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Submission No. 62.1

Date Received

To:
Committee Secretary
House of Representatives Standing Committee on
Legal and Constitutional Affairs
Parliament House
CANBERRA ACT 2600
AUSTRALIA

Via email: laca.reps@aph.gov.au

Re: FAMILY LAW BILL'S 23/06/2005 EXPOSURE DRAFT - SUBMISSION

Dear Sir/Madam,

This Submission is a Supplement to a Submission we made on 20 July 2005.

The matter of this submission is the contradiction in law of the Family Law Act 1975 s 43 with s 44, Part VI and other sections and parts of the same Act.

FLA s 43(a) states that "the institution of marriage as the union of a man and a woman to the exclusion of all others voluntarily entered into **for life** [emphasis added]"

FLA s 44(1A) provides that "[p]roceedings under this Act for a decree of **dissolution of marriage or nullity of marriage** may be instituted by either party to the marriage or jointly by **both** parties to the marriage" even though the parties are still **alive**.

FLA Part VI the "**Dissolution and nullity of marriage**" is often applied while the parties are alive.

It appears that the *leges posteriores priores contrarias abrogant* rule has been at work since 1975, however, it is the opportunity for the legislature to discard the contradiction.

Suggested amendment:

1. Omit the words 'for life' from s 43(a)

Or

2. Insert the words 'with the intention of it to be' before the words 'for life'.

If the matter is not corrected, members of our group will challenge the Federal Magistrates Court to apply s 43(a) when rescinding Divorce Applications.

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