

# PENINSULA WOMEN'S INFORMATION & SUPPORT SERVICE INC.

Reg. No. A0012249 W

Established 1985

ABN 43 039 070 320

Co-ordinator: Elida Radig

Address: 3 Lyons Street, Rye Victoria 3941  
Fax: (03) 5985 7999 Mobile: 0414 300 778  
Email: pwrc@ozemail.com.au

(03) 59 855 955

Committee Secretary  
Senate Legal and Constitutional Committee  
Department of the Senate  
Parliament House  
Canberra ACT 2600

Rye, 22<sup>nd</sup> February 2006



Dear Committee Secretary,


Please find enclosed our submission on the Family Law Amendment (Shared Parental Responsibility) Bill 2005.


This submission, in the form of the C06C Report, is the result of the work of a special Sub-Committee formed in accordance with the Constitution of the Peninsula Women's Information & Support Service Inc. following the introduction of the Amendment Bill to the House of Representatives.

Research was carried out with members of the organisation and the community which illustrated the high level of concern about this serious issue.

We ask the Committee to consider the significance of the very important points that we have made.

Yours sincerely

  
Carol Jamieson  
President

  
Thelma Edelsten  
Facilitator of Sub-Committee

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Thursday 12<sup>th</sup> January 2006

To: Members of Parliament/Organisations and Concerned Citizens.

In accordance with the Constitution of the Peninsula Women's Information & Support Inc., a special Sub-Committee was formed to conduct research on the issues of Family Law Amendment (Shared Responsibility) Bill 2005.

The Committee of Management hereby enclose the Report C06C which we endorse.

In studying this proposed legislation we request that you favorably consider the significant and very important points that we have made.

We look forward to your response and support.

Yours sincerely

Carol Jamieson  
President

Alison McInnes  
Public Officer

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**To:** Members of Parliament/Organisations and  
Concerned Citizens.

**Date:** December 2005/ January 2006

**Location:** 3 Lyons Street, Rye, Victoria

**RE:** Family Law Amendment Bill 2005  
(Shared Parental Responsibility)

**Our Ref.:** C06C

**Introduction:** Attorney-General Phillip Ruddock

**Status:** Federal

**Sources:** [www.ag.gov.au/family](http://www.ag.gov.au/family) & [www.familylaw.go.au](http://www.familylaw.go.au)

Family Law Amendment (Shared Parental Responsibility) Bill 2005  
Family Law Amendment (Shared Parental Responsibility) Bill 2005

Explanatory Memoranda.

Response to the Recommendations of the House of Representatives  
Standing Committee on Legal and Constitution Affairs (the committee) on the Family  
Law amendment (Shared Parental Responsibility) Bill 2005.

Prime Minister Howard Media release July 2004.

The Hon Phillip Ruddock Family reform news Dec.2005 and release.  
Dr. Michael Flood Sociologist – Australian University and The

Australian Institute.

Lundy Bancroft U.S. Academic/Clinician/Author/Judiciary educator  
and activist for reform to Family Law in some states of USA.  
Peninsula Women's Information & Support Service Inc. Case studies.

## REPORT FROM SPECIAL SUB-COMMITTEE. RE: FAMILY LAW AMENDMENT – BILL 2005

### SPECIAL SUB-COMMITTEE

THELMA EDELSTEN (Chair)

CAROL JAMIESON

COLETTE AZIZ

FAY LILLIAN

ALISON McINNES

MARY OWEN

ELIDA RADIG

PENNY BLAZEY

WINN BEVERIDGE

Report: C06C

After discussions, consultation and research the following statements were agreed upon:

In reference to 1) Schedule 1 Item 7 at the end of Section 4. Insert a presumption or starting point, of equal shared parental responsibility. This means that both parents have an equal role in making decisions about major long term issues for the benefit of their children.

***WE DO NOT AGREE THAT IT SHOULD BE PRESUMED THAT SHARED PARENTAL RESPONSIBILITY IS THE STARTING POINT FOR THE PROCESS. ASCERTAINING THE FACTS OF THE SITUATION AND ALL THE VARIABLES INVOLVED SHOULD DETERMINE RESPONSIBILITIES, FOR THE BENEFIT OF THE CHILDREN.***

In reference to 2) Schedule 1 Item 31 Section 65DAA. Where parents share parental responsibility, require the court to consider whether children spending equal time with both parents is practical or in the child's best interests. If not, the court must consider "substantial and significant time" (meaning more than just weekends and holidays, child's day to day routine and special occasions)

***WE DO NOT AGREE WITH EQUAL TIME OR SIGNIFICANT AND SUBSTANTIAL PARENTING TIME AS IT IS USUALLY IMPRACTICAL AND IN MANY CASES UNWORKABLE AND COULD BE AGAINST THE BEST INTERESTS OF THE CHILD.***

In reference to 3) Schedule 1 Item 8 Section 60B. Make the right of children to know their parents and be protected from harm the primary factors when deciding the best interest of the child.

***THE RIGHT OF THE CHILD TO BE PROTECTED FROM HARM IS THE PRIMARY FACTOR WHEN DECIDING THE BEST INTEREST OF THE CHILD. SAFETY IS THE MAIN ISSUE. THE RIGHT TO KNOW EACH PARENT MUST DEPEND ON SAFETY.***

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In reference to 4) Schedule 1 Item 3 Subsection 4 (1). Amend the existing definition of family violence to make clear that a fear or apprehension of violence must be "reasonable"

***WE OBJECT TO THE WORD "REASONABLE" BEING USED TO QUALIFY THE FEAR OR APPREHENSION OF VIOLENCE, BECAUSE IT WILL MAKE IT MORE DIFFICULT FOR A WOMAN TO OBTAIN AN INTERVENTION ORDER.***

In reference to 5) Schedule 2 Subdivision D 70ND 70NDB. Strengthen the existing enforcement regime by giving the courts a wider range of powers to deal with people who breach contact orders.

***WE OBJECT TO THE COURTS BEING GIVEN POWERS TO ORDER MAKE UP TIME AGAINST A PERSON WHO HAS CONTRAVENED A CONTACT ORDER WITH A REASONABLE EXCUSE, WHICH HAS BEEN ACCEPTED BY THE COURT. THIS COULD SERIOUSLY INTERFERE WITH THE PARENT'S DUTY AND RIGHT TO PROTECT HER OR HIS CHILDREN.***

In reference to 6) Schedule 3 Emphasis on Subdivision B 69ZN and on Subdivision C 69ZQ. Make all child-related proceedings in court less adversarial.

***WE FEAR THAT BASIC CIVIL LIBERTIES AND HUMAN RIGHTS COULD BE EITHER LOST OR COMPROMISED IF THE COURT PROCEEDINGS BECOME LESS ADVERSARIAL. i.e. LACK OF LEGAL REPRESENTATION OR ABILITY TO FULLY REPRESENT YOURSELF, THE RIGHT TO PRESENT ALL RELEVANT ISSUES TO YOUR CASE, AND TO CROSS EXAMINE.***

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In reference to 7) Schedule 1 Subdivision E 601. Require people to attend family dispute resolution and make a genuine effort to resolve their dispute before applying to a court for a parenting order (except in certain circumstances such as family violence or abuse).

***WE OBJECT TO COMPULSORY COUNSELLING BEFORE APPLYING TO A COURT FOR A PARENTING ORDER FOR THREE REASONS:***

- A) COUNSELLING SHOULD BE OPTIONAL.***
- B) SEPARATION OF POWERS CANNOT BE ACHIEVED IN A RELIGIOUS ENVIRONMENT, WITH THE RELIGIOUS INFLUENCE OF COUNSELLING SERVICES.***
- C) COUNSELLING SHOULD NOT REPLACE THE RIGHT OF THE PERSON TO GO TO COURT.***

In reference to 8) Schedule 1 Item 41 Section 117AB. Give the power to impose costs against those who make false allegations of violence.

***WE OBJECT ON THE GROUNDS OF THE PRIVATE AND SECRET NATURE OF HARRASSMENT, HARM AND VIOLENCE. ABUSE IS OFTEN HARD TO PROVE, ESPECIALLY MENTAL AND FINANCIAL ABUSE; AND COSTS COULD VERY EASILY BE APPLIED ERRONEOUSLY.***

In reference to 9) Schedule 3 Subdivision B 69ZS. One Family Consultant representing the whole family in the court.

***BECAUSE A FAMILY CONSULTANT IS NOT BOUND BY CONFIDENTIALITY, AND CAN GIVE SWORN EVIDENCE, WE OBJECT TO THE DESIGNATION OF A FAMILY CONSULTANT TO REPRESENT THE WHOLE FAMILY ON THE GROUNDS THAT IT IS A CONFLICT OF INTEREST AND DIMINISHES THE INDIVIDUAL RIGHTS OF A PARTY IN A COURT.***

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IN CONCLUSION:

WE CONCLUDE THAT THE RIGHTS OF A MOTHER WHO HAS BEEN ABUSED COULD BE AT RISK, SHOULD SHE BE REQUIRED TO NEGOTIATE HER OWN RIGHTS AND THOSE OF HER CHILDREN WITHOUT LEGAL ADVICE OR REPRESENTATION, IN FRONT OF COUNSELLORS WHO ARE NOT MEMBERS OF THE JUDICIARY, AND IN THE PRESENCE OF AN EX PARTNER, WHO HAS BEEN INTIMIDATING HER AND COULD MANIPULATE OTHERS PRESENT.

WE ALSO FIND THAT DUE TO PAST INTIMIDATION PLUS CURRENT MANIPULATION AND A WRONG PARENTING PLAN, THE RIGHTS OF THAT MOTHER WILL BE FURTHER ERODED IN THE FAMILY COURT.

WE HAVE ALSO SOUGHT KNOWLEDGE ON WHAT EFFECT VERY SIMILAR LEGISLATION (i.e. A PRESUMPTION OF 50/50 SHARE CUSTODY WITH A LIMITING OF RIGHTS WITHIN THE FAMILY COURT FOR PROTECTIVE MOTHERS) HAS HAD AFTER BEING IN PLACE FOR ALMOST 30 YEARS IN SOME STATES OF THE USA (REFERENCE LUNDY BANCROFT)

RESEARCH SHOWS THAT SINCE THE MATERNAL PREFERENCE WENT OUT OF VOGUE AND SHARED CUSTODY WAS INTRODUCED, FATHERS HAVE HAD A DISTINCT COURT ADVANTAGE.

THE RESEARCH ALSO SHOWS THAT IT IS A MYTH THAT CHILDREN FARE BETTER IN JOINT CUSTODY. IT SHOWS OVERWHELMINGLY THAT THEY IN FACT DO WORSE, EXCEPT IN THOSE CASES WHERE THEIR PARENTS REMAIN ON GOOD TERMS AFTER SEPARATION AND CAN CO PARENT COOPERATIVELY.

WE ALSO TOOK NOTICE OF A REPORT FROM THE AUSTRALIA INSTITUTE OF THE AUSTRALIAN NATIONAL UNIVERSITY WHICH FINDS THAT AUSTRALIAN FATHERS ARE HIGHLY INVOLVED IN THE DAY TO DAY CARE OF THEIR CHILDREN IN ONLY 1 OR 2 PER CENT OF FAMILIES.

WITH THESE FACTS IN MIND WE TOTALLY REJECT 50/50 SHARED RESPONSIBILITY AS A PRESUMPTION (OR FACT) WHICH IN TURN DELIVERS AN AUTOMATIC CLAIM TO 50/50 SHARED PARENTING TIME, THIS WE ALSO TOTALLY REJECT.

WE CALL ON ALL MEMBERS OF PARLIAMENT TO ACT WITH INTEGRITY AND NOT SUPPORT THIS BILL WHICH WAS REJECTED BY THE BI PARTISAN SENATE COMMITTEE, AND HAS THE ABILITY TO DEVASTATE THE LIVES OF SO MANY PEOPLE AFFECTED BY THIS ACT.

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