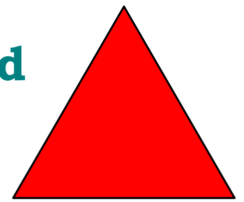
The Richard Hillman Foundation Incorporated



~ *Pursuing Equality, Unity and Justice for Families* ~

Parliament of Australia, The Senate
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http://www.aph.gov.au/Senate/committee/legcon_ctte/family_law/info.htm

Re: Inquiry into the Provisions of the
Family Law Amendment (Shared Parental Responsibility) Bill 2005

Please accept the following chronology of communications between Matilda Bawden and the Attorney General's Department and Community Services and Health Industry Skills Council (CSHISC) in relation to the CSHISC mandate of setting standards and competencies for Family Mediators and Counsellors.

We wish to signal several deep concerns for the record:

1) The Attorney General's advisor's and gate-keepers have failed to offer anything pro-active to alleviate the expressed concerns of non-custodial parents. In fact, despite her submissions (reprinted below), Ms Bawden has received NO communications from Ms Esler what-so-ever in response to the concerns she has raised, despite several approaches directly to Ms Esler, as per the Attorney General's advice in his correspondence (dated 23/1/06, reprinted below).

2) The Richard Hillman Foundation shares the concerns express by Ms Bawden and the Fatherhood Foundation, herein, particularly in light of the most peculiar comment in the AG's correspondence that:

> *The purpose of the Scoping Report is to provide some background to the development of competency standards, a project which commenced before the family law reforms were developed or announced. It would be outside the project brief for CSHISC to comment on the content of the reforms, **although the project itself has been extended slightly to incorporate new roles for professionals to be employed in the new and extended services funded by the Australian Government** (including Family Relationship Centres, the first 15 of which will open from 1 July 2006). (Emphasis added)*

If it is the case that "although the project itself has been extended slightly to incorporate new roles for professionals", then why is the Attorney General not listening and responding to the concerns being repeatedly raised by non-custodial groups?

Why are advocates of shared parenting/ joint residency being side-lined from the direct decision-making processes? Why does the Attorney General fail to redress the conflicting interests and biases which will be driving the work of the Committee away from establishing the highest standards and competencies necessary to work towards shared parenting outcomes?

In closing, it is our request that this Committee turn its attention to the problems of conflicting interests which are inevitably seeking to reduce the notion of "shared parenting responsibility" to mean nothing more than a maintenance and further entrenchment of the *status quo* established over 30 years ago.

Stephen Perkins
Public Officer for Richard Hillman Foundation

Patron: Hon. PETER LEWIS., JP, AFAIM, MAIAST, RDA (Hort), MP
MEMBER *for* HAMOND & FORMER SPEAKER, HOUSE *of* ASSEMBLY.

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Letter from Attorney General Phillip Ruddock, dated 23rd January, 2006:

Dear Ms Bawden

Thank you for your email dated 19 December 2005 and related emails regarding the Scoping Report issued by the Community Services and Health Industry Skills Council (CSHISC) as part of the development of competency standards for family counsellors, family dispute resolution practitioners and workers in children's contact services.

The purpose of the Scoping Report is to provide some background to the development of competency standards, a project which commenced before the family law reforms were developed or announced. It would be outside the project brief for CSHISC to comment on the content of the reforms, although the project itself has been extended slightly to incorporate new roles for professionals to be employed in the new and extended services funded by the Australian Government (including Family Relationship Centres, the first 15 of which will open from 1 July 2006).

The role of the project steering committee established by CSHISC is to provide expert, technical advice on the actual competencies that family counsellors, family dispute resolution practitioners and workers in children's contact services require to perform their respective roles in a competent, professional manner. It is not the role of the committee to comment on the family law reforms or their stated objectives.

However, the *Family Law Act (Shared Parental Responsibility) Bill 2005* (the Bill), which I introduced into Parliament on 8 December 2005, contains provisions that address many of your concerns in relation to shared parental responsibility. You may be particularly interested in section 63DA of the Bill, which places obligations on professionals who are providing advice to people in relation to parenting plans. These professionals are required to inform people that, where it is in the best interests of the child and reasonably practicable, they could consider an arrangement where they equally share the time spent with the child.

The Bill and explanatory memorandum can be found at www.ag.gov.au/family .

The action officer for this matter in my Department is Marian Esler who can be contacted on 02 6234 4882.

Yours Sincerely

Philip Ruddock

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Chronology of communications from Matilda Bawden to Lisa James(CSHISC) and Marian Esler (Attorney General's Department):

- Email sent to Liza James 16/1/06:

Re: Family Counselling, Family Dispute Resolution & Children's Contact Services Draft Qualifications/ First Draft Industry Validation

I note that NOT ONE of the 60 modules listed contains a whisper (must less passing reference to) shared parenting. Perhaps this should be the Committee's single main task in Reviewing the contents of the training modules.

Matilda

- Email sent to Liza James and Marian Esler of the Attorney General's Dept on 5/1/06:

Re: FW: Australian shared parenting law fiasco - draw it out why don't you?

I just received the following series of emails from a colleague who regularly monitors debate on matters of Shared Parenting/ Joint Residency. My concerns herein DO NOT relate to the work of Ms James or her employer body, but are solely directed to those members of the Committee who do not aspire to the objectives of shared parenting/ joint residency, whilst sitting on a Committee aimed at setting the standards and competencies for this industry.

It should greatly alarm us that the National Association of Community Legal Centres (NACLC) has most recently put on the record its opposition to shared parenting - the very thing your Department is apparently (if one believes media reports) trying to bring about.

That being the case, given that non-custodial parent groups have so far been "frozen out" of the process and in view of the incongruence of this with the Attorney General's purported "new directions" in Family Law, I question ***"What business does the NACLC have to sit on the Industry Skills Council's, Family Counselling, Family Dispute Resolution & Children's Contact Services Project Steering Committee {via Joanne Fletcher, Law Reform Co-Ordinator as its representative}?". But the NACLC is not the only one on this Committee which has expressed its opposition to the directions which this Committee (one would reasonably expect) should be taking to facilitate shared parenting outcomes, as far as it is at all possible. Many other bodies represented on this Committee have in the past done the same, using the same rhetoric (detailed in emails below).***

So, again I ask, "Why have pro-shared parenting groups and researchers not been involved and included on this Committee to offer balanced debate, especially if re-education is required to change the existing culture within the field of family intervention and support services".

In view of the NACLC's oppositional view to shared parenting/ joint residency, I also cannot help but want to ask "What proportion of the membership of the Committee is in a sole/ shared/ non-custodial parent living arrangement? How many are parents at all? What proportion of the Committee was raised in an intact/ shared/ blended family? How many knew both their biological parents? More importantly, how many have EVER advocated shared parenting/ joint residency?".

I expect some will claim that this information is "not important". Too right it is, as this is the composition and likely history of a Committee that will determine and influence the shape, contact, living arrangements and composition of other, future Australian families - far beyond their very own. Moreover, they will directly influence the ideology of the practitioners that will take over the work (and the social agenda that is set via the competencies and standards) for decades to come, long after this Committee has disintegrated.

What concerns all non-custodial parents and their supporters about the current composition of the Committee is that now the professions which have deeply entrenched themselves and their careers in the adversarial systems and processes {and which have dogged Family Law for the past three decades} will instead be able to undermine the spirit of any amendments to the Bill by procedurally manipulating the outcomes "behind the scenes" (i.e. if the mediators, counsellors and other professionals do not actively encourage, support and nurture shared parenting objectives, at the coal-face that will continue to translate in ongoing litigation for those unwitting families who might believe the current mantra put out by the AG's office).

Many non-custodial parent groups are asking the question, "How can the long overdue and sorely needed cultural shift in the provision of family mediation, counselling and intervention services take place when "the fox is guarding the hen house"?".

How can those people and the organizations they represent who have publicly opposed shared parenting ensure the highest standards and competencies towards shared parenting outcomes for all Australian families, when they either:
a) do not understand or aspire to the concept,
b) generally do not hold that value and belief system true for themselves, much less other families?
c) are resistant to the idea or
d) have no vision for how it can be made to happen, DESPITE all the media fear mongering and countless urban myths that have been entrenched through the existing cultures' belief and value systems (e.g. the rewards, incentives and disincentives that will need to be used as safeguards, checks and balances; the monitoring and evaluation tools that will need to be used to properly account for the professional assessments, decisions and reports which will be produced.)

It seems to me that the existing composition of the Committee is being asked to paint a Da Vinci when many have never held a paint brush. Many have publicly expressed their opposition to the problems, but I have yet to hear the same persons/ bodies offer a solution consistent with the shared parenting objective.

Surely the absurdity of this situation is self-evident and, judging by the lack of responsiveness to these issues and concerns non-custodial parent groups are getting from the AG's Department, I cannot help but feel that the Attorney General himself, personally, really doesn't even care if the professional "gatekeepers" work to keep him blissfully ignorant.

Am I right to make such a seeming "quantum leap", or is this the Sir Humphrey response to something the Minister is not even aware?

I would be most appreciative of your reply.

Matilda

- Email sent to Liza James 21/12/2005

RE: Family Counselling Scoping Report

Thanks for the reply and your continuing encouragement. I apologize if my comments herein will appear harsh, but it is an area of such passion for me, I cannot emphasize the importance of getting the foundations right.

The relevance of my earlier email remains very much directed at the Scoping Report and its clear deficiency in setting a more accurate picture of the social and political climate which is necessitating a cultural shift amongst mediators and counsellor in terms of their practice.

You rightly state "The purpose of this document is not to make recommendations on the content of the qualifications".

Neither was it the purpose of my critique, as per the previous email, to make recommendations on the content of qualifications. The criticisms I highlighted were all about the fact that such a valuable history of why this process exists is omitted in that context. It is about establishing - from the very outset

- the spirit and culture from which the standards and competencies will be approached. What will be the values and belief systems which will drive the rest of the process - not just one or two of the competencies or modules, but the entire range of industries that are to be serviced?

In the same vein that references were made to the NSW Law Reform Commission's view of Community Justice Centres and the Family Law (Shared Parental Responsibility) Bill at item 1.3.1, so too should there be an attempt to consolidate and acknowledge the history of how such inquiries came about - who drove them; with what motivation; what were the political statements of the time reflecting? I can tell you, in case you have not picked it up, there is severe and deep division in the community on this matter. The Report however, must not try to ameliorate those differences by remaining ambiguous and blissfully "neutral". As I read it, I cannot myself ascertain what the Committee's own position is on the whole question of Shared Parental Responsibility and whether the Committee is in agreement with the Attorney General or in opposition to him, whether it even knows what that will look like, or whether it is content to just sit on the fence (which is my immediate impression).

For example, it is stated that Family Relationship Centre will be set up across the country, but we already have them! What will be different now? Is all that we are going to achieve through this process going to be getting previously incompetent and inept practitioners rubber-stamped with formal Nationally Accredited Certificates? I can assure you non-custodial parent groups are expecting - and dreading - just that very outcome!

If this is done properly, it has the potential to change family histories and even impact on how our Family Courts will be influenced. The significance of this must not be lost on the Committee.

But if it is done in isolation to this background, and if we fail to acknowledge the deficiencies of many current practitioners, the whole thing will (history shows us) only be revisited in another 5-10 years time as the reason why families continue to experience breakdown or hardship, because the standards and competencies failed to make any difference to the outcomes in the courts.

Court statistics will be the ultimate indicator of whether this Committee has done its job properly, and it is imperative that this vision of what the future might look like is "carved in stone" (via the Scoping Report) for all to use as a reference point. It has to serve as "the Yellow Brick Road" or no-one will get to Oz!

I can't squeeze this feedback on Forms 1, 2 or 3!

Matilda

- Email sent to Liza James 19/12/05:

RE: Family Counselling Scoping Report

I have read the Scoping Report and wish to make some highly critical remarks and observations of the Committee's work so far, but hope it will be taken constructively and in good faith.

There is a fundamental and critical problem with the report at the very beginning - it's distinct failure to even attempt to define the Best Interests of the Child!

It uses the concept as a vague and extremely wishy-washy "ideal" that is changeable, depending on who the counsellor, observer, mediator and arbiter are in any given case.

In 90 pages of report this term is used only 7 times, but we are none-the-wiser, as professionals, for how we are supposed to bring about consistent outcomes, given all the variables we will encounter. What is the model we may prop up as an ideal?

As another monumental oversight, there is NO reference to "shared" or "equal" parenting, time, residency or contact so as to make it the intention of any standards of professional practice by mediators and counsellors to work/ aspire towards such an outcome. Why???? Is that because shared parenting is being deemed by the Committee NOT to be in the child's best interests? If so, what does one make then of the Attorney General's recent media comments and is the Committee outright ignoring his stated intentions with these reforms?

"Shared" in the report is only use to refer to the title of the Family Law Amendment (Shared Parental Responsibility) Bill with no direct or passing correlation to be made between the Bill and the applied practice. In essence, if the Bill is intended to make any progress towards shared parenting outcomes it cannot achieve this when the professionals on the Committee responsible for setting the standards and competencies are refusing to follow and implement the spirit of it's purported intent.

It is so elementary it beggars belief that the Committee is shying away from actioning what the AG claims to be a significant move in the direction of equal contact time.

There is more, but I don't need to go into the detail when the obvious is screaming out for attention.

Matilda

- Email sent to Liza James 27/11/05:

RE: Family Counselling, Family Dispute Resolution & CCS Adelaide Validation Focus Group Sessions - Draft Qualification Document

There are glaring competencies missing, such as "Provide gender-neutral mediation and case management services".

Notably, "UNIT CHCDFV8B Provide support to children affected by domestic and family violence" does not require an understanding of Parental Alienation Syndrome. As such, this criteria will likely be seized by extreme elements within the human services field to necessarily instead include the doctrine of Maternal Alienation as coined by Anne Morris to introduce bias into the practices of mediators and counsellors (which is now overwhelmingly the case).

For example, this section reads:

> *−Access and utilize age and developmentally appropriate communication resources (eg. Toys, puppets, drawings)*

Of course, nothing in these competency frameworks guides the practitioner on how to interpret those "communication resources" and on the basis of what training and which perspective.

For example, it suggests the possible use of anatomically correct dolls (e.g. as used in the possible investigation of suspected child sexual abuse), however, the use of anatomically correct dolls has been argued by academics as highly dangerous to validating child sex abuse, such as has been used by practitioners of "the Miami Method", which has resulted in countless false positives.

In one case I had some time ago, for example, a practitioner interpreted a 5-yo child's drawing of her father with six fingers as indicating sexual abuse because the 6th digit allegedly represented the father's penis. However, no allegations of child sex abuse was ever reported or recorded in any Family Court, child protection or other proceedings, nor were these allegations being made by the other parent.

Moreover, many cases will show how counsellors can unwittingly, unintentionally and even foolishly elicit so-called "disclosures" from young and vulnerable children simply by closed and repetitive questioning of children, especially and most commonly those of under 6 yrs of age, where the "disclosure" was either not possible (e.g. when there was clear and credible supervision and/or other witness present to affirm no abuse took place), was implausible (e.g. the child had allegedly been abused in ridiculous circumstances) and typically even impossible (e.g. the child had been abused when the alleged perpetrator was not present) .

I would add much more, but will await further feedback from you.
These competencies, though fine on paper, will mean nothing translated into practice in their present format.

Matilda
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MEDIA RELEASE, 20th January, 2006

Anti Family Forces Hi-jack New Family Relationship Centres

Men's groups can't say what they really believe, but Social Worker and Family Counsellor, Ms Matilda Bawden, today did. "Lesbians are setting the Federal Government's Family Law reform agenda", she said.

Labelling the Federal Attorney General Phillip Ruddock's new *Family Law Amendment (Shared Parental Responsibility) Bill* as ingenuine and a betrayal of the trust and hopes placed by Australian families in the Federal Government and the Liberal Party, at large, Ms Bawden said, "Non custodial parents have wrongly been led to believe that, unlike many since the 1995 Duncan amendments under the Keating Labor government, these reforms would be meaningful and convincing", she said.

Ms Bawden's comments come in response to complaints by non-custodial parent groups that they have been frozen out by the Attorney General's Department from fair and proper representation on the Community Services and Health Industry Skills Council (CSHISC) Steering Committee.

Non-custodial parent groups have had their expectations for shared parenting outcomes in the Family Court raised with the promise that the Industry Skills Council's, Family Counselling, Family Dispute Resolution & Children's Contact Services Project Steering Committee will be developing the professional standards and competencies for working with families undergoing dispute, separation and divorce. As part of the promised reforms, many of these mediators and counsellors will be employed within the newly touted Relationship Centres, however, Ms Bawden believes that the standards and competencies have not covered the critical issues the Federal Government promised they would.

Ms Bawden said, "I am deeply concerned that we now have a predominantly lesbian, anti-father culture and world-view of families determining the competencies and standards towards which family counsellors and mediators will aspire when working with children and their parents during the family breakdown process. Sadly, most hetero-sexual women are probably blissfully ignorant of this influence. **There is almost no father-friendly representation on this Committee and certainly NO evidence to show it is even sympathetic to genuine shared parenting or joint residency outcomes or ideals."**

Ms Bawden points out, "Of the 60 modules contained in The First Draft Industry Qualifications and Validations **not one** contains so much as a whisper (must less passing reference to) shared parenting. **What is more, the Committee is saturated with representatives of organizations which are on the record as being opposed to shared parenting."**

Ms Bawden is available for comment on 0412 836 685, anytime.

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Fatherlessness and the Family Law Reform Fiasco
by Warwick Marsh

The promised Family Law Reform by the Federal Government could be another case of re-arranging the deck chairs on the Titanic, instead of plugging the leak to stop the ship going down. Many of the reform proposals, such as the Family Relationship Centres, are well intentioned, but unless they solve the fundamental problem they really become another layer of bureaucracy to waste taxpayer's money.

In June 2003 the Prime Minister called for an enquiry into the need for a 'presumption of shared parenting'. In late 2003, the House of Representative's Standing Committee on Family and Community Affairs sidestepped the Prime Minister's original request, and came up with a nebulous concept of 'shared parental responsibility' and the need to direct divorcing couples away from the Family Law Court via an early intervention programme. In the latter matter, directing divorcing couples away from expensive, often fruitless and heartbreaking litigation procedures within the Family Law Court, the Committee's report was one hundred percent correct.

Fatherlessness has been shown to increase the likelihood of increased poverty, increased crime, increased incarceration in a prison, increased likelihood of violent sex crimes against women, increased drug abuse, lower educational performance, increased susceptibility to mental health problems, increased risk of suicide and increased likelihood of child sexual abuse. If Australia can increase the proportion of children growing up with involved, responsible and committed fathers, we can begin to solve the problem of fatherlessness in Australia. Dr Bruce Robinson has estimated that fatherlessness costs Australia 13 billion dollars per year. The problem of fatherlessness calls for a broad range of both government and community based initiatives. The easiest part of the fatherlessness problem to fix, would be the reform of the Family Law Court. The introduction of a presumption of equal parenting whilst imperfect, is the best by far of all the bad options. Divorce will always produce a certain amount of fatherlessness and motherlessness which ever way the sums are done. The key is to find a way to ensure equality for divorcing couples, justice for children and reduce divorce at the same time.

The proposed 2005 child custody changes in the Family Law Reform package do nothing more than recycle the ignored 1995 changes.

"The Family Court got it wrong!" was the plain message by then Labor Minister Peter Duncan, as he moved the Keating government's 1995 amendments. In response to the Family Court's refusal to comply with the intent of the original legislation, Minister Duncan stated that:

> *"The original intention of the late Senator Murphy was that the Family Law Act would create a rebuttable presumption of shared parenting, but over the years the Family Court has chosen to ignore that. It is hoped that these reforms will now call for much closer attention to this presumption and that the Family Court will give full and proper effect to the intention of Parliament." (Duncan P. Consideration of Senate Message, House of Reps, Hansard 21 November, 1995, pp 3303).*

Strikingly, despite this further reinforced legislative directive from the Labor Party, the Family Court continued to snub its nose at the intention of this legislation, and joint custody orders in fact fell further from an already paltry 5%, to a further low of just 2.5%.

In his telling "Kangaroo Court" critique, the well respected academic and social commentator, Mr John Hirst, underscored the inability of Australian governments to fully grasp the extent of resistance to equal parenting initiatives from a Family Court with remarkably entrenched views. Of the recently proposed Family Law changes, Mr John Hirst stated that:

> *"Late in 2003, the standing committee reported its findings. It is not clear why it baulked at recommending that joint custody be made law. The committee itself seemed committed to the change; the bulk of the evidence it heard was in favour; the Prime Minister had given them the cue. Although not prepared to recommend it as law, it remained sympathetic to joint custody and in appropriate cases it urged that it be encouraged. Judges in Australia were to consider equal time!"*

The same obstacles to anything resembling equal parenting time will be faced by this new legislation. It is a pointless exercise to ask the Family Court to 'consider' equal parenting time, when the whole culture of the Court is directed against such outcomes.

Importantly, the studies that have sought the views of children document that equal time with their parents is what most children want. Everything known about the children of divorce and their needs tell us that it is in their best interests to maximize the involvement of both parents for the benefit of the child. Where both parents seek to continue their role as parents, the court should reduce neither parent to a mere visitor, unless the other parent comes forward with a compelling reason to do so.

It would be wonderful if the government would consider not only the wishes of Australian children but of the voting public. 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.

It would also be wonderful if the Australian Government would follow the lead of the Italian Senate which has approved a bill, 25th January 2006, making joint custody the norm in divorce cases. Shared parenting after divorce is becoming the norm in countries all over the world and in many states of USA. The US Government just last week approved $500 million for marriage instruction as well as $250 million for developing responsible fatherhood. The people of Australia would applaud any government who acted with such foresight. However it would seem that our present government is more addicted to spin.

The Australian public have a deep sense of unease about the Federal Government's handling of the process of Family Law Reform. This unease is born out by social worker, Matilda Bawden, who says of the committee who are establishing the counselling competencies for the Federal Government's Family Relationship Centres, "There is almost no father-friendly representation on this committee and certainly no evidence to show it is sympathetic to genuine shared parenting or joint residency outcomes or ideals." The Family Relationship Centres, which are supposed to be working towards shared parenting outcomes, will be staffed by counsellors who know nothing about shared parenting. It is a little like Einstein's definition of insanity, 'doing the same thing over and over again and expecting different results'.

Australia's most pressing reason for Family Law Reform is to turn the tide of family breakdown, which will in turn lower the divorce rate. According to American researchers John Guidubaldi and Richard Kuhn divorce rates in USA declined nearly four times faster in high joint custody states compared with states where joint physical custody was rare. As a result, the states with

high levels of joint custody now have significantly lower divorce rates on average than other states. The real reason the Titanic is sinking is because we have refused to put a premium on marriage. Dr Wade Horn, author of 'The Fatherhood Movement: A Call for Action' said, "The best prevention for fatherlessness is building strong healthy marriages." Unless Family Law Reform works towards preventing divorce in the first place it
will continue to be a 'Clayton' style of reform. Waleed Aly, a lawyer and former legal associate to a family court judge, said about the recent proposed changes to Family Law Reform, "It is more a mirage than a breakthrough."

Unless Australia deals with the fundamental problem, which is the continuing high rate of family breakdown, and puts a premium on marriage, the Family Law Reform fiasco will continue. Until the Government gives a firm direction to the Family Law Court, that a presumption of equal parenting must be the starting point for all divorcing couples, re-arranging deck chairs on the Titanic will continue to be our primary occupation.

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