



24.2.2006

The Senate,  
Commonwealth of Australia.  
Standing Committee, Legal and Constitutional Legislation Committee

Enquiring Into the Provisions of the: -

Family Law Amendment (Shared Parental Responsibility) Bill 2005.

Dear Secretariat,

Refer Ann Palmer (ph 62777111 Fax 0262775794)

It is with feelings of great disappointment that I write to make yet another submission to a parliamentary enquiry centred on Family Law Act / Child Support shortcomings.

I have previously made submissions to the "Pathways Enquiry." and "Every Picture tells a Story Enquiry." They can be perused if required. I am enclosing a copy of my response to "A New Approach to Family Law. Discussion Paper 10.11.04" as I do not know whether the committee has access to those papers.

The concept of Shared Parental Responsibility as a presumption is fundamentally flawed.

In simple terms; - **IT JUST WONT WORK.**

**SHARED EQUAL PARENTING** as a presumption providing that there is no proven instances of sexual or physical violence perpetrated on the child by either parent **should be the starting point** when custody of the child / children is being decided.

**PROPERTY MATTERS.**

**Two types of property should be excluded from division as property built up during the marriage.**

**The first comprises compensation sums, judgments or other payments**

- 2. Children will continue to lose out from having a decent fair relationship with their other parent (predominantly their father) and be consigned to growing up in a world of fatherlessness.
- 3. Custodial parents will continue to be awarded 70% to 80% of the asset pool.
- 4. They have security in the knowledge that the Sole Parents Pension and concession cards, the Family Tax Benefits "A" and "B" and the Child Support Payments received from the ex spouse/partner provides more money than living together as a couple.

The other great beneficiary of these proposed changes will continue to be

**THE FAMILY LAW INDUSTRY.**

The Fifty odd Judges of the Family Court of Australia will continue to hand down judgements,  
 The Thirty odd Magistrates of The Federal Magistrates Court of Australia will continue on adjudicating on Family Law cases within their authority.  
 The Registrars will continue on as they previously did, and the numerous employees of the Court will continue on, secure in their employment.

The Court based Family Counsellors will continue to give biased advice and recommendations regarding custody of children because they know that going against the Standard Contact rule for non custodial parents of one weekend every second week and half the school holidays would place their positions in jeopardy.

The accredited Family Law solicitors will continue on, charging the approved rate of \$350 per hour.  
 SC Barristers and QCs specialising in Family Law will still receive up to \$6500 per day appearing in the Family Court from all the poor victims who are required to appear there.  
 (I forgot to mention the refresher fees charged, generally half a days fees.)

The phycologists, child specialists and family specialists will continue to interview children ignore their clearly stated wishes and make recommendations that conforms to the ideology of the Family Court.

And so it will go on and on and on infinitum\*\*\*\*\*

**CHILD SUPPORT SCHEME**

The number of submissions to the recent House of Representatives Parliamentary Enquiry complaining about the scheme indicate that it is deeply flawed. Speeches by Federal MPs recorded in Hansard support this statement.

The basic principle behind Child Support is to provide support for children.

received by a spouse in respect of pain, suffering and loss of amenity, future economic loss and damages for voluntary care, where the compensation amount (or part of it) remains intact or is readily identifiable even if it is held in joint names.

The second is property inherited by a spouse during the marriage.

Monies and assets that a party takes into a marriage should be excluded from the 'common pool' and revert to the party who bought them into the marriage.

The value of the foregoing assets should be calculated at original value plus an annual CPI factor over the period of the relationship.

The legal principle of 'erosion' should not be applied when valuing lump sum monies/assets introduced or acquired during a marriage or defacto relationship.

## **SUPERANNUATION**

Recent amendments in 2002 now cause superannuation assets to be divided equally between both parties.

The outcomes are: -

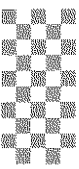
A totally inadequate amount of superannuation assets for each party causing the assets to be withdrawn as a lump sum and spent on overseas holidays etc.

This makes both parties eligible for the full pension with attendant benefits/concessions which is a further charge on the taxpayers of Australia.

**SURELY IT MAKES BETTER ECONOMIC SENSE TO HAVE ONE PARTY AS A PENSIONER AND ONE PARTY AS A SELF FUNDED RETIREE.**

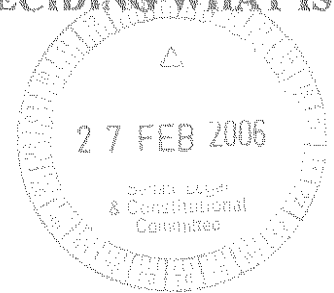
## **SUMMARY.**

1. If this bill is passed in its present form non custodial parents will continue to shower their respective MPs and Senators with letters of complaint and the suicides of those parents will continue to be a dark blot on Australian society.



**COURT WOULD NEED TO CONSIDER WHEN DECIDING WHAT IS IN THE BEST INTEREST OF THE CHILD.**

- 1. Yes.



**WHAT OTHER USEFUL PROVISIONS FROM OVERSEAS JURISDICTIONS SHOULD BE CONSIDERED.**

- 1. The Louisiana legislation that provides for **SHARED EQUAL PARENTING** as a proposition that can be rebutted, as a starting point.

**PROPOSED CHANGES TO THE COURTS.**

Six proposed Family Law measures are listed on page 15. Reaction to them is:-

- 1. I thought they were.
- 2. Supported.
- 3. Judge should directly seek the views of the child when they are six years of age or older.
- 4. As these 'certain rules of evidence' are not spelt out, comment cannot be made.
- 5. No.
- 6. No.

**Court based counsellors are biased.**

Their reports are written so as to support the prevailing court child custody award i.e. Half the school holidays and every second weekend to the non custodial parent (the father) the remainder of the time "the big majority" to the custodial parent (the mother).

The outcome of such custody decisions is to stop children from developing any meaningful ongoing relationship with the non custodial parent.

**This is exactly what is not wanted.**

**ARE THERE OTHER OPTIONS FOR CREATING A LESS  
ADVERSARIAL APPROACH TO RESOLVING DISPUTES IN THE  
COURTS ?**

**YES, THERE ARE.**

**Disputes in the Family court revolve around custody of children and division of property.**

**Custody of Children has been well and truly canvassed in the preceding pages of this submission, but the vitally important matter of division of property has received scant attention.**

**PROPERTY MATTERS.**

**Two types of property should be excluded from division as property built up during the marriage.**

**The first comprises compensation sums, judgements or other payments received by a spouse in respect of pain , suffering and loss of amenity, future economic loss and damages for voluntary care , where the compensation amount (or part of it) remains intact or is readily identifiable even if it is held in joint names.**

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**Monies and assets that a party takes into a marriage are currently excluded from the 'common pool' and revert to the party who bought them into the marriage.**

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**The legal principle of 'erosion' should not be applied when valuing lump sum monies/assets introduced or acquired during a marriage or defacto relationship.**

## **WHAT SHOULD THE COMBINED REGISTRY DO TO MAKE IT EASIER TO NAVIGATE THE FAMILY COURTS SYSTEM/**

**Can't say until the proposals are promulgated.**

**Currently other matters are heard in the Family Court. This should continue so that judges will find it attractive to sit on the bench of the Family Court.**

## **COMMUNITY EDUCATION.**

**ARE THERE OTHER MESSAGES THAT NEED TO BE INCLUDED?**

**YES.**

**Community based and private support groups currently provide much information to separating spouses.**

**Such organizations should continue in that role and they should receive a fee from the Federal Government for each client they provide information to.**

## **CHILD SUPPORT AGENCY.**

**The Government has established a Child Support Task Force to report back by March 2005 on a comprehensive re-evaluation of the scheme. I look forward to that report.**

**The number of submissions to the recent House of Representatives Parliamentary Enquiry complaining about the scheme indicate that it is deeply flawed. Speeches by Federal MPs recorded in Hansard support this statement.**

**The basic principle behind Child Support is to provide support for children.**

**Each parent should provide for one half of the cost of feeding, clothing, school costs, providing school holidays and reasonable entertainment costs.**

**Both parents should seek and find employment either part or full time and utilize Child Care facilities if children are in their care.**

The aim should be paid employment, NOT UNEMPLOYMENT, and relying on the Sole Parents Pension for the major income source.

The 'cap' on the income of a paying parent on which Child Support is calculated should be set at average weekly earnings for full time employees.

Family Tax Benefit should be payable to each parent for each day any child is in the custody of that parent and should be income tested in the normal way.

Family Tax Benefit Part A and Part B, Carer Allowance, Carer Payment and Child Support Payments are to be calculated on a daily basis.

For each day that the child/children are in the care/custody of a parent, payments are to be made to that parent within 28 days of lodging a claim form with Centrelink.

In other words;

**"THE MONEY FOLLOWS THE CHILD."**

**IT IS PAID TO THE PARENT FOR EACH DAY CARE IS PROVIDED FOR THE BENEFIT OF THE CHILD.**

Thank you for taking the time to read this submission.

Bob Hetherton.

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**COMMENT.**

I have read the full Ministerial Taskforce on Child Support report signed by Chairperson Patrick Parkinson dated 3.6.2005.

Some of the conclusions that have been reached after a five month gestation period are frankly bewildering.

There seems to be far too much emphasis on miniscule detail and insufficient focus on the basics, ie,

**CHILD SUPPORT IS FOR THE SUPPORT OF THE CHILD.**

**IT SHOULD BE USED ONLY TO ASSIST IN MEETING EXPENSES INCURRED IN PROVIDING FOR THE CHILD.**

**FAMILY TAX BENEFIT "A" AND "B"**

The Recommendation No 1.14 that FTB parts "A" and "B" should no longer be split where the non residential parent is providing care for the child for less than 35% of the nights per year is plain straight nonsense.

This recommendation is a classic example of the committee completely failing to focus on the needs of the child and being sidetracked into pandering to the demands of a small vocal group of sole parent representatives and the perceived need to placate them.

Thank you for taking the time to read this submission.



**Bob Hetherington.**  
24.2.2006

19.1.2005.

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**COMMENTS ON DISCUSSION PAPER DATED 10 November 2004**

**A NEW APPROACH TO THE FAMILY LAW SYSTEM**

**IMPLEMENTATION OF REFORMS**

**I have been a member of a Family Law Policy Review Committee since 2002. We were formed to examine the effects of the decisions that the Family Court of Australia had within Australian society and also the effects of the Child Support Agency.**

**Committee members ploughed through the "Pathways report" and the Governments response and formed the view that a lot more needed to be done.**

**When The Government commissioned The House of Representatives Standing Committee on Family and Community Affairs in July 2003 to conduct a further inquiry into these matters we determined to read the transcripts of the public hearings and read a selection of the submissions made to the inquiry.**

**A committee member attended one of the afternoon public meetings in Brisbane and was amazed to see nearly 120 citizens at that meeting. The member was astounded when told by a Parliamentary Committee official that nearly the same**

number of citizens had attended a similar public meeting at a different venue in Brisbane that morning.

We understand that all of the 30 odd public forums held by parliamentary committee throughout the nation were very well attended by citizens. The 1700 odd written submissions received by the parliamentary committee confirms the real concern and the clamor for change to the current law.

**CLEARLY, THE EXISTING SYSTEMS HAVE SERIOUS SHORTCOMINGS.**

**WIDE RANGING CHANGES ARE NOT ONLY REQUIRED BUT ARE ESSENTIAL FOR THE GOOD OF AUSTRALIAN SOCIETY.**

**SHARED PARENTING.**

Deliberation by the committee supports the concept of "50/50 SHARED CUSTODY " (that is, equal shared parenting time) as the starting point in family law cases.

**SUPPORT SERVICES NEEDED BY FAMILIES GOING THROUGH SEPARATION ARE: -**

1. Counselling.
2. Mediation.
3. Instant availability of alternative accommodation.
4. Being informed there is a presumption in Family Law that the children will spend equal time with each parent, and in what circumstances such a presumption could be rebutted.
5. Equally available to both or either parents.

**WHO CAN REFER SEPARATING PARENTS TO FAMILY RELATIONSHIP CENTRES?**

1. Individuals should be able to approach the centres direct.
2. Community based and private support groups who have operated in the community and provided a valuable service to separating parents over many years.
3. Church officials.

**OTHER WAYS TO ENCOURAGE PARENTS TO DEVELOP PARENTING PLANS.**

1. Have counselors, mediators, support groups and church officials attend workshops hosted by the proposed Family Relationship Centres to show how to draw up effective parenting plans.

#### **COMMENTS ON THE PROPOSED INFORMATION, ADVICE AND DISPUTE RESOLUTION SERVICES TO BE PROVIDED BY THE FAMILY RELATIONSHIP CENTRES.**

Our committee was supportive of the Families Tribunal proposal.

We feel that these Family Relationship Centres may well develop into another level of bureaucracy that separating parents will have to negotiate during a time of great personal stress.

The concept of Shared Equal Parenting as a presumption that can be rebutted needs to be the starting point in discussions at the Family Relationship Centres providing there are no proven instances of sexual abuse or physical violence. Any such allegations or charges should be heard before an appropriate court as a priority.

#### **JOINT SESSIONS AT FAMILY RELATIONSHIP CENTRES.**

The support person or companion that could be present at such sessions may inflame the discussion.

Representatives from Domestic Violence Resource Centres or similar support groups should be excluded from the sessions.

#### **TRAINING TO HELP PARENTING ADVISERS IDENTIFY VIOLENCE OR CHILD ABUSE.**

Medical practitioners to instruct advisers.

#### **OTHER THINGS THE PARENTING ADVISOR COULD DO WHEN AGREEMENTS BREAKS DOWN.**

1. Review the current parenting plan.
2. Be authorized to request Child Support Agency to withhold payments to custodial parent until matter is resolved.

#### **THE MOST EFFECTIVE WAY OF SUPPORTING PRE-MARRIAGE EDUCATION IS:-**

1. Service should be free to users.

2. Pre nuptial financial agreements should be encouraged.
3. Joint equal ongoing parental responsibility for children should be stressed.

**HOW CAN THE FAMILY RELATIONSHIP CENTRES BEST MEET THE NEEDS OF FAMILIES ACROSS AUSTRALIA. WHAT METHODS OF OUTREACH WOULD BE MOST EFFECTIVE FOR THESE SORTS OF SERVICES.**

1. Existing service providers under the Family Relationships Services program e.g. Life line, Anglicare, Centrecare, Relationships Australia, etc will no doubt tender to run various centres.
2. There are a number of private support groups in Australia that have provided extremely valuable support and assistance to separating parents throughout Australia, some in remote locations. We are of the view that Government should support such groups and that they should be paid an amount for each client they provide support to.

**WHAT MORE CAN BE DONE TO MAKE IT EASIER FOR GRANDPARENTS TO HAVE AN ON-GOING RELATIONSHIP WITH THEIR GRANDCHILDREN AFTER SEPARATION.**

1. Amend The Family Law Act so that in the event of separation or divorce the principal of 50/50 Shared/Equal Custody (that is, equal shared parenting time) as a proposition that may be rebutted will apply as the starting point in family law cases.
2. Subject to any agreement to the contrary arrived at in the parenting plan, any parenting time allotted to a grandparent should be regarded as part of the parenting time allotted to the parent who is the child of the grandparent.
3. It is self evident that it would be in the interests of each separated parent to foster and encourage a good ongoing relationship between the grandchild and grandparents.
4. Where grandparents assume responsibility for caring for grandchildren when the parents are unable to do so they often incur additional financial costs.

An allowance along the lines of that currently paid to foster parents would be appropriate in such circumstances.

**ENTRENCHED CONFLICT IS DIFFICULT TO DEFINE. THE FACTORS ARE OUTLINED :-**

A high level of physical violence instances over a sustained period proved in court that has occurred between parents is entrenched violence. However, this does not automatically mean that the parent would be a bad parent for the child. Given that the best interests of the child is paramount it could well be that the child would materially benefit from shared parenting with each parent. The dispute in that instance is between the parents not the child.

The concept of ENTRENCHED VIOLENCE needs to be very carefully defined so as to exclude trivial complaints of conduct.

#### **OTHER EXCEPTIONS TO THE REQUIREMENT TO ATTEND A DISPUTE RESOLUTION CENTRE BEFORE FILING A PARENTING DISPUTE IN THE COURTS.**

Entrenched violence or child abuse occurrences would need to be proved in court before being a proper exception.

Service providers and existing private support groups currently provide support by telephone to clients at remote locations. This should continue. Reimbursement of travel expenses for clients who need to meet face to face with counsellors will need to be provided.

#### **CHANGES TO ENFORCEMENT PROVISIONS IN THE FAMILY LAW ACT: EXCEPTIONS TO USING THE FAMILY RELATIONSHIP CENTRES BEFORE FILING AN APPLICATION IN FAMILY COURT.**

1. Custodial parent taking children overseas or to another state.

#### **PROPOSED OTHER CHANGES TO FAMILY LAW ACT TO HELP THE COURT DEAL WITH BREACHES OF PARENTING ORDERS.**

1. Provide sufficient resources to Australian Federal Police so that Family Court orders can be enforced.

**SHOULD THE GOVERNMENT AMEND THE FAMILY LAW TO INCLUDE THE FLORIDA USA PROVISIONS AS FACTORS THAT A**