INQUIRY INTO IMPACT OF THE FAMILY LAW AMENDMENT (SHARED PARENTAL RESPONSIBILITY) ACT 2006 (CTH)

Organisation: Family Law Working Party, Central Sydney
               VAW Reference Group
Name: Ms Toni Brown
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Date Received: 25/10/2006
Dear Committee Members,

The Family Law Working Party\(^1\) for the Central Sydney Reference Group for the NSW Strategy to Reduce Violence Against Women submits the following attachments and information to the NSW State Family Law Inquiry:

2. A written copy of the presentation of “Listening to Women’s Voices - Conversations with Women about Domestic Violence and Family Law”

The forum was a joint initiative of the NSW VAW Strategy; Marrickville Legal Centre; the Jannawi Family Centre; the Sydney Women’s Counselling Centre; the Muslim Women’s Association and the Canterbury Domestic Violence Liaison Committee. One of the aims of the forum was to highlight the implications of the then, proposed changes to the Family Law Act for women and children experiencing domestic violence.

The forum was very well received by the 160 participants who attended and speakers included Female Survivors of Domestic Violence; the Family Law Judiciary; Legal Mediation Practitioners; Women’s Legal Services; Academics and Mediation Services.

The forum was held on the day the Shared Parental Responsibility Bill was introduced to Parliament. Even though there were some minor amendments made to the Bill prior to its enactment in July 2006; most of the issues covered on the day are still relevant to the topic and the NSW Inquiry.

The DVD recording is three and half hours long; and so to overcome time constraints; we have provided a written summary as points of reference for your viewing. We believe all the content is very valuable, however we particularly recommend the content covered in the last three speakers presentations: Dianne Hamey about the proposed legal changes;

\(^1\) Consists of representatives from the NSW VAW Strategy; Marrickville Legal Centre; the Jannawi Family Centre; the Sydney Women’s Counselling Centre; the Muslim Women’s Association and the Canterbury Domestic Violence Liaison Committee.
Julia Pullen about protecting women survivors during mediation and Rachael Field about the risks associated with mediation when partner violence is a factor.

Judge Faulks presentation is an hour and covers all the proposed changes in the Family Law Court jurisdictions; of particular relevance to the topic are the Family Violence Strategy; the Magellan Project and the Childrens Cases Program. David Symes was restricted on the day by time constraints and the tender process for the first roll out of the Family Relationship Centres; the development of ADR services still pose concerns for DV workers about screening out domestic violence and providing adequate legal information to clients. Probably, the most powerful presentation of the day; “listening to women’s voices” was not recorded but we have included a written transcript of the presentation at Appendix One.

We believe it is too early to categorically identify the impact of the Family Law Act on women and children seeking protection from domestic violence in NSW. However we have outlined some preliminary trends and recommendations in the postscript of the submission. For more information about the presentations we have included the program details at Appendix Two.

For further information about the Working Party please contact Matina Mottee VAW Specialist Worker for Central Sydney on 9745-8448. For further information about this submission please contact Toni Brown - Marrickville Legal Centre on 9559-2899 at toni_brown@clc.net.au.

Yours sincerely,

Toni Brown
For the Central Sydney VAW Ref Group
Family Law Forum Organising Committee
Background to the Family Law Forum
*Why we needed a forum about domestic violence and family law*  

Listening to Women’s Voices - Zoe Sharman
Canterbury Domestic Violence Liaison Committee
*Presentation of women’s experiences of the Family Law System*  

Recent Developments in the Family Law Court
Family Court of Australia - Deputy Chief Justice, Judge Faulks
*Presentation & overview of the main changes in the Family Law Court. The Children Cases Program; the Child Responsive Pilot Program and the Family Violence Strategy.*  

Family Relationship Centres - Director, David Symes
Federal Attorney Generals Department
*Presentation about the development of the Centres - safety, screening and assessment guidelines, training, and the development of competency standards for family practitioners.*  

Family Violence and Mediation - Senior Mediator, Julia Pullen
Relationships Australia Victoria & DVIRC
*Presentation about how female survivors of domestic violence will be protected in mediation. Training and screening processes being developed with DVIRC and Relationships Australia Victoria.*  

Proposed Family Law Changes
Women’s Legal Services NSW - Dianne Hamey, Law Reform Solicitor
*How will the main changes to the Family Law Act impact on women and children experiencing domestic violence.*  

Supporting the Participation of Domestic Violence Survivors in Mediation.
Faculty of Law Queensland University of Technology - Rachael Field, Lecturer
*Presentation about the contextual framework of mediating when intimate partner violence is a factor.*  

Postscript and Recommendations
*A brief description of the outcomes from the forum and some suggested project strategies to assist women survivors of domestic violence navigate the new system as at October, 2006.*  

Program of Family Law Forum
*Copy of Program Details Presented at the forum on the 8th December, 2005*
Background to the Family Law Forum

In 2004, as part of its Family Law Reform package; the Federal Government introduced proposed changes to the **Family Law Act (Cth) 1975** under the inquiry name of “Every Picture Tells A Story”. After considering several rounds of community submissions the Government implemented most of its proposed amendments.

In response to concerns raised about proposed changes, the Central Sydney Reference Group for the NSW Strategy to Reduce Violence Against Women held a community education forum entitled “Changes in Family Law and the Impact on Victims of Domestic Violence”. The forum was held on the day the **Shared Parental Responsibility Bill (2005)** was introduced into the Federal Parliament the 8th December, 2005 and was a joint initiative of the NSW VAW Strategy; Marrickville Legal Centre; the Jannawi Family Centre; the Sydney Women’s Counselling Centre; the Muslim Women’s Association and the Canterbury Domestic Violence Liaison Committee.

The aim of the forum was to both inform service providers about programs within the family law context which respond to victims of domestic violence; and to highlight the implications of proposed changes to the Family Law Act for women and children experiencing domestic violence. Whilst the majority of attendees were female survivors of domestic violence and local service providers; the forum was also attended by representatives of peak women’s organisations and government departments such as Health; Housing; Police; the Attorney Generals Department and HEREOC. The forum was also honoured to host a delegation of 12 Chinese women officials from the People’s Republic of China. In all, there were 160 participants who attended the forum; indicating both the high level of concern around the issue, as well as the timeliness of the Bill being introduced into Parliament on the day.

**The Speakers**

*Listening to Women’s Voices*

After a warm welcome to the country of the Gadigal People by Sylvia Scott; the forum opened with a powerful presentation from Zoë Sharman, Counsellor at Jannawi Family Centre and Wafa Zaim, Kristin Dawson and Sue Anderson from the Canterbury Domestic Violence Liaison Committee. The presentation “Listening to Women’s Voices - Conversations with Women about Domestic Violence and Family Law” was based on findings from women’s focus groups and interviews about the experiences of women who had survived domestic violence and entered into the Family Law Process.

Some of the women’s experiences, highlighted perceptions of systemic abuses around the legal and the court process. Many women felt that their stories of domestic violence were relived through the legal process in the sense that: they would build up their hopes that
things would improve only to be let down; that promises were not carried out; that they were not heard during the mediation process; that they had to give into the perpetrator and that their emotional and psychological fears were not recognised. The reported children’s experiences of returning from contact visits, included: children eating paper and banging their head against the wall; allowing an older child to care for the child with a disability; inappropriate sexual behaviour and reoccurring nightmares. The women stressed that their children’s voices were not heard in court. Unfortunately, the research did not illicit any positive experiences of the Family Law Process and indeed; highlighted concerns regarding long delays in varying existing orders that further exposed women and children to alleged abuses.¹

Recent Changes & Developments in the Family Law Court

The Deputy Chief Justice of the Family Court of Australia, John Faulks, was our second speaker of the day, in his presentation entitled “Recent Changes & Developments in the Family Law Court”; the Deputy Chief Justice gave a comprehensive overview of the Children Cases Program; the Child Responsive Pilot Program and other developments introduced into the Family Court.

Whilst the Judge recognised the previous speakers’ concerns about the women’s stories; he reiterated that he would hear an equal litany of opposing allegations from a group of men. The Judge also outlined that both state and federal courts had jurisdictions over the care of children; and that this often resulted in uneven responses to serious allegations of abuse of children. To this end, he briefly outlined the Magellan Project which will deal with family matters involving serious cases of child abuse and will involve a specific registrar; mediator; legal aid; children’s representative and state departments of community services which have the legal mandate for the welfare of children.

The Judge then went on to explain that the Children’s Cases Program will also be introduced under The Shared Parental Responsibility Bill. He outlined how the program will provide a less adversarial process for determining family law matters. Rather than the parties deciding on what evidence to put before the Judge; the Judge will direct the proceedings by identifying the issues at hand; work out how to resolve those issues and then determine any matters that can’t be resolved. Parties will be able to have lawyers present but the rules of evidence will be relaxed to allow the Judge to make inquiries of the parties as well as the children. The program is being evaluated and findings are proving positive, however the pilot has not included any matters involving allegations of violence.

As part of the Court’s Family Violence Strategy, the Judge also outlined how Family Law Court counsellors will have a larger role to play under the Child Responsive Program. Matters reported to the counsellors both by the parties and the children, will no longer be privileged information and will form part of the report that goes to the Judge

¹ For a full account of the presentation please refer to attachment one “Listening to Women’s Voices - Conversations with Women about Domestic Violence and Family Law” Zoe Sharman.

Toni Brown, Marrickville Legal Centre - for the Organising Committee Central Sydney VAW Reference Group Feb 06
for determination on those matters. The Judge also explained how the Family Court’s Violence Strategy was being piloted in Brisbane and it was developing guidelines about early intervention; screening; assessment and safety. The Judge did stress though, that at that time; there was no appropriate assessment and screening standards in place for the Family Court and thus the court was falling short in its safety strategy. He did reiterate though, that the Court had made a commitment to do something about it; but at that time had failed to achieve that end.

Given time constraints on the day, the Judge highlighted two final points; he stated that final orders are never final orders because the needs of a family when children are young for example, will not be the same as when the children are older and so the orders would need varying. He also commented that the concept of equal shared parenting responsibility must not be confused with equal shared time and to illustrate, he said he remembered a parent advocating for equal shared time; when he, the judge pointed out to the parent that he could have all the sleeping time – the absurdity and unfairness of the notion of shared time became apparent.

*Family Relationship Centres*

David Syme, the Director of the Family Relationship Centres Development - Family Pathways Branch Federal Attorney General’s Department spoke about the process for the Roll out of the Family Relationship Centres, safety, screening and assessment guidelines, training, and the development of competency standards for family practitioners. This was a topic that had generated much interest among local domestic violence service providers. In the *Shared Parental Responsibility Bill*, it was proposed that compulsory mediation procedures take place prior to court action. Many services had concerns that abuse and violence would not be screened out of dispute resolution and that many women might enter agreements through veiled coercion and intimidation; further placing themselves and children at risk.

During his presentation David stressed that it was not only FRCs who would provide mediation services, but also private mediators; and that all matters of violence and child abuse would be exempted from mediation. He did not however, speak about what would be required as proof of abuse or violence in order to be eligible under the exemption.

David proceeded to outline that the first 15 FRCs would be rolled out in 2006/2007 with the remaining 50 being staggered over a two and half year period up until 2008. He also stressed that performance indicators were being developed for the Centres and included not only the number of agreements that were reached; but their durability; how they worked and issues of violence.

He outlined how the Health and Industry Skills Council had been commissioned to develop competencies for the staff of Family Relationships Centres and how that would be completed in 2006 when the new services began operation. When it was pointed out to him that the skills council would not complete the accreditation process before the new FRCs began operation; he responded that the current Family Law regulations would guide the operation of mediators in the transition period. Another concern raised
regarding the development of competencies for the Centres was that there was no
compartment of competencies covering domestic violence and other related referral and
advocacy skills in the CSHI process at that time; and that the regulations did not cover
such competencies.

David stressed that the government would definitely be stipulating the development of
such competencies in the staffing of FRCs. He explained how the FRCs would provide a
one stop shop for information; mediation; legal & non legal referral; and Child Support.
Concern was also expressed from the floor that Community Legal Centres, already under
resourced were likely to receive increased referrals from FRCs when the Centres
commenced operation and that they would require an injection of funds to cope with the
added burden. As the first tender process for the Relationship Centres was underway at
the time of speaking, David felt constrained about the detail he could provide to questions
from the floor. He advised that the roll out process was ongoing and that participants
should look to the government website for further detail.

*Family Violence and Mediation - Relationships Australia Victoria and DVIRC*

Julia Pullen, Senior Family Law Mediator and Conciliator with Relationships Australia
VIC (RAV) spoke about Relationships Australia’s involvement with training and
screening processes for RAV mediation services; as developed in conjunction with Allie
Bailey from the Domestic Violence and Incest Resource Centre (DVIRC) Victoria.
Given the pending changes to the Family Law Act, Julie outlined how it would become
more common for female victims of domestic violence to enter into the mediation
process. Even though such clients are exempt under the proposed Act; she stated
that they would not be able to self select out as was then the case; they would have to be
assessed and screened out.

Julie stated that the partnership between DVIRC & RAV arose from the need for the two
Services to find ways that would not disadvantage victims of domestic violence in the
mediation process; whilst also recognising that some women may prefer mediation to the
court process. To build on a model of best practice, Julie noted previous Keys Young
Research of 1996; where it was discovered that over 30% of both men and women who
entered mediation during the Family Law process had experienced domestic violence.
The research also identified a high incidence of women who did not disclose violence;
were not asked about the violence at screening and chose to minimize the violence. The
Keys Young research also identified that women needed to be asked specific questions
about the violence or abuse before they would disclose.

Julie outlined how research undertaken by the DVIRC/RAV partnership suggested that
best practice models of mediation in matters of violence should include two mediators;
involve a private caucuses; separate waiting rooms; safety protocols and ensure that the
abusive party had the capacity to be included in the mediation process – otherwise the
parties should be screened out from mediation. She also suggested that a third party, such
as a domestic violence worker; act as a support person during the mediation. However
when queried about legal models of mediation; she responded that they had not considered using a lawyer during the mediation.

**Proposed Family Law Changes**

Dianne Hamey, Law Reform Solicitor from Womens Legal Services NSW spoke about the way the main changes to the Family Law Act would impact on women and children experiencing domestic violence. A major change in the *Shared Parental Responsibility Bill 2005*, which was introduced into the Parliament on the day; was a presumption of equal shared parental responsibility; with an emphasis placed on equal shared parenting time. Dianne said that this provision, aside from possibly exposing family members to increased violence during contact visits; was likely to be unworkable when you considered that one parent might work full time or live far away.

She also explained that another concern for women and children survivors of domestic violence in the Bill was the replacement of current provisions covering the Best Interests of the Child\(^2\), with a new two tiered system\(^3\) of primary considerations of maintaining a meaningful relationship with both parents; and also protecting the child from harm.\(^4\) As it is possible that these two primary considerations might cancel each other out when issues of abuse and safety arise; the courts might look to guidance from the objects clause; as well as other secondary considerations. However, Dianne stressed that even though the objects clause contains the need to factor in considerations of protecting the child from abuse; it also states the best interests of the child are met, by ensuring that children have the benefit of both parents having a meaningful involvement in their lives, to the maximum extent consistent with the best interests of the child.\(^5\)

This focus on maintaining a meaningful relationship with both parents was intensified, she said by the introduction of a new secondary consideration in determining the best interests of the child,\(^6\) which identifies the willingness and ability of each child’s parents to facilitate and encourage a relationship with the other parent. The likely effect of this provision coupled with the primary objects clause outlined above, is that if women raise concerns about abuse or violence they might be considered a hostile parent; yet if they fail to raise those concerns in early proceedings they may be referred to as negligent in their duties to the child; if those matters are later raised in cross examination at a hearing. The effects of both provisions might further discourage women from disclosing violence.

The other factor highlighted by Dianne, which might discourage disclosure of violence; was a provision\(^7\) which allowed the court to make costs orders against parties knowingly making false allegations or statements. She stressed that if women believed they might have to pay the other party’s costs if they couldn’t prove the violence occurred; then they

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\(^2\) s68F *Family Law Act (Cth)* 1975  
\(^3\) S60CC(2) *Shared Parental Responsibility Bill 2005*  
\(^4\) S60CC(2) (a) (b) *Shared Parental Responsibility Bill 2005*  
\(^5\) S60B Pt V11 Objects Clause *Shared Parental Responsibility Bill 2005*  
\(^6\) s60CC(3)(c) *Shared Parental Responsibility Bill 2005*  
\(^7\) S117AB *Shared Parental Responsibility Bill 2005*
might diminish that violence occurred. Dianne also outlined how the introduction of an objective test into the definition of family violence under the Act could also impede the disclosure of violence. A “reasonableness test” she said, had been inserted into the Bill without any consideration by the community during the submission process. As tests of reasonableness are traditionally interpreted with a male gender bias by the courts; the effect of “punched keys” in the door or the “brisk walk” across the floor; might not be an incident of fear considered as reasonable to someone living outside of an abusive relationship.

Dianne also explained, that it was not clear at that time; how the test would comply with the NSW definition of domestic violence under Part 15A of the NSW Crimes Act (1900); which has both an objective and subjective element. Finally, she stressed the importance of getting independent advice and support before proceeding with mediation. Otherwise she said, women and children’s fear of violence would fall on deaf ears as had been demonstrated in the first presentation of the day.

**Supporting the Participation of Survivors of Domestic Violence in Family Mediation.**

Our final speaker for the day was Rachael Field, Lecturer, School of Justice Studies, Faculty of Law Queensland University of Technology. Rachael spoke about the contextual framework of mediating when intimate partner violence was a factor. She provided an outline of her alternative legal mediation model for women survivors of domestic violence when negotiating the new Family Law system.

Rachael outlined how the development of mediation as an alternative dispute resolution process to the courts, had significantly increased over the past few years; and she stated that the latest reforms would further entrench ADR in the Family Law System. Given the costs of court proceedings and the lack of Legal Aid grants, she explained that we will see more women survivors entering into mediation; regardless of what the government states about screening out such matters. She said that whilst the government reforms state that mediation services will exclude women from ADR through intake and screening processes, they provide no support for women survivors of domestic violence to engage in mediation. Therefore she said, women will deny and minimize the violence; so they can participate. Rachael stressed that even though she rejected mediation from a feminist perspective, she urged us to find safe ways to engage with mediation.

Before continuing, Rachael reminded the audience that domestic violence is still a women’s issue and that we must not become apologists for male gendered violence against women. She stressed that violence against women must be named; and referred to the Braithwaite and Daly definition of domestic violence – as a masculinity of domination; control; humiliation and degradation; a shameless masculinity of bravado and competitiveness among peers; a masculinity of unconnectedness and unconcern for others. She pointed out that the feminist literature strongly states that mediation

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8 A factor that was highlighted by the previous speaker in the Keys Young Research.
9 SS4(1) Sch 1 It 3 Shared Parental Responsibility Bill 2005
disadvantages women; and explained that someone who exerts control and dominance is not a consensus bargainer.

Because the foundation of mediation is based on creating a level playing field; she said it fails to recognise the inequality in domestic violence relationships. Rachael stated that mediators are not neutral and often do inject value judgements into the mediation process. How for example, she said will a mediator factor in a woman who appears to be in chaos and presents as difficult; against a charming perpetrator. She also pointed out, that balancing out the violence during mediation is inconsistent with the principle of neutrality that underpins ADR; and aside from that she believed that it could not be done. Moving parties to different rooms will not overcome the control associated with years of previous threats; nor does it overcome the breaches of confidentiality where men use the process in later court proceedings. There is also no accountability in the private nature of mediation; a woman does not have recourse to a judicial commission about what took place during mediation. Finally, she detailed how the current training accreditation for mediators as it stood in the Regulations was woefully inadequate.

On that basis Rachael urged the audience; and particularly the government to consider two ways of supporting women survivors of domestic violence during the mediation process. Firstly, she said to consider funding a legal advocate to support a woman prior to mediation; during mediation and after mediation, and secondly; that community legal centres could provide independent preparatory information sessions to women prior to entering the mediation process; so that women survivors of domestic violence could make informed decisions before entering into the mediation process. During questions from the floor it was stated that NSW Legal Aid made provision for lawyer assisted conferencing in Family Law matters if women met the eligibility criteria.

Closing of the Forum

Jane Mulroney, the then Director of the Australian Domestic and Family Violence Clearinghouse; closed the day by thanking the speakers for the high quality of content in their presentations. She pointed out that the aim of the day was to highlight the impact of the legislative and policy changes on women and children survivors of domestic violence; and to that end she had hoped the policy makers were listening.

Jane also reminded the audience that we had heard presentations from a range of different organisations; contexts; theoretical paradigms and service perspectives; so that we might come together to reach an understanding about how safety would be achieved for women and children. Essentially she said, the onus was now on us to move forward; to not give up until safety for women and children survivors of domestic violence was achieved. To meet that end, she encouraged participants to remain aware of the changes impacting on women and to stay involved.
Postscript  

1. The \textit{Shared Parental Responsibility Bill 2005} was finally passed through both houses of Parliament with some minor amendments in May, 2006. During that time the working party sent out seven updates on the progress of the Shared Parental Responsibility Bill. The \textit{Family Law (Shared Parental Responsibility) Act 2006} became effective from July 2006. Mandatory ADR Procedures will be effective from July 2007 and full implementation will take place in mid 2008.

2. The family law forum speakers power point presentations were posted on the Australian Domestic and Family Violence Clearinghouse Website at http://www.austdvclearinghouse.unsw.edu.au in late March, 2006.

3. An article about the forum was published in the Australian Domestic and Family Violence Clearinghouse Newsletter in May, 2006 and posted on its website.

4. A presentation about the Family Law changes and the forum was presented as part of the Blackout Violence Campaign at Redfern Legal Centre in May, 2006.

5. The working party edited a video recording of the forum held on the 8\textsuperscript{th} December, 2005. We intend to produce a DVD of the day which we hope to make available for distribution; and to further develop as a training tool.

6. The accreditation qualifications for family consultants will be completed in November, 2006. It is still not clear whether the development of screening standards and evaluation processes for the FRCs and other ADR services; will involve consultation with specialist domestic violence services.

7. The working party will endeavour to monitor the implementation of the ADR procedures and FRCs under the \textit{Family Law (Shared Parental Responsibility) Act 2006}.

At the time of transcribing the Family Law Forum Presentations in February 2006, the Shared Parental Responsibility Bill had been debated in the House of Representatives and referred to the Senate for debate. Whilst most of the proposed amendments were passed, legislative references in the Women’s Legal Services NSW presentation are to the \textit{Shared Parental Responsibility Bill 2005} not the \textit{Family Law (Shared Parental Responsibility) Act 2006}. For further information about the Family Law Changes refer to Women’s Legal Services NSW\textsuperscript{11} & Womens Legal Services Australia.\textsuperscript{12}

\textsuperscript{10} Family Law Working Party for the Central Sydney VAW Ref Group 20\textsuperscript{th} October, 2006.


\textsuperscript{12} Fletcher, J. Submission to the Senate Legal and Constitutional Commitee Inquiry into the provisions of the Family Law Amendment (Shared Responsibility) Bill.
Preliminary Impacts and Current Trends of Family Law Changes

We believe that it is possibly too early to judge the full Impact of the Family Law changes on children and female victims of domestic violence in NSW. However we clearly believe that the strong focus on alternative dispute resolution processes under the Act serve to undermine the criminal underpinning in domestic violence matters. Whilst it is stated that all DV matters will be screened out of mediation; it is not our experience that will always occur.

Women will enter mediation when violence has been a factor in the relationship; they may choose to do so willingly by not disclosing; they may do so through coercion and they might do so to save money. It is not enough for the Federal Government to simply state that matters are screened out of mediation; we must be informed about how that happens and where women are referred. For example, do all domestic violence matters screened out of mediation go to the Childrens Cases Program; the Magellan Program or Family Law Conferencing under Legal Aid. Legal advice and/or intervention must become an easy and accessible option in these matters; not all women will be eligible for legal aid.

If women choose to enter mediation there must be alternative advocacy models of mediation made available. It is for this reason; that we suggest funding alternative advocacy and support schemes; as well as funding information sessions which are independent of mediation services; so that women can make informed choices about their options. At a recent seminar conducted by Women’s Legal Services NSW; it was clear that the mediation service would screen out an allegation of sexual assault of the child; however it was not clear that they would refuse mediation to a woman who had suffered continuing harassment if she chose to enter the mediation. Whilst Family Law matters do not come under the jurisdictional responsibility of the state; it is strongly recommended that the NSW government provide resources to monitor and redress the ongoing implementation of FRC’s and how they impact on Domestic Violence survivors.

There is also much confusion around the Implementation of the new Act:

- Such as shared parental responsibility means shared equal time
- Parenting plans are not enforceable by the Police; yet we have had police stating that women must seek a parenting plan with reference to the children on the AVO. Whilst the references are to having matters in writing; there remains much confusion around the legal status of these plans.
- Where does a parenting plan sit with the AVO? If the AVO refers to the parenting plan and the prohibition states that the parties must not have contact except for the purpose of exercising child care arrangements under the Family Law Act - what is the enforceability of that part of the AVO - if the reference to the children’s arrangements is to a document that has no enforceability?
- What consideration, if any will a magistrate in a lower court give to an existing parenting plan made under the Family Law (Shared Parental Responsibility) Act 2006 when making an AVO?
• Will a woman who has an AVO under NSW State Law be automatically eligible for screening out of mediation?
• The intention of S68R of the (Family Law Shared Parental Responsibility) Act 2006 is to allow lower courts greater power to protect family members from Violence. The new Act places a higher bar on the ability of legal advocates to invoke this provision and is likely to cause Magistrates to be even more reluctant about changing Family Law Court orders. Would it be enough for example, that the new material brought before the court when seeking an AVO is a defendant’s continuing phone calls of harassment? Would a magistrate in a lower court vary the contact arrangements of the existing family law order? The development of clear directions or guidelines to State Court Magistrates on the need to prioritise the need to protect people from harm when determining this provision might help to overcome this obstacle.

To overcome some of the above obstacles and confusion we recommend that the NSW State Government consider:

1. Developing protocols for FRC’s when they are mediating when domestic violence is present.
2. Funding the publication of materials and resources about the family law changes to assist NSW women and children escaping violence; navigate the new family law system; especially for those women who consider mediation
3. Funding the development of independent information sessions and advocacy services for women prior to; during and after mediation.
4. Funding solicitors to be attached to each Womens Domestic Violence Court Assistance Scheme to provide legal advice on both family law matters and representation in contested AVO hearings.
5. Providing extra funds to WDVCAS’s to provide assistance to women making family law applications at the Family Law Court.
6. Providing grants of aid to CLC’s to undertake representation in contested AVO hearings and family law matters.
7. Increasing the availability of legal aid funding for legally assisted family law conferencing.
8. Funding the development of training sessions and community legal education for DV workers to act as support workers for female survivors of DV in the new family law system.
9. Training NSW Police Prosecutors; Magistrates and Local Court Registrars about the Family Law Changes in relation to domestic violence matters.
10. Funding independent research on the Impacts of the New Family Law System on Survivors of Domestic Violence in NSW.

For further information about the Working Party please contact Matina Mottee VAW Specialist Worker for Central Sydney on 9745-8448. For further information about this submission please contact Toni Brown - Marrickville Legal Centre on 9559-2899 at toni_brown@clc.net.au.