



Australian Government

**Australian Institute of
Family Studies**

**Submission to the Senate
Legal and Constitutional Committee**

**Inquiry into the provisions of the
*Family Law Amendment
(Shared Parental Responsibility) Bill 2005***

**Authorised by: Professor Alan Hayes, Director
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The Australian Institute of Family Studies is pleased to have the opportunity to comment on the proposed provisions of the *Family Law Amendment (Shared Parental Responsibility) Bill 2005*.

The Institute has always held a strong interest in family law issues, and has been following the recently proposed reforms closely – both independently, and through its involvement with the Family Law Council.

Established under the Family Law Act 1975, the Institute seeks *to promote the identification and understanding of factors affecting marital and family stability in Australia*. Family law represents an important area of research at the Institute, and much of its current work seeks to inform the recently proposed family law reforms.

To date, we have made three formal submissions in relation to the current reform agenda: (i) a written submission to the House of Representatives Inquiry into Child Custody in the Event of Family Separation (submission no: 1055); (ii) verbal testimony to that House of Representatives Committee on 13 October 2003; and (iii) a written submission in response to the discussion paper, *A new approach to the Family Law System: Implementation of reforms*.

Given that we have already provided a substantial amount of material, and the draft Bill is about to be brought before the Senate, we have sought to keep our submission brief. Our comments address the four key frames of reference set out in the call for submissions: (a) shared parental responsibility; (b) compulsory primary dispute resolution; (c) enforcement of contact orders; and (d) the importance of grandparents and significant others.

(a) The introduction of a presumption of shared parental responsibility

The Institute supports the proposition that generally both parents should be encouraged to maintain involvement in their children's lives following separation. At the same time, it should be noted that not a great deal is known about the dynamics and practicalities of shared parental responsibility – either in “intact” or separated families, or in step- or blended families. It will be important to support any changes with a strong education program that assists families through the transition phase from older notions of a primary and “absent” parent to a “two home/two family” model.

While violence, child abuse, and entrenched conflict remain contra-indicators of a presumption of shared parental responsibility, an understanding of these phenomena and the capacity to define these terms accurately need further refinement (both conceptually and empirically). Ongoing research into these areas and the monitoring of their presence in the context of parental separation will assist in better discriminating between circumstances in which decisions based on a presumption of shared parental responsibility are in the best interests of the children, and those in which such decisions may put children and/or a parent at risk.

We remain cautious about endorsing the proposal that “equal time” with each parent “must be considered”, even though it is qualified to some extent in the proposed legislation by the issue of “reasonable practicality”(see S65DAA(5)). Recent research by the Institute (eg., Smyth 2004, 2005; see also Amato & Gilbreth 1999 in the US) reaffirms that the quality of relationships between children and each parent is more critical than the formal allocation of time. Indeed, a preoccupation with numbers and “time splits” can distract separating parents from the more critical work of building a healthy, cooperative parenting relationship that enhances the ongoing care of their children.

We would re-emphasise the importance of educating parents to start from an appreciation of their children’s needs. The need for child-sensitive processes to be developed that allow children to be heard may also act as an important counter-balance to the proposed mandate that equal time parenting be considered.

(b) The requirement for parents to attend dispute resolution and develop parenting plans before taking a parenting matter to court

In line with the strong emphasis in our previous submissions on the importance of primary dispute resolution services as an alternative to litigation, we endorse the Government's proposal to make it a requirement in all cases, except those involving violence or abuse, that parents first try to resolve their disputes through supported facilitative processes (such as mediation) before making an application to the court.

Once again we emphasise the need for these processes to be informed by child-focused and child-inclusive practices. Articulating arrangements for children in the form of parenting plans is one important way of contributing to this goal. We support the prominence of parenting plans in the proposed Bill.

(c) Improvements to enforcement of parenting orders

Enforcement of parenting orders remains one of the thorniest issues confronting many family law systems throughout the world. There are no simple solutions, and there is little research that might inform any legislative change. Therefore it would be important for changes in this area to be closely monitored in order to identify the extent to which the proposed tougher enforcement of parenting orders serves the needs of the children in families where parenting orders are frequently breached.

Work currently underway at the Institute suggests that a complex interplay of psychosocial dynamics typically sit underneath contact disputes, and that this complex amalgam is likely to require multifaceted intensive work with those families in dispute, over and above legislative reform.

(d) Better recognising the interests of children spending time with grandparents and other relatives

Family law in Australia has, to date, probably under-emphasised the importance to many children of preserving a sense of their wider kinship networks, in which grandparents can play a very significant role (see the recent Institute work by Gray, Misson & Hayes 2005). Legislation that helps to refocus on this issue is to be encouraged. At the same time, each family's circumstances will differ, and not all family networks are nurturing for children.

Summary

The Institute supports the broad intent of the proposed reforms to bring about a cultural shift towards (a) less adversarial processes in the way that parenting disputes after separation are managed, and (b) ways to encourage the active involvement of both parents in their children's lives after separation – providing, of course, that this involvement is in children's best interests.

References

Amato, P. R. & Gilbreth, J. G. (1999), "Non-resident fathers and children's wellbeing: A meta-analysis", *Journal of Marriage and the Family*, 61, 557-573.

Gray, M., Misson, S. & Hayes, A. (2005), "Young children and their grandparents", *Family Matters*, 72, 10-17. [Attached]

Smyth, B. (2005), "Time to rethink time? The experience of time with children after divorce", *Family Matters*, 71, 4-10. [Attached]

Smyth, B. (2004), "Parent-child contact schedules after divorce", *Family Matters*, 69, 32-43. [Attached]