



## Shared Parenting Council of Australia

12 May 2011

Committee Secretary  
Senate Legal and Constitutional Committees  
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### **Submission to the Senate Standing Committee on Legal and Constitutional Affairs – Inquiry into the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011**

Dear Secretary, Senators and Members,

The Shared Parenting Council of Australia (SPCA) has been extensively involved in family law and child support legislative reforms since its formation in 2002. Our organisation, affiliates and other likeminded organisations were instrumental in developing many excellent legislative reform components in the 2006 Family Law amendments that have directly lead to:

- A family law regime where children are safe, have the benefit of both parents involved in their lives, are protected from physical or psychological harm or being exposed to abuse, neglect or family violence. (60CC (2) (a) and (b));
- A regime that facilitates, and encourages, a close and continuing relationship between the child and both parents (60cc) (3);
- A situation that directs courts to consider proper and adequate time to enable fulfilling family relationships (65DAA); and
- A regime that allows family courts to take into account relevant considerations in matters relating to violence in (s68R, s61DA 2(a)).

In relation to the legislative landscape, we believe it prudent the Senate consider numerous family court judgements<sup>1</sup> since the introduction of the Shared Parenting provisions in the 2006 legislation which detail and define the notion of “Unacceptable Risk” and the evidentiary standard of proof that is not dealt with in any significant way in State Legislation, which much of the proposed amendments have been modelled on.

The SPCA support for the 2006 Family Law Amendments were founded on two solid principles upheld by a bipartisan report of the Federal Parliament, being:-

1. That the Parliament of Australia in recognising the fundamental right of every child to experience the love, guidance and companionship of both parents after their separation or divorce declares that it is the public policy of the Commonwealth to assure minor children of an equal opportunity and relationship with both parents, after the parents have separated or dissolved their marriage and to require parents to share the rights, duties and responsibilities of child rearing to affect this policy; and

2. That where there is no physical violence, abuse or significant contraindications then the starting point for care time when parents separate is equal time if possible or substantial time, with such care time arrangements to be adjusted to that which is workable and/or requested by the parents.

The Shared Parenting Council fully supported the extensive report of the House of Representatives Standing Committee on Family and Community Affairs, entitled 'Every Picture Tells A Story' and whilst we were disappointed that a rebuttable presumption of equal parenting arrangements was not accepted by that committee, we did however agree with the majority of its findings and recommendations and congratulated the members of both sides of the parliament, on their patience and endurance through the overwhelming public response to their inquiry and also for their clear demonstration of an extensive understanding of the circumstances that may befall everyday Australians who end up in the family court system.

### **Current Amendments**

The current amendments have come after only a relatively short time in operation (only four and a half years) since legislation was passed, following the very extensive parliamentary inquiry across Australia and recommendations made in the Bi-Partisan report "Every Picture Tells a Story". This very significant report, having received the most number of submissions ever in any parliamentary inquiry, has almost been dispensed with in the lead up to the proposed and flawed amendments currently before the Parliament. The large study undertaken through a survey of over 20,000 respondents by the Institute of Family Studies in 2010 has barely been considered, and this is very regrettable and denies due process when considering change to arguably one of the most contentious legal matters that Parliamentarians ever deal with, being Family Law.

We are further disappointed that the Government proposes to make un-reasoned and ill thought out changes that will undoubtedly alter the landscape and course of family dealings in society for parents and children facing separation, with little or no credible evidence to support such change. It is our firm belief that the proposed amendments, in their current form, will most certainly involve children of separating parents in vastly more complicated, litigious, lengthy, conflictual and hostile separations than Australians have ever witnessed before. For these reasons, the SPCA has provided the attached submission to assist the Parliament carefully consider these amendments before they are passed into law, and before a whole new generation of dysfunction and cost is perpetrated on Australian families.

We would welcome the opportunity of giving further evidence at any upcoming hearing into this matter, and remain available to assist the Committee with its deliberations.

Sincerely



**Geoffrey Greene**  
President



**Wayne Butler**  
Executive Secretary



**Ed Dabrowski**  
Federal Director

Shared Parenting Council of Australia

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<sup>1</sup> Kings & Murray [2009] FamCA 565, Briginshaw v Briginshaw [1938] , M&M [1988] 166CLR69, **Amador** and **Amador** [2009] FamCAFC 196 [78] to [97]