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Family Law Council

11/ 12138; 11/ 27167

1 December 2011

The Hon Robert McClelland MP
Attorney-General
Parliament House
CANBERRA ACT 2600

Dear Attorney-General

Education campaign for Family Violence Bill

The Family Law Council notes that the Family Law Legislation Amendment (Family violence and Other Measures) Bill 2011 ('the Bill') has been passed by the Senate.

Council supports the policy direction of the Bill and believes that the reforms are a positive step towards changing the way the family law system responds to the needs of vulnerable families. Importantly, the Bill sends a clear message, to those using the family law system, to prioritise the safety of children when making parenting arrangements.

Council understands that as a result of the changes to the *Family Law Act 1975* ('the Act') by the Bill, parents may think that a finding of family violence will mean that there will be no order for shared time. However, this would not necessarily be the case. Council recommends that it be made clear that there is no particular outcome guaranteed in relation to parenting orders where family violence has been identified, and that the paramount consideration for the family law courts remains the child's best interests.

The Bill will expand the definitions of abuse and family violence. These amendments to the Act will have a direct effect on how the court balances the primary considerations in section 60CC(2), being the benefit to the child of having a meaningful relationship with both of the child's parents and the need to protect the child from physical or psychological harm.

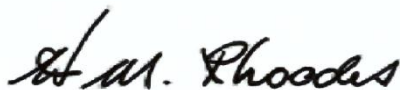
The expanded definitions are also relevant to the presumption of equal shared parental responsibility. In particular, section 61DA(2) of the Act outlines that the presumption does not apply where there is family violence or abuse.

Section 65DAA sets out that where a parenting order provides for equal shared parental responsibility the court is compelled to make an order for the child to spend equal time or substantial and significant time with each of the parents.

However, in those circumstances where the presumption of equal shared parental responsibility does not apply the court will apply section 65AA. This section of the Act requires the court to have regard to the best interests of the child as the paramount consideration and to take account of the matters in section 60CC(2). That is, even though the court is not compelled to do so, both equal time or substantial and significant time may be considered.

Council notes that the Senate Standing Committee on Legal and Constitutional Affairs in its report on the provisions of the Bill recommends that the Attorney-General's Department, in conjunction with the family law courts and relevant professional organisations, institute an education campaign to cover the critical amendments made by the Bill. Council supports the Senate Committee's recommendation for an education campaign and further recommends that, for the reasons set out above, the education campaign specifically target the issue of parenting orders where there is family violence.

Yours sincerely

A handwritten signature in black ink, appearing to read 'H. M. Rhoades', is written on a light blue rectangular background.

Associate Professor Helen Rhoades
Chairperson