



SUBMISSION TO THE
SENATE STANDING COMMITTEE
ON LEGAL AND CONSTITUTIONAL AFFAIRS

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

February 2006

PETER VAN DE VOORDE

1.0 INTRODUCTION

- 1.1 This submission is made by Peter van de Voorde. I do so as a humanitarian and as such, wish to draw your attention to the fact that removing Children from one or both of their parents is not a natural condition.
- 1.2 I make this submission on behalf of the vulnerable children of this Country, who do not have a voice of their own and who are totally dependant on the adults handling their welfare.
- 1.3 This submission is made, because we also got it so wrong in the past. This occurred when, for many years we removed Aboriginal children from their parents. This was also deemed to be "In the Best Interest of the Child". Sadly it is my opinion, based on research and my own experiences, that we have got it seriously wrong again.
- 1.4 Australia is a signatory to the UN Convention on the Rights of the Child, Nov 1989 and therefore has an obligation to protect our children's rights to maintain a meaningful relationship with BOTH parents on a regular basis, following separation from one or both parents, as per Articles; 3,5,7,8,9,10,12,13,14,16,18,19,20, of the Convention. **We are failing our UN obligations to protect our Children's Rights**, this can hardly be "In the Best Interest of our Children".

2.0 PURPOSE OF SUBMISSION

- 2.1 More than 600,000 Australian children had little or no meaningful contact with one of their parents (mainly their fathers) during 2005. While at the same time 3 of their Australian fathers committed suicide every day, due to the trauma of forced separation from their children, who are able to be Stolen from them by recalcitrant residential parents who have no respect for Court Orders and/or mediation agreements and ignore them at will. **This has to stop!**

- 2.2 We have a Family Court designed to ensure our UN obligations are met, in relation to providing meaningful contact for our children with BOTH parents following separation, yet after 30 years, Non Compliance of Court Ordered Contact remains an obstacle, which the Courts are **unwilling and unable** to resolve.
- 2.3 Our continuous failure to develop Laws which would prevent the destruction of so many human lives and families, will see us judged by history, in the same way we now judge our previous generations for the atrocities that were inflicted on our Indigenous population. We had little understanding then, and seem to have developed little understanding now, of what we are doing. Many people who took Aboriginal children away from their families, genuinely believed that what they were doing was "In the Best Interest of the Child". As legislators I ask that you please read "Bringing them Home- The Report", to have a clear understanding of the terrible impact bad Laws can have on helpless children, **before you make a decision**.
- 2.4 The accounts of the suffering and the methods used to alienate them from their families and Culture, by people of the Stolen Generation, are not dissimilar from the accounts now coming to light, by victims of "Our New Stolen Generation". Again I implore you, to read a Dec 2004 study by Amy J.L. Baker, Ph.D. "The Cult of Parenthood: A Qualitative Study of Parental Alienation", which is available on the Net, **before you decide** what is "In the Best Interest of our Children".
- 2.5 I am extremely concerned that, without informed knowledge of the potential consequences for our vulnerable children if we continue to get it wrong, your decisions will have a disastrous outcome, not only for those children and families immediately involved but also for the wider community, and our Nation

- 2.6 The issue is not only a Legal one, there are also Mental Health implications which need to be understood and considered. The research on the methods used to eliminate parents out of a child's life and the impact on **both** victims are well documented. In order to be able to make a sound judgment, the reading of "The Parental Alienation Syndrome" by Richard A Gardner, M.D and/or "Children Held Hostage" by Stanley S. Clawar, Ph.D,C.C.S. and Brynne V. Rivlin, M.S.S. are a must!

3.0 HUMANITARIAN CONSIDERATIONS

- 3.1 The gravity of this humanitarian tragedy, which allows the separation of children from their parents by default, can be seen by the comments made by Mr. Kennedy, who was the spokesperson from the Family Law Council of Australia, at the recent House of Representatives Standing Committee Inquiry, into the Exposure Draft of the Family Law Amendment (Shared Parental Responsibility) Bill 2005. When answering a question from Mrs Hull MP at these hearings on the 20th July 2005, as to "how often would costs be awarded against a habitual offender for not providing contact, and how many times do they have to go to Court in order to get cost awarded against them"? He replied that "In many cases the people breaching the Orders, and those doing it repeatedly, are people of very limited means, or will **often have underlying psychiatric or other health issues, such as alcoholism, drug addiction and all sorts of social and other problems.** The mere imposition of a financial penalty on them is impractical for two reasons; They cannot pay it, and if they were to pay it, the children would suffer because they would not have the funds available for other purposes".

- 3.2 What sort of gobbledegook is this? If we were to extend this reasoning to Criminal or Civil Law, it would lead to anarchy. No one would be expected to have to pay their fines or go to jail, simply because their children might suffer.
These children ARE suffering!!
- 3.3 Mr Kennedy, who is also the Vice-President of the **International Academy of Matrimonial Lawyers**, went on to say, **“The issue of Compliance is absolutely an International and extremely difficult one. No-one in any part of the world has a solution to it”**. He further states that **“there is that group of people who, whatever you do, are not going to play the game and comply with Orders. It really is an intractable problem. We absolutely recognize that. If anybody could invent a solution, it would spread around the International Community like wildfire”**.
- 3.4 This acknowledgement, by the **International Family Law Industry**, that they are **knowingly** failing to provide justice for our children and protect their rights as per our UN obligations, hopefully is what is going to spread around the International Community like wildfire!
Is this not a form of State Sanctioned Child Abuse?
- 3.5 Our Children must also be absolutely thrilled to hear these comments, which only ensure they can continue to be **Stolen from one Parent, then abandoned and left in the care of the most Dysfunctional of their parents**. This represents 30 years of failing to effectively protect our children. This sort of twisted view of what is **“In the Best Interest of the Child”**, still prevails with the practice of **Stealing Aboriginal Children from their Parents**.

- 3.6 The above comments show that in effect we are still allowing the Stealing of Children from their Parents, **INCLUDING** Aboriginal Children. We have simply widened the net, invented a new system, which embraces the larger community, with new titles, new rules and regulations. **But the end result is exactly the same.** By the International Lawyers' own admissions, Family Law Courts have played a major role in this, and now, after 30 years of posturing, they **acknowledge** not to have any answers.
- 3.7 Mr. Kennedy's admissions have finally shown us, what all those separated parents who are non-residential parents, have known for many years, that going to Court in the believe that obtaining a Court Order will allow them to remain in Contact with their children, is a **fallacy**. It will however guarantee that they will be left physically, emotionally and financially destroyed. Only the foolhardy go back to Court to complain about contravention of Contact Orders. Most non- residential parents are unable or unwilling to continue, And see the Court as a failed institution, which **failed to provide justice for their children, no matter how hard they tried.**
- 3.8 Left in a fragile state, the only option these parents have is to return to this failed institution, which is unwilling and unable to enforce its own Orders, and asked to spend further thousands of dollars on Lawyers to instigate contravention proceedings, because they are **falsely** led to believe that justice will prevail there, and the residential parent will be **forced** to allow the children to remain in contact with their other parent. Only to discover, that following a slap on the wrist, nothing changes. This leaves the children unprotected from all types of emotional and psychological abuse, inflicted by a Dysfunctional residential parent, while the other parent is unable to come to their assistance and protect them. In the end these parents are forced to walk away from their own children, in order to save themselves!

This is the result of Lawyers and other self interest groups having a free rein for 30 years, at the expense of hundreds of thousands of innocent children. The Laws governing the separation of Aboriginal children from **their** parents, were written by Lawyers, with the main beneficiaries being the Churches and pastoralists. The current Laws are written by Lawyers, with the main beneficiaries being Lawyers, and Dysfunctional Residential Parents. The children remain forgotten.

- 3.9 There are provisions both in the UN Convention on the Rights of the Child and in our own Family Laws, that Children have the right to be protected against all forms of physical, sexual, emotional and psychological abuse. I wholeheartedly support these rights. We have to be super vigilant however, in order that those provisions are not abused as they were, when Indigenous children were removed from their parents. These parents were also denigrated by authorities as not being fit to look after their children by virtue of an array of **false allegations**. This tactic certainly guaranteed the separation of the children from **their** parents, and the terrible emotional and psychological damage that occurred as a result of dehumanizing their parents, is now well documented.

4.0 PUNITIVE AND ENFORCEMENT AMENDMENTS

- 4.1 The adding of further punitive measures to strengthen the so called "enforcement regime", should be seen for what it is, nothing more than a smokescreen. It only **appears** as if something is being done. On closer examination it can be seen how 65(D)(A)(2), already deals with particulars of the obligations Court Orders create, it shows the particulars of the consequences that may follow if a person contravenes the Orders, and states the following;

Re Contact Orders;

- 3.4.2.2 A person bound by the order must comply with the Order. In addition, while the contact order is in force, a person must not;

- 3.4.2.2.1. Hinder or prevent a person and a child from having contact in accordance with the Order; or

- 3.4.2.2.2. Interfere with the Contact that a person and the Child are supposed to have with each other under the Order.
- 3.4.2.3. If a person contravenes the Order, a Court may, on **application;**
 - 3.4.2.3.1. Issue a recovery Order authorizing police officers to recover the child and to deliver the child to a person with whom the child is to have contact;
 - 3.4.2.3.2. Order the person to attend a post-separation parenting program.
 - 3.4.2.3.3. Make a compensatory contact Order;
 - 3.4.2.3.4. Require the person to enter into a bond;
 - 3.4.2.3.5. Fine the person up to a maximum of \$6,000;
 - 3.4.2.3.6. Make a community service Order against the person;
 - 3.4.2.3.7. Imprison the person for a maximum of 12 months;
 - 3.4.2.3.8. Vary the Order that was contravened.

So it can be seen, that there are already a substantial number of punitive measures available to the Courts. However, as per Mr. Kennedy's revelations in 3.1 and 3.3 of my submission, it can be seen that the Courts are unwilling to act against habitual offenders. My point being, that there is no point in adding further punitive measures, while the Courts refuse to make use of the existing ones.

- 4.2 The absence of any Instrumentality to **ENFORCE** Court Ordered Contact, makes all Court Orders irrelevant, and makes a mockery of the claim that, "the proposed amendments represent the most significant changes to the Family Law System in 30 Years".
Air brushing something ugly only makes it APPEAR less ugly.

- 4.3 In the apparent absence of available statistical data on **costs or any other punitive measures** being awarded against habitual offenders, how is it possible to measure the success or failure of any **new** amendments to an already badly failing system?
- 4.4 Family Relationship Centres designed to encourage and assist parents to reach agreement on parenting arrangements after separation outside of the Court system where appropriate, on the face of it, would appear to be a sensible approach. The current adversarial nature of the Family Court System only serves to exacerbate the antagonistic views the opposing parties have of each other. The outcome of which, is that hundreds of thousands of innocent children become tools to be used to punish the parent who no longer resides with the children. It is foolish however to believe that parents, hell bent on punishing the other parent for perceived wrongdoings, are going to abide by Parenting Plans. These parents simply refuse to comply with Court Orders, and as already shown, can do so with ease. Who is going to **enforce** these **Parenting Plans**? The psychopathic behaviour of these parents who show no respect for the law and do not even **consider**, the right of their child to have a relationship with BOTH parents following separation, needs to be closely looked at.
- 4.5 The Government's Terms of Reference, acknowledge the need to promote the benefit to the child of **both parents** having a meaningful role in their lives and to recognize the need to protect children from violence and abuse. Is it cynical to suggest that perhaps we should look at the role that Lawyers play in all this first? After all they stand to lose the most, if we were to adopt practices which would actually provide **Real Justice for the Children**. Many Law firms have developed large Family Law practices over the last 30 years. They know very well that the current system has nothing to do with providing Justice for our children. They know very well that despite all the posturing in Court, the person who becomes the residential parent can do whatever they like. This includes eliminating the other parent out of the children's lives. The methods used to achieve this cruel result are well researched and documented and are referred to in 2.6 of my submission.

5.0 ALTERNATIVE REFORMS

- 5.1 As a first step, the provisions of the Bill should be tightened to **ensure** that our children are protected from being Stolen, separated and eliminated from one or both of their parents, as per our **UN obligations**.
- 5.2 The legislation should be amended to include an enforcement instrumentality such as a Contact Compliance Agency. This agency to have the same sweeping powers as the Child Support Agency. This would enable non residential parents to **write and report** contraventions of Court Ordered Contact, instead of the current procedure of having to go back to Court again and again. This agency would then request a written explanation from the residential parent, as to why the Court Orders were contravened. It would be accompanied by a reminder of their responsibilities regarding their Court Orders and the penalties that may be imposed, if they continue to disregard the Orders. This would also establish a record of the nature and number of contraventions that have taken place. This record could then be used in Court by the Agency. This would go some way towards **the State accepting their UN responsibilities**.
- 5.3 In order to protect our children from bad judgments which have the potential to destroy so many of their lives, I propose that the legislation be amended so that members of the Judiciary and those that are to staff the proposed Family Relationship Centres are required to be well informed of the Mental Health issues associated with the nightmare these children face. Again I refer you to 2.6 of my submission.
- 5.4 That the provisions of the Bill include the Mandatory Analysis of the psychological suitability of those wishing to remain residential parents, when persistent Non Compliance of Contact Orders prevails. That those carrying out this analysis, have the required degree of knowledge of Psychopathic behaviour in order to better detect these destructive individuals who destroy so many young lives

6.0 CONCLUSION

6.1 The Bill as it currently stands has severe limitations.

1. It still fails to ensure we meet our UN obligations on Human Rights, as per the **UN Convention on the Rights of the Child**.
2. It does not eliminate unfettered and unjustified powers to the Residential Parent.
3. It has no provision for an enforcement instrumentality to enforce Court Ordered Contact, thereby **ensuring nothing will change**.
4. It fails to comprehend the terrible plight of our helpless Children, who are living in a nightmare they can do absolutely nothing about.
5. It fails to realize the implications of the need to understand the Mental Health issues involved.
6. It fails to observe the similarities with the plight of the Aboriginal Children who were Stolen and separated from **their** parents.
7. It accepts the Courts unwillingness to use the punitive powers at its disposal, thereby allowing the residential Parent to do as they please.
8. It does not seem to understand that without the Court being prepared to use punitive powers and without an enforcement agency, the Court Orders obtained are not worth the paper they are written on.

6.2 The legislation should be withdrawn and alternative reforms advanced, unless we wish to remain in the dark ages.
Our Children demand and deserve better.

- 6.3 I appeal to you as legislators to help achieve **real** justice for these children and ask that you view their plight with the compassion it deserves. Continued inertia and failure to change these archaic and grotesque Laws are destroying the very fibre of our Nation by the nature of its divisiveness. **History is sure to judge us harshly.**
- 6.4 We are presently dealing with many angry children and youths in our communities, **both black and white.** Major behavioral problems are present in our schools. Many angry youth act out their anger with violent behaviour such as what happened in Cronulla. Many of these children and youths have no positive male role model in their lives, neither at home or at school. Many are angry that one of their parents has been allowed to be eliminated from their lives. Their expressions of anger, could be an indication that **the chickens are coming home to roost,** following 30 years of inaction.
- 6.5 This issue affects Hundreds of Thousands of our Children and their lost Families. The responsibility to resolve this nightmare for our children belongs to **ALL OF US. Dysfunctional Parents, can lead to Dysfunctional Children, can lead to Dysfunctional Communities, Can lead to a Dysfunctional State!**
- 6.6 Please find enclosed a copy of **OUR STOLEN CHILDREN, CD,** soon to be released, and on behalf of our helpless, vulnerable Child victims, I respectfully ask that you **PLEASE!** spare a little time and listen carefully to the words of the songs. They draw attention to the feelings of helplessness, despair, grief, frustration, hopelessness, bewilderment, and anger that are experienced by the victims, and that these injustices should be allowed to happen in 2006. It is designed to be a gift to the Stolen Children, from all those family members, and friends who also love them and care for them. Hopefully it will offer some insight of how one parent and half of their extended family disappeared from their lives, and help them reconnect with those loved ones. It will also help those lost families understand why they no longer have contact with the children. I hope helps to achieve some understanding of the plight of **"OUR NEW STOLE GENERATION" and their "LOST FAMILIES".**