

**A GRASSROOTS RESPONSE TO THE FAMILY LAW REFORM –
FAMILY LAW AMENDMENT (SHARED PARENTAL RESPONSIBILITY)
BILL 2005 – A CULTURAL SHIFT IN DEALING
WITH FAMILY BREAKDOWN –
OR IS IT?**

We welcome reform. We believe that there is a need for a bipartisan approach towards family relationship issues. The reforms, among other things, attempt to answer two questions:

1. What is in the best interests of the child/children?
2. How does the **Court determine** what is in the best interests of the child/children?

The reforms are aimed at providing a new recipe/formula for the Court and Family Law Dispute Resolution Services to use in an attempt to answer these questions. But what about people who wish to answer these questions for themselves?

We do not wish to enter into a debate regarding the new formula/prescription that the Family Law Reform has developed for answering these questions. Our submission is narrow in its focus. It is focused solely on the development of an alternative approach for those people who wish to explore the possibility of answering these questions themselves.

The Family Relationship Centres proposed by the current reforms are central to the Government's reform package. It has been said that these Centres will encourage individuals to develop their own solutions. The current proposals for these Centres, however, will do little to empower disputing parties towards developing their own solutions. This is because the current proposals emphasize the provision of "**advisory dispute resolution**" services. Essentially, the Centres will be required to offer a range of professional advice and professional information to assist parties to develop solutions.

Put in another way, the staff of the Family Relationship Centres will be imposing their **opinions** on the disputing parties about how the disputing parties should resolve their dispute. For instance, it is currently proposed that individual interviews will be offered where the staff of the Relationship Centres will **assess** whether the cases are suitable for joint session and, if not, whether other services may assist the individuals and, if so, which services. It is important to note, therefore, that at this initial stage the very first thing that the Centres are required to do is make a "**determination**". This may be referred to as an **assessment** but the consequence is the same. It results in the imposition of an **opinion** upon the disputing party. One way to bring about a true cultural change would be for the Government to focus on different kinds of dispute resolution services.

The original Section 10H of the **Family Law Amendment (Shared Parental Responsibility) Bill 2005** made a distinction between “**advisory dispute resolution**” and “**facilitative dispute resolution**”.

The House of Representatives Standing Committee on Legal and Constitutional Affairs (“the Committee”) on the **Family Law Amendment (Shared Parental Responsibility) Bill 2005** has, of course, made certain recommendations. In response to Recommendation 30 the Government developed the view that the distinction between “**facilitative**” and “**advisory dispute resolution**” was no longer required in section 10H(2).

It is important that the Government understands that the two processes are entirely different and, as such, should be distinguished.

We are concerned because the subsequent guidelines which have been published in relation to the Family Relationship Centres make it clear that these centres will be organisations which provide professional advice and referral and which will provide opinion based on government policy and/or professional knowledge regarding solutions for the conflict facing the disputing parties. In other words, the current vision the Government has for Family Relationship Centres is that they will provide “**advisory dispute resolution**” services to the exclusion of “**facilitative dispute resolution**” services.

If the Government is truly looking for a cultural change, then the Government needs to come to terms with the difference between these two methods of dispute resolution. The primary difference is in relation to the point of power. In an “**advisory dispute resolution**” service the point of power lies with the adviser as the adviser has the power by virtue of the knowledge, whether it be legal knowledge or psychological knowledge, in relation to the provision of the advice. On the other hand, in an open “**facilitative dispute resolution**” process the facilitator assists the parties to discover and hold onto their own power. The facilitator does not provide opinion or advice based on legal knowledge or any other professional knowledge. If there were a shift towards “**facilitative dispute resolution**”, therefore, there would be a shift towards individual parties taking more responsibility for developing their own unique solutions to their unique family disputes.

It is in the shift from “**advisory dispute resolution**” towards “**facilitative dispute resolution**” that the Government may achieve the cultural change that it is looking for. The current model which has been proposed by the Federal Government does little other than extend the current system of non-adversarial “**advisory dispute resolution**” as distinct from adversarial dispute resolution. It does nothing towards progressing people towards a cultural change. It, therefore, provides little more than window dressing to the current system. The reason for this is purely and simply because the Government has not been able to develop a concept of “**facilitative dispute resolution**”.

We are not suggesting that “**advisory dispute resolution**” services or **determinatory** judicial dispute resolution services do not play a significant role in the overall Family Law reform. There will always be some parties who are significantly entrenched in their conflict such that “**facilitative dispute resolution**” will not achieve solutions. However, truly “**facilitative dispute resolution**” services at least need to be a part of the system.

We would value the opportunity of being able to develop an alternative model for a Family Relationship Centre. The model would be based upon the provision of education in personal awareness/personal development. It is proposed that parents/grandparents/significant others participate in such an education program, which will offer assistance in emotional intelligence. Here the term “education” is used in its Latin sense meaning, “to lead out”.

Such an education program, it is submitted, will enable parents/grandparents/significant others, to understand their own role in the family dynamic. This will assist these people to subsequently participate in “**facilitative processes of dispute resolution**” more deeply and to take more personal responsibility for developing their own solutions.

We welcome the opportunity of being able to produce an alternative model for the Government. It could be launched as one Centre in the Newcastle area as a pilot program. It could be monitored for its effectiveness and if it proves to be effective the model could be further developed and used more extensively throughout Australia.

There are a number of distinguished and highly trained people and organisations willing to contribute towards developing such a model.

These people include:

1. Sonia Anderson - Lawyer/Educator/Mediator/Author of the book "Reflections on Law & the Failure of Morality" published 2005 by Insight Press, New York. Her associates - Australia's Leading Edge Alternative Dispute Resolution (LEADR) have made a commitment to this "Holistic Education" project.
2. Professor Ronald Laura, Education Faculty, Newcastle University, whose innovation is recognised worldwide, having published some 25 books and numerous academic articles.
3. Barbara Tebo, a highly qualified and internationally respected educator in personal development and awareness programs that relate to the Family Relationship Centres' modus operandi.
4. Dr Warren Farrell, prominent American author and educator regarded as global expert on Children, Parenting & Families who has keen interest in Australia, visiting many times. He has been a regular on the Oprah TV Show and his books are best sellers worldwide. Warren is willing to do

an Australia Tour Oct 1-21, 2006, to raise public awareness by enhancing and promoting the Family Relationship Centres as a new way to have a truly caring Family Court System in Australia as a global model.

The model that we propose for the pilot Family Relationship Centre would move the emphasis from **advice** and **assessment** to **empowerment** of the parties in an effort to facilitate the parties towards developing solutions to their own conflict. It is this kind of process that we believe will, eventually, provide Australia with the kind of **cultural shift** that is intended by the Government.