Dear Senate Inquiry - Shared Parental Responsibility Bill 2005

This is a my submission to the Senate Inquiry into the provisions of the Family Law Amendment (Shared Parental Responsibility) Bill 2005

On Line Opinion
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The myths about shared parenting
By Michael Green

The Federal Government tables significant changes to the Family Law Act with a view to encouraging both parents after divorce to share parenting of their children. At the same time, the government announces that $400 million will be spent in setting up 65 family relationship centres across the country for the purpose of counselling couples with relationship problems and, if they decide to separate, to assist them to manage the aftermath in a sensible manner.

On the face of it, such sensible proposals might be expected to meet with universal acceptance. Indeed, the average citizen might even be moved to congratulate a government on such family-friendly initiatives.

Not so. There has been a chorus of dissent from significant interest groups and individuals. Former judge's associate Waleed Aly (Sydney Morning Herald, (2/2/06), describes the shared parenting provisions as "little more than a mirage". Family lawyerAndrea Brooks (Sydney Morning Herald, (11/2/06), calls the relationship centres "a triumph of style over substance". The National Association of Community Legal Centres suggests that the new family law and processes "may be harmful to children" ("Seeing families right", NACLC, December 2005).

Why all the big noise? After all, the government was not merely responding to noisy fathers' groups, as some have claimed. A Federal Joint Select Committee, the Family Law Council, the Australian Law Reform Commission and others, over the past ten years, have pointed to serious deficiencies in the Family Law Act and its processes. Both mothers and fathers - individually and in consort with parenting groups - have responded vigorously to invitations for submissions to a number of inquiries.

In 2003, the government commissioned an inter-party committee to examine our family law system. The committee's investigations were not done by members sitting on their seats in Canberra and chatting nicely to one another. For six months, the committee travelled the nation, conducted public hearings and received over 1,700 written submissions. The resulting report, "Every Picture tells a Story", ran to 240 pages, and contained 29 recommendations. There was unanimous support for far-reaching reform of the system.

The government responded, a draft Bill was produced, and this was subjected to further public scrutiny by way of another inter-party committee. Out of this process the current Bill, the Family Law Amendment (Shared Parenting) Bill, is now before the parliament.

Given all of the above, one would expect that the reforms would attract overwhelming support. That this is not the case bears close examination.

The objections emanating from pockets of resistance can be loosely grouped as follows.

Equal or shared parenting is not in the best interests of children. The NACLC paper claims: "There is no evidence that time shared equally with both parents is actually more beneficial to children." In a paper purporting to "ensure the

full facts are widely known", the authors have conveniently ignored at least three US studies (for example, Bauserman (pdf file 80KB), 2002), and an Australian study (Smyth et al (pdf file 3.74MB), 2003). This research shows that joint custody or shared parenting of children after divorce brings positive benefits to both children and their parents.

It is bold indeed for the NACL to rely so heavily on the Rhoades report (pdf file 663KB) (2000) to support many of its contentions, when it is well known that the limitations of that report were trenchantly criticised by several commentators (for example, Moloney 2001).

The NACLC suggests that 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. 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 head-in-the-sand stuff. 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 them emotionally, intellectually and financially. The stability that children hunger for is not geographical stability, but the stability of meaningful relationships with the people most dear to them, their mothers and fathers, grandparents, relatives and friends, schools and communities. Shared parenting can deliver this.

Another objection is that 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 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.

Such mischievous nonsense shields deeper currents. The opposition to reform from lawyers can only be motivated by professional and financial insecurity. Over 50 per cent of couples currently sort out their own post-divorce arrangements with little or no recourse to the law. With increasing education and the realisation that such a process can be achieved without paying $300-500 an hour to a lawyer, this trend is set to continue. In 10 years´ time will there be any work left for the generalist family lawyer? I doubt it. And if the government's programs of legislative reforms and community education are properly supported, I can envisage that the services of many family court judges will no longer be required.

The brayings of feminist groups are rooted in a similar anxiety for self-preservation and in the feminist myth. Their support for the present system reveals a concern about power and money: if mothers share the parenting of children, it follows inevitably that they will have to share control of the family and of the resources that come with it, i.e. the home and financial support.

The need revealed by women's groups for funding and resources to support abused women and children is well established and accepted. Not so, however, is the radical position that this is the lot of most women and children, particularly in the aftermath of separation or divorce. Radical feminism has done a disservice to women. It has sought to portray them as poor, suffering creatures that need protection from men and from paternalistic institutions. They are unable to speak confidently for themselves, to make their own choices, and are easily led into negotiations where their will and interests are overborne. Such thinking is a grave insult to the majority of women.

Ask any experienced mediator who carries the power in a mediation: almost inevitably the mother with the children.

The government is to be congratulated on having the courage and energy to effect a new system of family law and practice so soundly based on reliable research and the aspirations of right-thinking men and women. If enacted, funded and supported by community education, it will bring enormous benefits to mothers, fathers and children.

http://www.onlineopinion.com.au/view.asp?article=4126

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Thank you for reading my submission

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