***NON-CUSTODIAL PARENTS PARTY (EQUAL PARENTING)***

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Attention Ms Julie Dennett

Dear Ms Dennett,

**Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011 - Reply to Professor Richard Chisholm.**

We thank the Senate Standing Committee on Legal and Constitutional Affairs for the opportunity for us to make a response to the comments made by Professor Richard Chisholm to our submission (referred to, in your letter dated 20 May 2011, as Part 2 of Professor Chisholm's submission).

## 1. Introduction.

We submit that the following organizations have already made general submissions to the Senate Standing Committee. The submissions either seek that the Standing Committee rejects the *Family Law Legislation Amendment*

*(Family Violence and Other Measures) Bill 2011* or seek that the Standing Committee has the Bill heavily modified.

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1. Non-Custodial Parents Party (Equal Parenting)
15. Fairness In Child Support
44. Dads in Distress Support Services
45. Mr Roger Smith
55. Mr David Hardidge
60. Men's Health Australia
61. One in Three Campaign
68. Professor Stephen Brown
76. Mr Eric Sanders
95. Dads4Kids Fatherhood Foundation
108. Mr Simon Hunt, Family Law Action Group
109. Mr Gordon Cramer
145. Mr Dale Williams
146. Joint Parenting Association
150. Mr Matthew Hopkins
151. Mr Alberto Carvalho
152. Mr Alexander Stewart
155. Mr Howard Beale
156. Mr Cameron Smyth
157. Salt Shakers
161. Mr George Potkonyak
167. Richard Hillman Foundation
170. Men's Rights Agency
171. Mr John Stapleton
184. FamilyVoice Australia
190. Lone Fathers Association of Australia
204. Shared Parenting Council of Australia
215. Mr Michael Fox

We do not propose to re-state and analyze the overall issues in this particular response to Part 2 of Professor Chisholm's submission. We believe that the Senate Standing Committee would already have sufficient information on the more significant issues from the above submissions.

At first glance, we note there appears to be many more submissions supporting the Bill (in a ratio of approximately 2:1)

However we submit that many of the submissions supporting the Bill would appear to have been actually written by the same author. This is particularly with regard to the submissions commencing with the words "I am writing to express my support".

## 2. Professor Chisholm's Concerns about our Comments on potentially erroneous family violence accusations

Professor Chisholm seems to be concerned that we believe that potentially erroneous family violence accusations would become paramount when deciding whether or not children are to have contact with both parents

We refer the Senate Standing Committee to Item 17 of the *Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011*, viz.

> ***Subdivision BA—Best interests of the child: court proceedings***
>
> ***17 After subsection 60CC(2)***
>
> *(2A) If there is any inconsistency in applying the considerations set out in subsection (2), the court is to give greater weight to the consideration set out in paragraph (2)(b).*

We also refer to the corresponding reference in the Explanatory Memorandum for the Bill, viz.

> ***Item 17: After subsection 60CC(2)***
>
> *29. Item 17 inserts new subsection 60CC(2A) which requires the court, when determining what is in a child's best interests, to give greater weight to the primary consideration that protects the child from harm in cases if there is inconsistency in applying the considerations. Section 60CC(2) of the Act provides that the two primary considerations are: (a) the benefit to the child of having a meaningful relationship with both of the child's parents; and (b) the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence. Where child safety is a concern, this*

*new provision will provide the courts with clear legislative guidance that protecting the child from harm is the priority consideration.*

It is clear that this proposed change "*after Section 60CC(2)*" would effectively mean that potentially erroneous family violence accusations would become paramount when deciding whether or not children are to have contact with both parents.

This is despite Professor Richard Chisholm's claims to the contrary.

## 3. Professor Chisholm's Concerns about the accuracy of the Statement that the bill undermines the 2006 amendments

Professor Chisholm states in his summary that "*nor do I think it is accurate to say that the bill undermines the 2006 amendments (leaving aside the emotive word 'sabotage')*".

We agree that the 2006 amendments did not say that there would be a rebuttable presumption of equal-time shared parenting. The amendments merely stated that there would be a consideration of "equal-time shared parenting".

However many separated parents (perhaps incorrectly) believed that this is what the legislation said. That is, they believed that the Family Court would genuinely consider that the "rebuttable presumption of equal-time shared parenting" as a starting point.

By shear weight of numbers "equal-time shared parenting" has became more and more the norm since 2006. Very often, this has occurred without having to go to Court.

This new piece of proposed legislation is a "Trojan horse". This is the term aptly used in Parliament by a National Party member of the House of Representatives, the Honourable George Christensen MP, on Monday, 30 May 2011, to describe this Bill

This is also despite Professor Richard Chisholm's claims to the contrary.

As such, we still believe that *Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011* will adversely undermine the changes made in the 2006.

## 4. Our Concerns

We have been concerned with the ultra-conservative thinking of Professor Richard Chisholm for some time.

We would refer the Senate Standing Committee to a 33-page paper prepared by the then Family Court judge, Richard Chisholm. The paper is titled "*The Paramount Consideration*". It was given to the 10th National Family Law Conference in Melbourne in March 2002.

The *Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011* is about the Best Interest of the Child Principle – also referred to as the Paramountcy Principle.

In that paper, Richard Chisholm discussed the "strong view" and the "weak view" of the Paramountcy Principle. In his conclusion, Professor Chisholm came down on the side of the conservative "strong view" of the Best Interest of the Child Principle. (As a disclaimer, it is noted that Richard Chisholm does refer to a case in which the undersigned was a party. This is on pages 27 and 28 of the paper).

We believe that this thinking is reflected in Professor Chisholm's *Family Courts Violence Review,* which formed the basis of this Bill.

We submit to the Senate Standing Committee that parents after separation are not concerned about "weak views" and "strong views". They are concerned about having a significant amount of contact with their children after separation.

If passed by Parliament, this Bill will certainly adversely affect that desire.

Therefore, due to the lack of consideration of these adverse consequences of the *Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011*, we again submit that the Bill should be rejected in its entirety.

Yours faithfully

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