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From: [redacted]
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To: Committee, LACA (REPS)
Subject: Family Law Amendment (Shared Parental Responsibility) Bill 2005: Exposure Draft (Committee-in Confidence)
Committee-in-Confidence

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

Dear Committee Secretary

I am writing to you on two matters relating to the proposed exposure draft of the Family Law Amendment (Shared Parental Responsibility) Bill 2005. As my Submission also provides information of a sensitive personal nature, I would be very grateful if you could treat it as in confidence to the Committee.

The first matter relates to the status of existing orders. It is not clear from the exposure draft or the explanatory statement whether there is a requirement for existing orders to be amended to correspond to the new provisions of the legislation. Clearly if all existing court orders were required to go back to court for amendment it would be a huge burden on all the relevant parties, so I assume this will not be the case. However this is not clear. Also it is not clear whether the existing orders will be interpreted against the new legislation, or against the legislation under which they were made. This too should be made clear.

Second, and than more worrying, is the proposed change to the terminology on □residence□ and □contact□. While there may be value in making such changes in domestic legislation, there could well be unanticipated consequences when this is translated in foreign jurisdictions. The Convention on the Civil Aspect of Child Abduction has very clear language describing the relative responsibilities of parents. Article 5 of the Convention refers to □custody□ and □access□, with clear definitions of this terminology. It is my understanding that □residence□ and □contact□ have been held to correspond to these terms.

Well over 300 children are abducted from Australia every year. My own family has had an experience of such an abduction, which was searing for all concerned and tragic for the child involved, who [redacted]
The court of order for [redacted] makes clear that should [redacted] father, [redacted] take [redacted] overseas his rights as a □residence□ parent would be □suspended□ and he would only do as so as □contact□ not a □residence□ parent. At the time the court order was drafted [redacted] it was made clear to me

that this was a standard provision and it was consistent with the Convention. I was advised that the use of this language was a protection against abduction and provided a basis under international law (including the Convention) for me to mount a court case for [redacted] return to Australia should [redacted] be abducted. I am now concerned that the change of this language, which is far less specific in nature, may not be recognised under the Convention, or in foreign courts as corresponding to the Convention, and that this will affect the prospects of children abducted overseas being returned to Australia.

I would ask you to investigate this issue very closely and to ensure that the domestic legislation is drafted to be entirely consistent with the language of the Convention and in a way that this will be recognised without dispute in foreign jurisdictions. The risk of the current definitional change is that the impact of this change will not be known until the new definitions are tested in a foreign jurisdiction.

I would suggest that the risk of getting the legislation wrong in this important area would have devastating consequences for many children and their parents. It also has a capacity to cause grave difficulties and huge expense for Australian authorities overseas and in Australia dealing with such cases. If this is not a problem it would be helpful, especially for parents with dual nationality partners or former partners, if this were to be made clear. Specifically, the impact of the definitional changes in relation to child abduction, and solid legal advice to that effect, should be provided in the explanatory documentation relating to the proposed changes.

Yours sincerely

[redacted]