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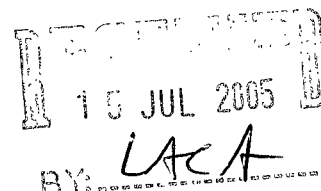
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15th July 2005

NT
The Secretary
House of Representatives
Standing Committee on Legal and Constitutional Affairs
Parliament House
Canberra ACT 2600



Dear Secretary,

Review of exposure draft of the *Family Law Amendment (Shared Parental Responsibility) Bill 2005*

The Domestic Violence and Incest Resource Centre (DVIRC) is a Statewide organisation providing professional development and resources to those who work with victims of family violence, including sexual assault, throughout Victoria. The Centre provides:

- professional education and training programs
- community education strategies and public forums
- publications and web-sites
- policy-focused research and discussion papers, and advice to government through participation on committees and working groups
- a lending library and information service
- a referral service, and secondary consultations for those working with victims of violence.

Our organisation is a member of the Federation of Community Legal Centres (FCLC), and we actively participate in the Violence Against Women and Children (VAWAC) working group of the FCLC. DVIRC also works closely with the Victorian Women's Legal Service, and is an active member of Domestic Violence Services Victoria (DV Vic) the peak body for women's domestic violence services in Victoria.

DVIRC wishes to **strongly endorse the submission made by the National Network of Women's Legal Services (NNWLS)** to the Standing Committee on Legal and Constitutional Affairs in relation to the exposure draft of the *Family Law Amendment (Shared Parental Responsibility) Bill 2005*.

We regret that the extremely short timelines for responding precludes us from providing a more detailed response to the exposure draft. However we

support the recommendations proposed in the NNWLS submission, and would like to make some brief additional comments.

Shared parenting & meaningful contact:

We are concerned that the Government Response to *Every picture tells a story* refers consistently to the notion of the 'importance of children having the opportunity for both parents having a meaningful involvement in their lives'.

With regard to S63DA(2) in the exposure draft, regarding the obligation of Family Dispute Resolution (FDR) advisers to raise 'substantial time' arrangements, we refer the Committee to comments made in our *Response to the Discussion Paper: A New Approach to the Family Law System Implementation of Reforms* on 10 November 2004¹, which stated:

Research repeatedly shows that equal time is not the preferred option for most families, nor is it workable for many². Nor does research demonstrate that equal time is necessarily best for children. In fact, clinical child psychologist Dr Jenn McIntosh argues that 'in isolation, father's increased contact with children is not thought to produce better outcomes for children'³.

Repeatedly this Government has heard that children of different ages and stages have very different needs following separation, and that it is harmful to impose a universal formula to parenting arrangements. Clinical psychologist Vincent Papaleo writes that 'In all circumstances, the aim should be.... for the contact plan to be primarily sympathetic to the child and their developmental needs, and not the need of either parent'⁴. In some cases and stages, for example, when a child is under three, Papaleo argues that equal shared time may in the longer term do more harm than good, and may undermine a child's capacity to develop a strong relationship with a parent in the future⁵. He goes on to argue that;

*'A parent's rights to contact must be secondary to the developmental needs of the child, and this may lead to situations that might seem unfair to one parent. It is essential that the needs of parents not compromise the child's development of a secure sense of trust and attachment to its primary carer'*⁶

The proposal to start from a position of equal parenting time undermines the capacity to begin from what is in the best interests of children. It suggests a preconceived notion of what is optimum for all

¹ Domestic Violence & Incest Resource Centre (2004) *Response to the Discussion Paper: A New Approach to the Family Law System Implementation of Reforms* Melbourne November 2004

² Australian Institute of Family Studies (2004) *Parent-Child Contact and Post-Separation Parenting Arrangements*, Research Report No. 9, Melbourne www.aifs.gov.au/ and Smyth, Bruce (2004) 'Post-Separation Parenting Arrangements: from research to family law practice', paper presented at Victoria Legal Aid Conference, Melbourne, 03.12.04

³ McIntosh, J. (2004) 'Enduring Parental Conflict in Family Law: Impacts on Children' paper presented at Victoria Legal Aid Conference, Melbourne, 03.12.04, p.5

⁴ Papaleo, V. (2004) 'Developmental Considerations in Contact and Residence Disputes' paper presented at Victoria Legal Aid Conference, Melbourne, 03.12.04, p.3

⁵ Ibid, p.5

⁶ Ibid, p.6

children, and, worse still, suggests an arrangement that has not been shown to be suitable for most children or parents.

This presumption is not founded on sound research, and further runs the risk of de-prioritising issues of safety and giving greater weight to the rights of parents rather than children.

Training of FDR Advisers and FRC staff:

The issue of training of FDR advisers is fundamental to ensuring that women living with violence are not forced to participate in unsafe FDR processes. We again refer the committee to comments made in our *Response to the Discussion Paper: A New Approach to the Family Law System Implementation of Reforms* on 10 November 2004⁷ in relation to screening for violence:

‘According to the Discussion Paper, victims of violence should not be required to have contact with the perpetrator, nor should children be forced to have contact with an abusive parent. The Family Relationship Centres are to screen out cases where family violence is present. However, Australian research shows that despite screening and assessment tools, domestic violence is not identified as an issue for many families attending mediation services⁸. ...

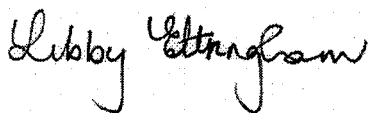
The reality is that despite the best attempts to screen out violence, many families attending these Centres will have issues of family violence or abuse.

This raises a number of issues that must be addressed. First of all, effective screening does not only require the careful development of appropriate tools, but a great deal of knowledge and expertise by the worker that is assessing violence. In addition, even the most sensitive screening tool, and highly skilled adviser will not identify all cases of family violence. Research of mediation services reveals that almost two thirds of cases attending involved family violence, and less than a third identified as such⁹. The impact violence or abuse has on the capacity to mediate is well documented. Furthermore, it requires considerable expertise on the part of the adviser to develop methods that might be appropriate, such as shuttle mediation.’

Screening will not be sufficient to preclude victims of violence attending parenting advice sessions. DVIRC recommends the development of comprehensive training around family violence prevalence, types, and dynamics for all staff at Family Relationship Centres, Family Court and Contact Centres. Accredited training in recognising and responding to family violence must also be a requirement for FRC staff.

DVIRC urges the Committee to give serious consideration to these issues and to the recommendations proposed by the National Network of Women’s Legal Services.

Yours sincerely,



Centre (2004) Response to the Discussion Paper: A New Approach to the

Family Law System Implementation of Reforms Melbourne November 2004

⁸ Keys Young (1996) and Astor, Hilary (1991)

⁹ Ibid

Libby Eltringham, Community Legal Worker