working definition on what might constitute “Reasonable Excuse” in the area of Contraventions schedule 4 or the words “reasonable excuse” be removed or replaced with a more specific term. The fact is the term is used all too often in contravention proceedings to excuse the contravention.
7. Add to the notes that describe subsection 68F (1) (ii) “other behaviour”. We recommend that other behaviour should also be described as alienation of the children from one parent by another and considered as child abuse.
8. Add in guide notes that the Judiciary must commence a proper implementation to effect shared parenting outcomes under the new Bill guidelines.

Preamble relating to new enquiry

The inquiry and the Shared Parenting Council

The Shared Parenting Council with its affiliate members has worked tirelessly since 2002 with government agencies, committees, the Family Court, The Attorney Generals Office and attended at Parliament and many other locations throughout the country during the last four years that the family law reforms have been under review.

The Council has assisted at every juncture in carefully crafting a set of legislative reforms that would be seen as a breakthrough in handling Family Law matters before, during and after separation and family breakdown.

The Council has both men and women in its membership and its affiliate member organisations are not only from Australia but also New Zealand and the United States through membership of the CRC (Children's Rights Council)

We have been extremely careful to ensure that the terms and details in the new Bill have been extensively reviewed line-by-line, section by section to achieve outcomes that not only secure the safety, the best interests of children first as the paramount consideration, but also deliver some welcome and significant improvements to parent's relationships and interactions with their children after separation.

This Bill in our view is the result of one of the most substantial and researched inquiry's that has ever been undertaken, in relation to Family Law reform in Australia .

In December 2003, the bi-partisan committee chaired by Mrs Kay Hull MP reported **29 major recommendations** through a substantial 240-page response that included:

- *1715 detailed written submissions from various interested persons, groups, organisations, societies, law firms and Government agencies.*
- *380 additional confidential submissions*
- *450 additional "name withheld" submissions*
- *15 specific letter submissions*
- *186 specific exhibits from various parties*
- *32 formal public hearings held throughout Australia*
- *5 specific detailed inquiries held with the Federal magistrates court, Child support agency, Family court of Australia, Attorney Generals department and the Family relationship services Industry representative bodies.*
- *2 Inspections to the Family Court of Australia Parramatta and Unifam Counselling and mediation centre.*
- *4 additional listening sessions*

The House of Representatives Standing Committee on Family and Community Affairs (the FCAC), report, *Every picture tells a story*, unequivocally advocated the concept of shared parental responsibility, within the context that the best interests of the child are paramount.

The resultant enquires, exposure draft and submissions on the final Bill have been a result of thousands of hours of detailed and painstakingly put together research on the subject and the Senate might well take into account that this Bill should not be read in its entirety out of the context of proposed reforms.

It is important that we lay out the key milestones to the reforms so that the Senate may appreciate the breadth and depth and full scope of the Government's reform package, which appears to stand as four foundation pillars of reform measures.

The Four Pillars of Reform – The Government's stated reforms

Pillar 1 – The Bill

The Government released its response to the FCAC recommendations on 23 June 2005, and simultaneously referred to the Standing Committee on Legal and Constitutional Affairs the Exposure Draft of the Family Law Amendment (Shared Parental Responsibility) Bill 2005, the legislative implementation of the response of the Government.

The Committee comprising members from both main parties responded to the challenge posed by the Attorney-General to review the Exposure Draft in a limited period with the aim to implement changing government policy and public demands for a less adversarial system in family law matters.

In August 2005, The House of Representatives Standing Committee on Legal and Constitutional Affairs tabled a detailed report on the Exposure Draft of the Family Law Amendment (Shared Parental responsibility) Bill 2005 and subsequently the final Bill was tabled.

Contemporaneously, there were **three other pillars of reform** under way, two of which arose from the initial recommendations of the House of Representatives Standing Committee on Family and Community Affairs (the FCAC), report, *"Every picture tells a story"*.

Pillar 2– The Family Relationship Centres

The creation of the Family Relationship Centres and the budget funding announced in May 2005 were followed by the engagement of the Industry Skills Council Ltd to prepare the accreditation requirements for practitioners involved in the centres. This work is ongoing through detailed workshops being held throughout the country.

Pillar 3– The Child Support Agency Review

The Parkinson report, an outcome of the review of the Child Support Agency proposed 30 recommendations, which have subsequently stalled.

The Child Support Agency should immediately implement those recommendations where legislation is not required and deliver the changes outlined in the report. Where Government legislative changes are required to enable the recommendations to be implemented these amendments should be tabled at the earliest opportunity. The extensive work done by the task force during 2004 and chaired by Professor Parkinson appears to be languishing.

Pillar 4 – The Family Court Reform’s

Lastly some credit needs to be given to the facilitators of the fourth pillar, the Deputy Chief Justice Faulks and Chief Justice Bryant.

There has most definitely been significant work undertaken by the Family Law Court of Australia themselves through the various workshop sessions for interested parties and in particular Self Represented Litigants workshops held in main centres.

There have been a number of advised reforms that include:

- Multiple and regular revisions to the separate Family Court rules
- Overhaul and operation of a single entry point to the Family Court System
- The new call centre development
- The move to a single document set throughout the jurisdictions of Family Law
- The involvement of the more flexible Federal Magistrates to get faster interim and long term outcomes (For applications that are received after the Relationship Centre options are explored and exhausted fully)
- The wide spread adoption of the Children’s CASES Pilot project to allow a less adversarial court system.

However, it remains yet to be seen after the new legislation is introduced, if in fact the court will start to make better time parenting outcomes a reality, or if they will adopt the previous status quo approach to weekend Saturday night contact regimes for the new “spends time with” parent.

The widely used case law matter “Hall v Fordyce” illustrates that where there is any degree of conflict between the parental parties Judges have not embraced the concept of shared parenting. The new Bill addresses a number of reservations giving clearer guidelines and enabling the possibility for many more shared parenting outcomes.

It is under this environment that the Shared Parenting Council views the reforms proposed in the Bill to be fundamental in changing the attitude and operation of the Family Court to be proactively in favour of shared parenting outcomes in line with community expectations and HORISP and successive report recommendations.

The Shared Parenting Council is further supporting the additional 59 recommendations that arose as recommendations of the House of Representatives Standing Committee on Legal and Constitutional Affairs tabled in August 2005.

Two key recommendations are maintaining statistics on outcomes to be monitored and reported along with monitoring of the performances of the Relationship centres and a review of the use of previous case law should be examined in line with recommendation 55 and 59 of the Exposure draft report.

Case law is often used to exclude contact when satisfactory conditions may well exist or that family members and extended communities have not been parties to a matter and are therefore excluded.

New Senate inquiry

While the Exposure Draft had its critics, most people who contacted the Committee clearly acknowledged the merit in what the Attorney-General and Government were attempting to do. The arguments largely focused on whether the proposed changes went far enough, or too far.

The Senate should note that the only dissenting view of the report came from Ms Roxon (L)

The Shared Parenting Council fully supported the report of the House of Representatives Standing Committee on Family and Community Affairs, entitled *Every Picture Tells A Story* (“**the Report**”) and was a significant contributor to that report and also the subsequent exposure draft report with additional support of reforms and submissions to various working groups.

Presumptive equal parenting arrangements

Whilst we were disappointed that the committees did not accept a presumptive equal parenting arrangement, we did however agree with the overwhelming majority of the findings and recommendations as a good starting point and in particular we strongly endorsed recommendation 5 of the HORISP report “**require courts/tribunal to first consider substantially shared parenting time when making orders in cases where each parent wishes to be the primary carer.** (Para 2.86)”

The HORISP Committee argued a reasonable case against the implementation of a rebuttable presumption in favour of a child spending equal time with each parent on the grounds that it would be problematic.

The main arguments advanced by the HORISP Committee were that firstly people would spend a lot of time in court proving the other parent was unfit so that the equal time presumption would not automatically be awarded.

This concerned the Council, as we had firm evidence that while the lengthy litigation proceeded interim order outcomes were usually completely unsatisfactory. The non-residential parent often had little or no relationship with their children as the residential parent controlled the often meagre contact

We also saw many poor agreements made where the non-residential parents were desperate to see their children.

The high costs associated with extended litigation either crippled or excluded many parties.

Finally a view that a significant number of the verbal suggested that the 50/50 presumption was a percentage not able to be enjoyed by many and that there were many other time portion options that required consideration.

We agreed with the committee that equal parenting time and quality parenting time were more beneficial to the child than taking into account the child’s physical placement in a particular residence for a particular time of 50%.

Contrary to misinformation in the public arena about the HORISP findings, it needs to be stated that the HORSIP Committee were not against 50:50 time outcomes, rather they would not support a Rebutable Presumption of 50:50 time starting point for parents negotiations for all separating couples. Nevertheless, the Committee's recommendations and the Government's response go a long way to facilitating equal and substantially equal time parenting outcomes for the great diversity of couples and family situations in the Australian community.

The Council believes strongly that it is every child's inalienable right to know and be cared for by their parents equally. However, this finds expression in court orders, which are simply injunctions and as a rule in every other area of the law, are used sparingly. That is, you impose the minimum restriction on the parties' prior freedom. You put only the smallest imposition, the smallest restriction on them necessary to resolve the dispute at hand. You don't go to a disruptive extreme.

The Bill recognises that we ought to work very hard to preserve for the children, for their best interest, as much of that pre-existing joint custody, as much of that access to both parents as we can..

The Council took the view that the alternate position of a clear Presumption of Shared Parental Responsibility listing specific responsibilities for the parents, coupled tightly with a closely linked second tier possibility of a starting point of equal or substantially equal time could work as well, if not better providing there were appropriate and firm guidelines delivered to the Family Court.

World wide there are increasing trends to shared legal custody and shared time. No where is this more apparent than in the United States where **36 states and Washington, D.C., have a presumption or preference for joint custody, legal or physical or both.** For further analyses, see appendix 3.

We believe that a better result was achieved through a range of amendments in various sections of the new Bill especially the significantly re worked section 65DAA.

The Bill

It should be noted that the Shared Parenting Council of Australia and its affiliates spent a huge amount of time going through each and every line of the proposed new Bill to ensure that children would benefit greatly from the provisions of the legislation and fully protect the rights of the child to a safe and secure environment.

The Council congratulated the members of both committees on their patience and endurance through the overwhelming public response to their inquiries and for their clear demonstration of an extensive understanding of the circumstances that may befall everyday Australians who end up in what has delivered less than adequate parenting outcomes from a convoluted family court system.

The Senate needs to know that the quality of a number of the submissions including those from the Family Court themselves were of the highest calibre and that the detail to which these submissions were reviewed in the Attorney Generals office is in fact noteworthy and should be noted by the Senate.

This Bill, in our view after extensive consultation, has been founded on a framework of proper consultation to Australians over a number of years and crafted carefully by the Attorney General's office to ensure that there is no erosion of fundamental values that exist for every separated child already today.

The Shared Parenting Council believes that there are some areas that could be improved and further enhanced however to support the four pillars of reform that are fundamental to the proposed changes Family Law reforms the Bill is needed in its entirety.

Shared Parenting Council Views

Fortunately, the Government has accepted the vast majority of those recommendations as detailed in the "Every Picture Tells a Story – Government Response (**"the Government's Response"**)" and has accepted all the key recommendations that the Shared Parenting Council has also agreed with.

The potential legislation resulting from the Government's agreed policy position will create a 'World Class' and broader based family law system.

Australia now stands at the cusp of increasing prevalence of shared parenting outcomes from a meagre 6% upwards to 18 to 24%, which is currently the United States situation as evidenced in the USA 2004 census statistics. In Australia, more than 291,000 of our children see a parent less than once a year. Refer to related statistics in Appendix 1

Furthermore the SPCA has received positive feedback from its family of global affiliates including commentary from New Zealand, that the Australian amendments substantially support the parenting of children post separation and divorce, and is a model that could be adopted in many other countries.

The Shared Parenting Council believes that the Government's stated policy will provide greater flexibility in post-separation parental arrangements, and is satisfied it will also provide an effective child safety and protective mechanism that meets community standards. Most importantly, the report also provides for a genuine cultural shift in the operation of Family Law. The new Bill has most assuredly addressed a wide range of specific issues including:-

1. The many shortcomings of the existing Family Law systems through focusing reform on not only legislation but also creating a completely new dispute resolution environment and process. This appears to ensure the best interests of children are paramount and that Children can enjoy the right to know and be with both Parents;
2. More effective focus on the child's rights, and protection of those rights. The Bill has not elevated the parents interests over the best interests of children;
3. Increased protection for children from abuse by designing new protective arrangements to ensure that allegations of abuse and or violence are clearly dealt with before the parties enter into any agreements relating to their children. It moves away from the false premise that violence is present in nearly all separations during Custody disputes.

4. New guidelines and strengthened existing legislation in a wide range of areas including Family violence and contravention provisions with new standard of evidence.
5. A less adversarial and better dispute resolution system for agreeing to parenting arrangements and managing the stressors of family breakdown, which will reduce conflict and resolve disputes more effectively and equitably.
6. Clear provisions for a wider involvement of extended family, which is particularly important for indigenous and culturally diverse communities.
7. A range of provisions to enhance protection measures and environments for the safety of children and their family members. The Family relationship Centres are the first port of call in dispute resolution and the conflictual, adversarial, legal battleground of the Family court has been relegated to a venue of last resort.

It is with great hope that Australia looks forward to a new era of administering family breakdown that is sensitive to parents and children and to the relationships affected, and also a system which acts fairly and equitably when considering proposed post-separation parenting arrangements.

The Draft Legislation

The Shared Parenting Council of Australia has had limited time to respond to the Senate request in terms of *referral/principal issues for consideration* of the draft legislation, however having taken advice and having the Bill reviewed by our affiliate members, the SPCA has formed a view that the current Bill is a significant improvement on the existing Family Law Act.

In respect to the specific terms of reference.

Further Analysis as to why the existing control of divisions of parenting by courts is not considered adequate.

“Australia has the most interventionist court process in the world”. (Hon Alan Cadman, Wed 25 May 2005). “It does not have a proper process of evidence taking”, “Either side can throw anything on the table and it is almost taken as fact”.

From the submission and public hearings, there is absolutely no doubt in our minds that the current system is not working and major reforms are required. The evidence from the first substantial inquiry chaired by Mrs. Kay Hull showed the majority of people giving evidence wanted to spend more time with their children but were unable to do so.

It has been well documented in the thousands of submissions made over the last few years that there have been significant numbers of complaints from perfectly good parents, grand parents and extended families that they are being kept apart from their children.

In recent polls, the concept of shared parenting received between 91% (Insight Poll) and 82% (Channel Nine Poll) support. In a federal poll in early 2004 Family Law Reform and Child Custody was the number one issue, outpolling Medicare by over six times.

In 1997, around one million children in Australia under 18 years of age were living with one natural parent and had a parent living elsewhere (ABS, 1998) and only 3% were in shared care arrangements. 4% had daily face-to-face contact with the non custodial parent. 30% rarely or never saw their other parent (typically their father). Of those that did, 34% never stayed overnight with their father. Over 75% of non-resident fathers wanted more contact time (Aust. institute of family studies).

The HORISP report needs no further commentary and is in itself a primary reason to suggest the current system of Family Law needs major reform. Following on was the subsequent detailed committee report on the Exposure Draft of the Family Law Amendment (Shared Parental Responsibility) Bill 2005, which made additional major recommendations to the draft Bill.

Post separation relationships, dynamics and parental performance are problematic. The time following separation is problematic; a lot of hostility and anger, and plenty of opportunity for parents to damage children's relationships. It is with this background that the Bill has had particular attention to detail and there are a wide range of provisions to ensure that parents know what is expected on separation and what obligations they both must have to the children.

Concerns that this bill will see parents' interests take precedence over the best interests of children;

Specific provisions throughout the Bill carefully protect the best interests of the children. It continues to be the paramount consideration.

The law remains the same as always; Children have rights, parents have responsibilities.

The effect of introducing shared parenting as a starting point will jeopardise the safety of some children and their family members;

The Bill does not deliver shared parenting outcomes as a starting point.

In fact it delivers a shared parental responsibility outcome in the first instant as a starting point and then the possibility arises for the Court to consider the child spending equal time or substantial and significant time with each parent in certain circumstances (65DAA).

Shared parenting approximates as closely as possible the protective environment of an intact family, which is well known to be the safest environment for the nurturing, protection, safety and the raising of children.

The language of Part VII amendments in the Bill is now couched more appropriately in covering the equal shared parental responsibility provisions and moving on to dealing with the amount of time a child spends with each of the parents in section 65DAA.

A paper by the National Association of Community Legal Centers (NACLC) claims: *"Equal or shared parenting is not in the best interests of children"*. And *"There is no evidence that time shared equally with both parents is actually more beneficial to children."* In this paper, purporting to *ensure the full facts are widely known*, the authors have conveniently ignored at least three major US studies (eg *Bauserman* 2002), and an Australian study (*Smyth et al*, 2003), a more recent study completed in New Zealand (Binks 1999) and a very recent research paper from the Christchurch School of medicine in December 2005 "Journal of Marriage and Family" a survey of 437 women and 391 men which examined in detail the prevalence and extent of domestic violence..

The reference studies referred to above show that joint custody or shared parenting of children after divorce brings positive benefits to both children and their parents.

By contrast the NALAC report alleges *"What is important for children after separation is stability. This is best achieved by sole-mother custody, reflecting the parenting responsibilities in the intact family"* This is the *no change* argument and couldn't be further from the truth..

Thus the NACLC paper suggests that children have enough to cope with *"without asking them to cope with more unnecessary change by requiring them to spend more time with the other parent."* This is unrealistic. Separation and divorce are all about change and it is impossible to shield children from it.

What is important is to engineer the necessary changes in parenting that look after the children emotionally, intellectually and financially. The stability that children hunger for is not geographical stability, but the stability of meaningful relationships with the people dearest to them, their mothers and fathers, grandparents, relatives and friends, schools and communities. Shared parenting outcomes can deliver this.

How the new system would provide the right support for Indigenous communities, among other issues;

There are substantial provisions throughout the Bill relating to Indigenous people. Of particular assistance for aboriginal communities is the new emphasis on counselling and mediation and on non-adversarial processes for resolving disputes.

Specifically we draw your attention to the new provisions in section 60B, which includes the right of the child (a) to maintain a connection with that culture;

(b) to have the support, opportunity and encouragement necessary: (i) to explore the full extent of that culture, consistent with the child's age and developmental level and the child's views; and (ii) to develop a positive appreciation of that culture.

In addition, the measures for the Family relationship centres include the following measures that are to be emphasised:

First, there is a proactive action, which can involve, for example, high school kids working on communication skills, and relates to pre-marriage skills and communication in marriage before there is any hint of a problem. Secondly, there are the areas in which people have problems; they will want to resolve those problems or they will want facilitation leading to separation. Thirdly, there is the support phase; the emphasis is on trying to keep relationships together as a priority.

These phases are key recommendation in the HORISP report recommendation 7

“The committee recommends that in support of the legislative presumption for shared parenting recommended in Chapter 2 the government review the community's current access to services which can assist those who cannot achieve and sustain shared parenting on their own to:

Develop the skills to communicate effectively around their children's needs and to manage co-operative parenting; enable them to resolve their on-going conflict and develop a long term ability to share their parenting responsibilities in the interest of their children; and include the perspective and needs of their children in their decision-making, with and without assistance from the family law system. (para 3.70)”.

Are changes in the best interest of children?

The changes are in the best interest of children?

“Compulsory mediation may force separated parents, especially women, to negotiate with abusive former partners, and to agree to parenting arrangements that are not safe for them or for their children”. **This is not true and has never been true.**

No mediator or mediation agency will conduct a mediation session when family relationships are seriously affected by violence or abuse. In such instances, mediation is always seen to be inappropriate.

The new Family Law provisions specifically exclude mediation in such cases.

Nor do mediators permit parties to agree to unsafe parenting arrangements. While entry into mediation may be required, remaining in the mediation session is voluntary, as is agreement to any proposals. Moreover, the parties have access to legal advice, either during the mediation or before signing any mediated agreement.

Will changes ensure safety of children and their family members?

The changes continue to and add to the safety of children and their family members.

The Shared parenting Council strongly supports a system of family law which protects children, women and men from all kinds of violence.

We acknowledge that violence is a serious issue in both intact and separated families. However in the majority of families, violence is not an issue. The vast majority of separations proceed without any violence.

Some groups would have us believe that all cases are violent.

The reality is that this is far from the truth and the focus on only a minority of cases leads to a false presumption that violence is present in nearly all separation and custody disputes.

The Shared Parenting Council has argued and will continue to argue that left unqualified the notion of family violence is too wide and vague and fabrication and allegations of violent behaviors are often made by one party during a case to leverage parenting outcomes that would disadvantage the other.

We have proposed the addition of the word “**serious**” to be added to “**violence**”. Leaving the word violence unqualified is capable of a wide definition and interpretation, whereas the reality is that it varies from raised voices to serious injury. Violence without any definition might lead to an enormous amount of litigation, and would prevent many fruitful mediation sessions from taking place.

It has been noted in the United States that further definitions of violence have been defined more exactly into the types of violence categories. See appendix 2.

We therefore propose a minor amendment to add the word “serious” to bring into some context the meaning of violence to prevent minor disputes being escalated to a level of seriousness that would harm a child - parent relationship.

Violence - alienation by a parent (Considered as abuse)

There have also been suggestions from our members that alienation of the children from the non-residential parent by the residential parent should be considered as abuse and detailed as a specific component in the definition of violence and added into section 60D and or 68F1 (ii) or at the least be described in the annexure notes.

Parental alienation and exclusion has also resulted directly from the actions of the Family Court in making the type of restrictive parenting orders that have often been made in the past (Documented in the HORISP report) and then not enforcing the parenting orders that they have made in the first instance with the resulting meager contact not being honoured.

We are optimistic and expect this to substantially change under the new provisions outlined in this Bill once the judiciary is given appropriate internal instruction on the new Laws.

What we do see however on occasions, is the non-resident parent removed from the child's life to protect the child from conflict. Conflict is precipitated and escalates as a direct result of a failure of the custodial or residential parent to allow contact.

This is supported by numerous cases, where after some years of trying to maintain contact through the court system the non-residential parent has simply run out of will power, given up and capitulated to the factual realisation that he or she will never see their children again unless the children seek him or her out (case details available).

It is now universally recognised that alienation of a child from a relationship with a parent is child abuse. Yet this is not reflected in any of the provisions of the Bill.

In our view, any limitation or frustration of a child's contact with their "other" parent is morally indefensible - because it causes suffering and harm to children.

It is children who suffer when they are unreasonably kept from maintaining a relationship with both of their parents. The children did not ask for the divorce. They should not suffer twice by being denied access to a loving parent. Children are born with, need, and love both parents. They should not be denied that relationship without a compelling reason to do so.

The Bill dealing with this particular issue will further enhance the safety of children

- In general, the Bill has addressed the issue of violence to a much greater extent than existed previously and there are not less than 76 specific areas in the Bill that detail the specific protection elements that ensure the absolute safety of children under this Bill.

- In particular sections 60D(1) , 60K Schedule 6 and Schedule 9. We agree that that the new format of section 68F elevates the importance of the safety of the child in the court's considerations

Will changes meet the needs on indigenous and culturally diverse communities?

We believe these changes will. meet the needs on indigenous and culturally diverse communities.

In this Bill there are wide ranging changes to sections relating to Aboriginal and Torres Strait Islanders in particular.

These changes were implemented in the new Bill and defined not only Aboriginal and Torres strait islanders but also that “children have a right to enjoy their culture (including the right to enjoy that culture with other people who share that culture).”

Section 60B is carefully worded to cover these groups.

2 Subsection 4(1) Insert:

Aboriginal or Torres Strait Islander culture in relation to a child:

(a) means the culture of the Aboriginal or Torres Strait Islander community or communities to which the child belongs; and

(b) includes Aboriginal or Torres Strait Islander lifestyle and traditions of that community or communities.

The New Zealand legislation allows for Family Courts to be empowered to order specialist reports, and to hear speakers, on a child's cultural background. These speakers may not be specialists but lay people who have a specific dealings with or affiliations with such groups..

Will changes meet the needs of rural and remote communities?

We believe the changes will meet the needs of rural and remote communities?”

It is clear that rural and remote communities have special needs.

The significant detrimental effect of fatherlessness on children and young males especially in rural communities is well researched { THE FACTS ON FATHERLESSNESS Prepared for the Fatherhood Foundation by Bill Muehlenberg, Australian Family Association Revised, November 2003 Appendix 1 <http://www.fathersonline.org/fatherlessness/facts-on-fatherlessness-nov-03.pdf>} and the very high incidence of male suicide can be significantly addressed by restoring the positive influence and mentoring of fathers to their sons.

Two parents can parent more than one - the need for shared parenting in rural communities to address children's lack of access to the excluded or non-custodial parent is long overdue.

We refer to the material “the Right to better service – DOCS rural and remote communities policy directions” http://www.community.nsw.gov.au/documents/policy_rural.pdf.

This document is one of a suite of statements developed by DOCS to address inequities and lack of access which some individuals and communities in rural and remote areas of New South Wales continue to experience.

The NSW Government articulated key directions for rural communities in the Rural Social Justice Statement contained therein with a focus on the following:

- 1) Building stronger communities by working with the people, towns and regions of rural NSW; and
- 2) Designing and delivering integrated and flexible services that are more responsive to the particular needs of rural people.

The Shared Parenting Council believes that the Bill is supportive of these key policy directions by directly addressing the fundamental social justice issue of including both parents in their children’s lives after separation and divorce rather than the current Family Law System’s delivery of majority sole parent custody outcomes.

Similarly the new Family Relationship Centres will provide a positive and constructive interface with parents rather than the intimidating adversarial and expensive zone of the Family Court.

It cannot be understated; the cost savings to rural communities for engaging with the Family Relationship Centres in lieu of the court and this is a significant benefit for people who can least afford protracted legal battles.

Final comment

The intense interest of both Members and Senators over the past few years, in particular since 2002 through to the present time, is to be congratulated.

The fact is that many Senators and Members from both sides of politics have stepped forward to tackle what is a most complex and difficult area and is clearly a reflection of the importance they place on families in our great nation.

Having the courage and energy to effect a new system of family law and changes to the entrenched but unsatisfactory practices is no mean task.

The Shared Parenting Council and its members has stood by the process of reforms and assisted at every opportunity when asked to provide resource and information to the enquiries, the departments and other advisory requests.

We have taken a gender neutral view, at all times looking to effect safe and secure arrangements for children to have substantial and effective contact with good Mums and Dads.

We are optimistic that with the vast amount of soundly based and reliable research behind us, a result of the work from two key Bi Partisan enquiries, this Bill will provide the structural foundations for future Families policy for any Government of the day.

With the aspirations of right-thinking men and women from the Senate and the House of Representatives, this Bill If enacted, funded and supported by community education, will bring enormous benefits to mothers, fathers and children.

The Bill is clear and concise, signifying the primary policy of the Government that Shared Parenting outcomes are to be considered a legitimate and desirable method of dealing with a child's living arrangements after their parent's separation or divorce.

The SPCA does strongly concur with the Family Law Council in their letter to the Attorney-General, The Hon Philip Ruddock MP, 16 November 2004 which stated that aspects of the law need to be re-written into precise, easy to comprehend language and the SPCA believes that this principle applies to all of Part VII - Children's Issues so that parents can understand and operate effectively within the law.

We believe the legislation is now at a point that more accurately reflects the intention of the House of Representatives Standing Committee's Report "*Every Picture tells a Story*" and the Government's Response to that report with a final amendment Bill now on the table.

However, we would also comment that the observations made by former judge's associate Waleed Aly (Sydney Morning Herald, 2/2/06) <http://smh.com.au/news/opinion/shared-parenting-more-a-mirage-than-a-breakthrough/2006/01/01/1136050344137.html> that the 2006 amendments are more of a mirage than a breakthrough, are concerning.

The Shared Parenting Council is expecting the Family Court of Australia to follow the direction of Parliament and the vast majority of every day Australians, in delivering a significant change from the current 80 / 20 template detailed in the HORISP report..

We are expecting shared parenting outcomes of equal or substantial equal time parenting to become the norm.

The new Bill has a range of additional flow on affects. Many are incalculable that we would expect to reduce the incidence of often irrational and disastrous outcomes after separation. The reduced stress of marital separation, when parents know that their post separation arrangements of contact with the children would be substantial and continued under legislation cannot be underestimated.

This Bill goes a long way to ensuring that Australia can proceed with a truly 'World Class' Family Law system.

Supporting annexure

APPENDIX 1

Fatherlessness – Children and Fathers statistics The Institute of Family Studies

This appendix is relevant to the current inquiry as it shows clearly the statistically high extent to which fathers are excluded from their children's lives in post separated and divorced fathering.

It presents sobering statistics for the degree of fatherlessness for the majority of children who spend next to no time with their fathers. It articulates a strong case for bridging this gap by increasing the prevalence of shared parenting beyond the minority (6%) of fathers. It demonstrates that our society is failing the best interests of our children who predominantly lose contact with their fathers after family breakdown.

The Shared Parenting Council is hopeful that the Family Law Amendment (Shared Parental Responsibility) Bill 2005 will remove many of the restrictive practices imposed on fathers' continuing parental involvement and will lead to more equal sharing of the burden of post separation parenting amongst responsible mothers and fathers.

*Paper presented at the Fatherhood Research in Australia Seminar
University of Newcastle, New South Wales, December 4, 2003. Published
in Journal of Family Studies v.10 no.1 April 2004: 20-49.*

This article summarises Australian Institute of Family Studies research into separated and divorced fathering. It attempts to take stock of what is known in order to identify research gaps for the development of a forward-looking research agenda. My hope is that the piece will encourage more considered empirical attention to post separation fathering.

Residence and Contact

In 1997, around one million children in Australia under 18 years of age were living with one natural parent and had a parent living elsewhere (ABS, 1998). For 88% of these children, the parent with whom they lived was, their mother. Only a tiny proportion (3%) were in "shared care" ¹⁹ arrangements, although another 4% of children had daily face-to face contact. (A more recent estimate based on both mothers' and fathers' reports, derived from the HILDA Survey, suggests that around 6% of separated households share the care of dependent children.)

Of concern, however, are data that indicate that almost one-third (30%) of children with a natural parent living elsewhere - according to resident parents - rarely or never see their other parent (typically their father) (ABS, 1998). ²⁰ Of those who do see their nonresident parent, a significant minority (34%) never stay overnight (Smyth, & Ferro, 2002). (Again, these estimates are mirrored by more recent data based on both mothers' and fathers' reports; see Parkinson & Smyth, 2003.)

Also of concern is that around 26% of separated/ divorced parents live more than 500 kilometres from their former spouse, while another 15% live between 100 and 500 kilometres apart.²¹ In other words, at least one in four nonresident parents (mostly fathers) live a significant distance from their children (The remaining 59% of separated parents that is, the majority - live less than 100 kilometres from their former spouse, typically within an hour's drive.)

Distance and face-to-face contact have been found to be strongly related: the greater the distance, the less frequent the contact (Maccoby & Mnookin, 1992; Smyth et al., 2001; Woods, 1999). This makes sense: the further the parents live apart, the greater the time, effort, and money required to make parent-child contact happen. Other forms of contact (e.g., telephone, letter) tend to be closely related to face-to-face contact (Smyth et al., 2001).

Hidden underneath these, broad trends is a high level of dissatisfaction around post separation parenting - especially for non-resident fathers. Parkinson and Smyth (2003), for instance, found that a sizeable proportion of separated and divorced parents in Australia would like to see more contact occurring (75% of nonresident fathers; 40% of resident mothers). In addition, nonresident fathers with daytime only contact report significantly lower levels of satisfaction with their relationship with their children than fathers who have overnight stays.

Furthermore, Smyth et al. (2001) found marked differences between resident mothers and non-resident fathers in their desire to change the structure of children's living arrangements. Few resident mothers (3%) wanted any change compared to 41 per cent of non-resident fathers. (These were not former couples). Around two-thirds of these dissatisfied fathers wanted children to reside with them while the remaining third desired joint 50:50 care.

In the most recent data available on the issue of equal care (Smyth & Weston, in press), three quarters (74%) of nonresident fathers in Australia, compared with only one-quarter of resident mothers (27%), agreed with the idea that children should spend equal time with their parents after separation - which is in stark contrast to the tiny proportion of parents who actually exercise shared care. Of course, a basic axiom of social psychology is that attitudes are not always consistent with behaviour. Exercising "equal time" parenting may be quite different from being attracted to it as an ideal of fairness for parents and children.²²

APPENDIX 2

Violence – An Overview of specific violence definition provisions in the United States of America

The Australian definitions of domestic violence are not codified into exact and useful definitions for determining the type and seriousness of domestic violence incidents.

This appendix is relevant to the current inquiry as it contains some very interesting domestic violence definitions found in the US statutes which could well be supported and utilised to further define and constrain what is meant by “Violence” where in the US they have detailed each specific type of violence to reduce ambiguities.

These exacting definitions or categories of violence provide an appropriate context and could well accelerate the processing of false allegations and false denials in relation to alleged abuse or violence.

- (a) **Assault or reckless conduct as defined in RSA 631:1 through RSA 631:3.**
- (b) **Criminal threatening as defined in RSA 631:4.**
- (c) **Sexual assault as defined in RSA 632-A:2 through RSA 632-A:5.**
- (d) **Interference with freedom as defined in RSA 633:1 through RSA 633:3-a.**
- (e) **Destruction of property as defined in RSA 634:1 and RSA 634:2.**
- (f) **Unauthorized entry as defined in RSA 635:1 and RSA 635:2.**
- (g) **Harassment as defined in RSA 644:4.**

New Hampshire (RSA 458:17)

<http://www.gencourt.state.nh.us/rsa/html/XLIII/458/458-17.htm>

(c) Where the court finds that abuse as defined in **RSA 173-B:1** has occurred, the court shall consider such abuse as harmful to children and as evidence in determining whether joint legal custody is appropriate. In such cases, the court shall make custody and visitation orders that best protect the children or the abused spouse or both. If joint legal custody is granted despite evidence of abuse, the court shall provide written findings to support the joint custody order.

The other area that has been made clear in the US statutes is the specific definitions of Domestic Violence under TITLE XII PUBLIC SAFETY AND WELFARE

CHAPTER 173-B PROTECTION OF PERSONS FROM DOMESTIC VIOLENCE **Section 173-B:1**

173-B:1 Definitions. – In this chapter:

"Abuse" means the commission or attempted commission of one or more of the following acts by a family or household member or current or former sexual or intimate partner and where such conduct constitutes a credible threat to the plaintiff's safety:

- (a) Assault or reckless conduct as defined in RSA 631:1 through RSA 631:3.
- (b) Criminal threatening as defined in RSA 631:4.
- (c) Sexual assault as defined in RSA 632-A:2 through RSA 632-A:5.
- (d) Interference with freedom as defined in RSA 633:1 through RSA 633:3-a.

- (e) Destruction of property as defined in RSA 634:1 and RSA 634:2.
- (f) Unauthorized entry as defined in RSA 635:1 and RSA 635:2.
- (g) Harassment as defined in RSA 644:4.

Source. 1999, 240:3, eff. Jan. 1, 2000 USA statutes.

APPENDIX 3

An Overview of Joint Custody Statutes in the United States of America

This appendix is relevant to the current inquiry as it shows clearly that by country comparisons, the Australian Government is not alone in recognising the fundamental rights of children to enjoy an equal or substantially equal relationship with both their parents after separation or divorce.

Joint Custody statutes are already operating in 37 US States. Not only is joint custody mainstream in the United States but shared parenting at 18-24% is 3 to 4 times more prevalent than in Australia.

The Australian Bill has the potential to emulate or exceed this performance by significantly increasing shared parenting outcomes.

Shared Parenting Legislation and Case Law in USA States

A synopsis of the U.S. Situation by Mr David Levy, President of the Children's Rights Council (USA); prepared for SPCA and other Global CRC Affiliates - 30/12/2005.

Joint custody is the fastest growing concept in U.S. late 20th century and early 21st century family law.

Beginning in California in 1980, joint custody became legal in all 50 states by the mid-90's. **CRC estimates that in 36 states and Washington, D.C., there is a presumption or preference for joint custody, legal or physical or both.**

In some states, there is a presumption only if both parents agree. More and more states are strengthening their joint custody (shared parenting) statutes.

The list of states below, prepared by CRC evaluator Richard D. Kuhn, is based on an update of a 1997 American Bar Association report. See more information on www.gocrc.com

*** States with some kind of presumption or preference for approximately equal physical custody, maximum time with parents, or similar language -- Alaska, Iowa, Kansas, Oklahoma, Wisconsin**

*** States with a statutory presumption or preference for "frequent or continuing contact" or similar language between a child and both parents -- Alabama, Arkansas, Arizona, California, Colorado, District of Columbia, Delaware, Florida, Idaho, Illinois, Louisiana, Maine, Missouri, Montana, New Mexico, Ohio, Oregon, Pennsylvania, Texas, Virginia, West Virginia.**

*** States with case law that provide for a child to have "equal access and opportunity" to both parents (Georgia) or "requiring a trial court to first consider joint custody" (Kentucky)**

*** States with a preference for joint legal custody -- Massachusetts, Minnesota, New Hampshire.**

*** States where joint custody is presumed when both parents agree -- Connecticut, Michigan,**

Mississippi, Nevada, Tennessee, Vermont, Washington state

* states where there is **no statutory language promoting shared parenting** -- Hawaii, Indiana, Maryland, North Carolina, North Dakota, Nebraska, New Jersey, New York, Rhode Island, South Carolina, South Dakota, Utah, Wyoming.

.
Laws, however, do not tell the whole story. **The U.S., Census Bureau, the group that most reliably collects national data in the U.S., reports that between 18 percent to 24 percent of divorced families in the U.S. are estimated to have 50/50 shared parenting.**

This data appears on page 6 of the Winter 2005-2006 issue of Children News, published by the Children's Rights Council. Source: U.S. Census, America's Families and Living Arrangements, 2004 Current Population Survey, March 2005, Table FG-6.

APPENDIX 4

Judges' Written Reasons

Enacted Joint Custody Legislation Requiring Judges' Written Reasons for their Decisions – USA States Jurisdictions

This appendix is relevant to the current inquiry as it shows how Family Law legislation is advancing in the United States to honour parents with the necessary written explanation for a judges' decision that seriously delimits their shared parenting time.

It places the necessary onus and responsibility on the judges to fully disclose in writing, specific and detailed reasons and findings of fact for decisions weighed against equal parenting. This is a common sense approach which recognizes the parents' need to know why they can't be with their children.

This requirement also imbues transparency and accountability to the judges' decision making process and brings honour to the Family Court. The Shared Parenting Council believes that such openness is long overdue and would raise the standing of the Court in Australian society.

1. State of Iowa (USA) Joint Custody

House file 22 – Joint Physical Custody for Iowa Children

Introduced by the Human Resource Committee Chair, Representative [Dan Boddicker](#) (R), as [House File 22](#), the bill passed the Iowa House by a 59-37 margin on March 17, and passed the Iowa Senate unanimously (49-0, one absent) on April 5, 2004.

The previously existing [2003 Iowa Code](#) [<http://www.legis.state.ia.us/IACODE/2003/>], Custody of Children, Section 598.41, subsection 5 was replaced with:-

If joint legal custody is awarded to both parents, the court may award joint physical care to both joint custodial parents upon the request of either parent. If the court denies the request for joint physical care, the determination shall be accompanied by specific findings of fact and conclusions of law that the awarding of joint physical care is not in the best interests of the child.

Note: The new law is an attempt to force judges to adhere to the laws they were sworn to uphold by requiring them to explain why they are destroying a relationship between a child and his parent, usually the father. That destruction is typically disguised as an "award" of custody to one parent, something both parents previously had prior to the actions of the state.

Link to House File 22 with content reproduced below.

<http://www.legis.state.ia.us/GA/80GA/Legislation/HF/00000/HF00022/Current.html>

House File 22

Partial Bill History

- Bill Introduced: H.J. 66.1
- Committee Report Issued: H.J. 633.1 H.J. 458.2 S.J. 700.2
- Passed House: H.J. 724.2
- Passed Senate: S.J. 894.2
- Signed by Governor: H.J. 1676.2

[Complete Bill History](#)

Bill Text

PAG LIN

```
1 1 HOUSE FILE 22
1 2
1 3 AN ACT
1 4 RELATING TO THE AWARDING OF JOINT PHYSICAL CARE OF A CHILD.
1 5
1 6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
1 7
1 8 Section 1. Section 598.41, subsection 5, Code 2003, is
1 9 amended to read as follows:
1 10 5. a. Joint physical care may be in the best interest of
1 11 the child, but If joint legal custody does not require is
1 12 awarded to both parents, the court may award joint physical
1 13 care. When the court determines such action would be in the
1 14 best interest of the child and would preserve the relationship
1 15 between each parent and the child, joint physical care may be
1 16 awarded to both joint custodial parents or physical care may
1 17 be awarded to one joint custodial parent upon the request of
1 18 either parent. If the court denies the request for joint
1 19 physical care, the determination shall be accompanied by
1 20 specific findings of fact and conclusions of law that the
1 21 awarding of joint physical care is not in the best interest of
1 22 the child.
1 23 b. If joint physical care is not awarded under paragraph
1 24 "a", and only one joint custodial parent is awarded physical
1 25 care, the parent responsible for providing physical care shall
1 26 support the other parent's relationship with the child.
1 27 Physical care awarded to one parent does not affect the other
1 28 parent's rights and responsibilities as a joint legal
1 29 custodian of the child. Rights and responsibilities as joint
1 30 legal custodian of the child include, but are not limited to,
1 31 equal participation in decisions affecting the child's legal
1 32 status, medical care, education, extracurricular activities,
1 33 and religious instruction.
1 34
1 35
2 1
2 2 CHRISTOPHER C. RANTS
2 3 Speaker of the House
2 4
```

2 5
2 6
2 7 JEFFREY M. LAMBERTI
2 8 President of the Senate
2 9
2 10 I hereby certify that this bill originated in the House and
2 11 is known as House File 22, Eightieth General Assembly.
2 12
2 13
2 14
2 15 MARGARET THOMSON
2 16 Chief Clerk of the House
2 17 Approved _____, 2004
2 18
2 19
2 20
2 21 THOMAS J. VILSACK
2 22 Governor

.....
Link to Quad-City Times Online Newspaper Article (Iowa) – reproduced below.

http://www.qctimes.com/internal.php?story_id=1028453&l=1&t=iowa+%2F+Illinois&c=24,1028453

19 May 2004

Iowa governor signs child custody bill

By Todd Dorman

DES MOINES — Gov. Tom Vilsack signed legislation Wednesday that he predicts will fundamentally change child custody decisions in Iowa.

Under the legislation, courts that award joint custody of a child to both parents also would be expected to award joint physical care to each parent. Current practice gives the primary responsibility for physical care to one parent.

Parents could request to opt out of the arrangement. And judges who decline to offer joint physical care would be required to present a detailed explanation. “I think we took action today on what might be the most significant thing the legislature did,”

Vilsack said. “I hope this sends a message to fathers and mothers across the state that we want them to be engaged in raising their children. And we think if they are, the outcomes for children will be better.”

Vilsack said he supported the measure after consulting with child psychologists and poring over research that suggests children are better off when both parents are “encouraged and invited” by the courts to take a more active role.

The governor said judges and the Iowa State Bar Association will be encouraged to take a similar view. “This will not necessarily be easy to implement. It will potentially be a significant change,” he said.

With his action, he finished his work on bills approved by the legislature in 2004.

Todd Dorman can be contacted at (515) 243-0268 or tdorman@willinet.net.

2. State of New Hampshire (USA) Joint Custody Bill

This ‘comparable parenting’ bill would ensure that children from broken families be allowed to retain meaningful access to both their mothers and fathers. If the court were to determine otherwise then it would be required to make detailed findings on the record of the evidence it relied upon to separate the children from one of their parents.

HB529 has now passed the full House of Representatives with amended language and has been referred to the Senate Judiciary Committee. The Senate Judiciary Committee held a public hearing on this bill at 1:00pm Tuesday, 22/2/06 in Room 103 of the State House.

New Hampshire House Bill 529 (HB529)

HB 529 – AS AMENDED BY THE HOUSE

AMENDED ANALYSIS

This bill requires the court to consider comparable parenting as part of the determination of parental rights and responsibilities.

Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struckthrough~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

AN ACT relative to the determination of parental rights and responsibilities.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Statement of Purpose; Comparable Parenting. RSA 461-A:2, II is repealed and reenacted to read as follows:

II. This chapter shall be construed so as to promote comparable parental rights and responsibilities.

2 Determination of Parental Rights and Responsibilities; Comparable Parenting. Amend RSA 461-A:6, IV-VII to read as follows:

IV. If the court finds upon consideration of the evidence that comparable parenting or the parents proposed allocation of parental rights and responsibilities is not in the child’s best interest, the court shall set forth in detail the reasons for its decision in a written order.

V. If the court finds that a parent has been convicted of sexual abuse or sexual assault against such parent's minor child or minor stepchild, the court may prohibit contact between such parent and the victim of the abuse and any sibling or step-sibling of the victim. The court shall make orders that best protect the victim of the abuse and the siblings and step-siblings of such victim. In this paragraph, "sexual abuse" shall mean sexual abuse as defined in RSA 169-C:3, XXVII-a, and "sexual assault" shall mean sexual assault as provided in RSA 632-A:2, RSA 632-A:3, and RSA 632-A:4.

[V.] **VI.** If the court determines that it is in the best interest of the children, it shall in its decree grant reasonable visitation privileges to a party who is a stepparent of the children or to the grandparents of the children pursuant to RSA 461-A:13. Nothing in this paragraph shall be construed to prohibit or require an award of parental rights and responsibilities to a stepparent or grandparent if the court determines that such an award is in the best interest of the child.

[VI.] **VII.** The court may appoint a guardian ad litem to represent the interests of the child according to RSA 461-A:16.

[VII. ~~At the request of an aggrieved party,~~] **VIII.** The court shall set forth *in detail* the reasons for its decision in a written order.

3 Effective Date. This act shall take effect 60 days after its passage.

Rep. Walz, Merr. 13
November 16, 2005
2006-0196h
05/10

Amendment to HB 529

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT relative to the determination of parental rights and responsibilities.

4

5 Amend the bill by replacing all after the enacting clause with the following:

6

7 1 Statement of Purpose; Comparable Parenting. RSA 461-A:2, II is repealed and reenacted to
8 read as follows:

9 II. This chapter shall be construed so as to promote comparable parental rights and
10 responsibilities.

11 2 Determination of Parental Rights and Responsibilities; Comparable Parenting. Amend
12 RSA 461-A:6, IV-VII to read as follows:

13 IV. *If the court finds upon consideration of the evidence that comparable parenting*
14 *or the parents' proposed allocation of parental rights and responsibilities is not in the*
15 *child's best interest, the court shall set forth in detail the reasons for its decision in a*
16 *written order.*

17 V. If the court finds that a parent has been convicted of sexual abuse or sexual assault
18 against such parent's minor child or minor stepchild, the court may prohibit contact between such
19 parent and the victim of the abuse and any sibling or step-sibling of the victim. The court shall
20 make orders that best protect the victim of the abuse and the siblings and step-siblings of such
21 victim. In this paragraph, "sexual abuse" shall mean sexual abuse as defined in RSA 169-C:3,
22 XXVII-a, and "sexual assault" shall mean sexual assault as provided in RSA 632-A:2, RSA 632-A:3,
23 and RSA 632-A:4.

24 [V.] VI. If the court determines that it is in the best interest of the children, it shall in its
25 decree grant reasonable visitation privileges to a party who is a stepparent of the children or to the
26 grandparents of the children pursuant to RSA 461-A:13. Nothing in this paragraph shall be
27 construed to prohibit or require an award of parental rights and responsibilities to a stepparent or
28 grandparent if the court determines that such an award is in the best interest of the child.

29 [VI.] VII. The court may appoint a guardian ad litem to represent the interests of the child
30 according to RSA 461-A:16.

31 [VII. At the request of an aggrieved party.] VIII. The court shall set forth *in detail* the
32 reasons for its decision in a written order.

1 3 Effective Date. This act shall take effect 60 days after its passage.

APPENDIX 5

New Zealand Section 131 The Care of Children Bill. Restrictions on publication of reports on proceedings.

This appendix is relevant to the current inquiry as it shows how concerns about the openness of the Family Court has been addressed in New Zealand by allowing the publication of a report of court proceedings in the public interest, so long as names of affected parties are kept confidential in respect of their private interest.

The Act will come into force on 1 July 2004.

The Care of Children Bill will replace the Guardianship Act 1968. The review of the Guardianship Act originated from proposals for shared parenting and concerns about the openness of the Family Court. In 2000, the government released a discussion document and called for public submissions. Nearly 400 submissions were received from a wide range of parties, including judges, parents, academics and community organisations.

The Bill modernises the framework for resolving care arrangements for children within families. Patterns of family life and attitudes towards children have changed significantly over the last 35 years. More modern legislation is needed to ensure a stronger focus on the rights of children and that all types of family arrangements are recognised.

The Bill will help parents, families and children by:

- ensuring the legislation has a stronger focus on the rights and voice of the child;
- promoting co-operative parenting;
- removing discriminatory provisions that present barriers to families;
- recognising the diversity of family arrangements that exist for the care of children;
- providing meaningful court processes for guardianship proceedings.

Specifically

131 Restriction on publication of reports of proceedings

(1) No person may publish a report of proceedings under this Act (other than criminal proceedings) except---

- (a) with the leave of the Court that heard the proceedings; or
- (b) as provided in subsection (2).

(2) A person may publish a report of proceedings under this Act if the report does not include any name or particulars likely to lead to the identification of any of the following:

- (a) a child who is the subject of the proceedings;
- (b) the parties to the proceedings;
- (c) a person who is related to, or associated with, a party to the

proceedings, or who is, or may be, in any other way concerned in the matter to which the proceedings relate:

(d) a witness in the proceedings or a person the Court agrees to hear under section 128.

(3) Every person who contravenes subsection (1) commits an offence against this Act and is liable on summary conviction,---

(a) in the case of an individual, either to imprisonment for a term not exceeding 3 months, or to a fine not exceeding \$2,000:

(b) in the case of a body corporate, to a fine not exceeding \$10,000.

(4) Nothing in this section limits---

(a) any other enactment relating to the prohibition or regulation of the publication of reports or particulars relating to judicial proceedings; or

(b) the power of a court to punish any contempt of Court.
Compare: 1968 No 63 s 27A