

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

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Friday 20 October 2006

Standing Committee on Law and Justice  
Parliament House  
Macquarie St  
Sydney NSW 2000

By Fax: (02) 9230 3371

Dear Committee Members,

**RE: Inquiry into the impact of the Family Law Amendment (Shared Parental Responsibility) Act 2006 (Cth) ("The Act")**

The Association accepts the invitation to lodge a submission in response to the Committee's inquiry into:

- (a) The impact of the Family Law Amendment (Shared Parental Responsibility) Act 2006 (Cth) on women and children in NSW; and
- (b) The impact of the Family Law Amendment (Shared Parental Responsibility) Act 2006 (Cth) on the operation of court orders that can prevent family violence perpetrators coming into contact with their families.

The Association's submission is informed by its role as the peak body representing approximately 3000 foster carers in NSW. Further information about the Association is available at [www.fcansw.org.au](http://www.fcansw.org.au). Foster carers are often involved in proceedings in the Children's Court and the Family Court in order to ensure the safety and well being of children and young people placed in their care.

The Association concurs with the objectives of the amendments provided by the Attorney General in the explanatory memorandum that accompanied the introduction of the Act in which he remarked that,

"The amendments also reinforce the primary importance of the object of ensuring that children live in an environment where they are safe from violence or abuse."

The Association agrees that it is important that the impact of the legislation in NSW should be assessed, particularly the inter-relationship between this legislation and NSW statutes. However, the Association notes that the Act only received the Royal Assent on 22 May 2006 and that it may be too early to assess the real impact of the legislation on children, young



people and their families in NSW. The Association would encourage the Committee to revisit the issue again once the legislation has been in place for a while longer.

The Association is concerned that the Committee should not inadvertently ignore those situations in which the perpetrator of the family violence is a female family member. Although much less frequent than the violence perpetrated by male family members, the Association is aware of several tragic cases where the primary perpetrator of the violence was a female primary care giver (either the mother or another female member of the family). The Association encourages the Committee to look at the Act to ensure that it does not inadvertently assume that the perpetrator is male.

The Association also encourages the Committee to look at the impact of the legislation on foster carers and kinship carers as these two groups are also affected by the amendments.

As the Committee will be aware, a significant number of children and young people in NSW who are not living with one or other of their birth parents are living with a relative (kinship care arrangement). The Association submits that any provisions that apply to birth parents and foster carers should also apply to kinship carers.

One of the issues of concern to the Association is the access arrangements that might be put in place. While the Association acknowledges that one of the objects of the Act is for children to maintain a "meaningful relationship with both parents." (Amended explanatory memorandum), the Association considers that access arrangements must be in the interests of the child. Where a Court has determined access arrangements that limit birth parent contact with a child, birth parents must not be able to ignore these arrangements by, for example, telephoning and visiting the child.

An aspect of the foster care arrangements that can be ambiguous is the notion of shared parental responsibility once the child is in the out of home care system. In this scenario, the decisions about the child's welfare (those aspects identified in subsection 4(1) of the Act) become the responsibility of the Minister (delegated to the Department of Community Services) and the carer (foster, relative or kinship). Decisions are regularly made about a child's education, religious and cultural upbringing and health. In many instances it is not in the interests of the child for a birth parent to be aware of these arrangements (for example, the address of the child's school) as this could place the child at risk. The implementation of these provisions must be made in such a way that the child is not placed in harm's way because of the deliberate or inadvertent disclosure about such arrangements if it is not interests of the child to do so.

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If the Committee has any questions about the Association's submission, please do not hesitate to contact me or the Association's Executive Officer, Donna Bain.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Mary Jane Beach'.

Mary Jane Beach  
President

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