

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

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***COUNTRY WOMEN'S ASSOCIATION OF NEW
SOUTH WALES***



***SUBMISSION TO THE
INQUIRY INTO THE IMPACT OF THE FAMILY
LAW AMENDMENT (SHARED PARENT
RESPONSIBILITY) ACT 2006 (Cth)***

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Inquiry into the impact of the Family Law Amendment (Shared Parental Responsibility) Act 2006 (Cth)

We would like to thank the Legislative Council for the opportunity to express the views of our members to the **Inquiry into the impact of the Family Law Amendment (Shared Parental Responsibility) Act 2006 (Cth)**.

As with our many previous submissions on changes to the Family Law Act, our focus is on the well being of the children affected by the changes to their parents' lives.

We would like to say from the outcome that where we state "fathers" this can also be "mothers" but in reality, in the majority of cases the mother is still the primary care giver.

We would also like to recognize that this legislation applies to couples who have not been able to come to an agreement between themselves. That immediately indicates that there is, if not a degree of animosity, then is at least a lack of ability to make a commitment without a form of mediation.

A concern for our committee remains that the idealism of equally shared responsibility is just that, idealism. In some cases, the reason the relationship broke up in the first place is the fact that those fathers spent very little time with their children. An article in The Australian from 22.12.05 claimed that fathers are involved in day to day care of children in just 5 to 10 percent of families and only in 1 to 2 per cent of families do fathers share the physical care of children equally with their partner. We acknowledge that the concept of shared responsibly is not the same as shared custody (time) but it does raise the question of how a parent (usually a father) who has very little input into the upbringing of the children even when they had the day to day support of the other parent, will manage on their own.

The Australian article argues that if children have been used to spending most of their time with one parent when the family was still together, it is important to keep this situation as stable as possible. There are enough changes for children to cope with during family breakdowns without asking them to cope with more unnecessary change by requiring them to spend more time with the other parent.

We also need to recognize that children are capable of manipulating the situation as well. Stories of the wonderful time they had with father and the gifts and treats they were provided with and the lack of discipline are not helpful to the mother who is battling to keep the changed family together, often in reduced circumstances. Conversely, where the other parent has established another family, the time with the visiting children may have to be shared with the children of the new family. Difficult.

We believe the realism of life dictates that only a minority of families caught up in a usually bitter battle for the hearts of the children will be so altruistic that there will be genuine sharing, even when it is strategically possible. We can make as many laws as we like, but changing human nature is not so simple. Children are still used as pawns in the battle between separating parents.

However, there appear to be two real advantages of the new system, when they are in place and accessible across the country. One being Relationship Centres where partners are encouraged to treat each other as separating couples with a common

cause, (the children) or even the ultimate happiness of each other rather than adversaries. The other is the Children's Contact Centre where warring partners drop off and pick up the children for contact visits without each partner having to come into contact with the other.

These are excellent ideas but there must be enough of them spread across the state. If access to the Centres is not easy, then they will fail for that one reason alone. We must recognize that not everyone has a motor car, a family break up can result in the previously shared motor vehicle not being available to one party. The access is usually on week ends. Even in some areas where bus services operate to cater for Monday – Friday working travellers, week end services can be very limited.

We cannot stress enough the need to have sufficient services in place for families to access without additional stress – otherwise it will not work. We all recognize that divorce and family breakup is increasing at an alarming speed, so the facilities to cope must also keep pace. As an example, the Newcastle Family court has a critical shortage of judges. 3 judges are needed for a city the size of Newcastle and its surrounds but the Newcastle Family Court had only one judge since the second retired in 1998. The Federal Attorney General Philip Ruddock denied a second judge, even though some families were waiting for more than 2 years to have their cases heard. Fortunately a second judge was appointed mid-way through 2006 because the Family Relationship Centre for Newcastle is not due to be opened until 2008.

To illustrate our concern about location and access, the new regulation that if a change of support or access is to be discussed or debated at a Family Court, the parents have to prove that they have undergone family counseling before their case can come to the Family Court. Theoretically this is good. For Newcastle, currently, the nearest Family Relationship Centre and advice online is Sutherland counseling via telephone. (The Newcastle Centre is not due to be opened until 2008.) This is unacceptable. It has to be easy and it has to be accessible. ALL of the support systems need to be in place BEFORE the regulation comes into being. Phasing in afterwards is not practical.

The Bill's biggest change is that separating parents are compelled to attend Family Relationship Centres before they can commence court litigation. It is up to the family relationship dispute practitioner to say whether the parties have made a genuine effort to resolve the dispute. If the practitioner is of the opinion that no real effort was made, there does not seem to be any review possible under the proposed act, the papers are certified that a genuine attempt was not made to resolve the dispute and no second change given. This also applies for erratic attendance at counseling sessions. While some would feel this is unfair, it is at least a lesson to take the situation seriously. Second chances simply waste time and effort.

We are particularly concerned at how "shared responsibility" can work where the parents are situated many kilometres away – in some cases in other states or even other countries. Certainly with technology such as emails, computers and telephones, children and separated parents can have more contact, than with just the old form of letters. However it does mean that one parent and of course the children, miss out on the physical contact. It is simply not possible, financially or geographically for children to spend as much time with the other parent in these circumstances. Even in cases where the parents live in adjoining suburbs, children report living between the 2 households is difficult – the school book or article of

clothing always seems to be at the wrong house at the time. There is also the further concern that if the child is removed from the jurisdiction, particularly overseas, there may be opportunity to flaunt custody rulings.

There is also anecdotal evidence of parents (usually fathers) applying for access and promising to pay maintenance in order to gain an advantage – however they do not fulfill these obligations. This can be very difficult for children, convincing them that they should spend a certain amount of time with the other parent and then over and over again that parent lets them down by not being available. On the other hand, there is also the problem of the custodial parent denying access with feigned illness etc of the child.

We believe equal shared parental responsibility – parents having an equal role in making decisions about major long term issues – primary, secondary and tertiary education etc is of course desirable. This will naturally work where there is no bitterness between the two parents, where concern for the children is their primary concern however, these people don't need legislation to cover their actions. It is the warring ones who do. It will be interesting to see how the new formula for calculating Child Support payments from 1st July 2008 is received, focusing on costs of children, combined income of both parents, the parents' contribution to the children via care or contact and considering situations where parents have children with different partners. Fathers sometimes complain how hard it is to support two groups of children from different families. It may sound harsh, but if they can't afford two families don't have them!!

This committee's greatest concern is that of the operation of court orders that can prevent family violence perpetrators coming into contact with their families.

Unfortunately, all too regularly we read of situations where a parent (usually a father) has ignored an apprehended violence order and murdered his partner and children and then attempted (usually unsuccessfully) suicide. In these cases, penalties are irrelevant as the person believes they will kill themselves anyway, so what use is the threat of jail to them.

Safety from harm is the major aim of the amendment to the Bill. Children have the right to know both parents but if one parent is violent or abusive, they must be protected against that person. In some cases, the reason the family has separated is due to violence within the family. Regardless of whether the child has actually been abused, they are affected by the abuse of the other parent or siblings around them. Abuse should also include alcohol and drug use. The Children's Contact Centres are an excellent idea if there are enough of them. They can provide supervised access for a supposedly violent non-custodial parent but only if the child wants that contact. They should not be forced to have contact and live in fear during the week of what is to come.

There are certainly problems with abuse and any parent who is responsible for such violence should realize that they give up their rights for access to the children, both in a physical and a shared responsibly sense.

However we also need to recognize that there are parents who make false malicious accusations of possible violence or abuse simply to deny the other parent their rights. We understand there is a new law in the pipeline with penalties for making unfounded accusations of this nature. We support this.

Other changes to the Bill concern giving the Courts a wider range of powers to deal with people who breach contact orders and there is an attempt to make all child-related proceedings in Court less adversarial. Wherever possible, the children should be involved in making decisions as to what they want. While we realize a very young child cannot make those decisions for themselves, children who are a little older should be included in having a say (not necessarily in an intimidating Court situation). Trained child counselors should also be able to establish whether the child's stated wishes are genuine or whether they have been "coached" by one parent or the other.

As with most things, the success or failure of these amendments hinge on the result of RESOURCES!

A recurring statement prompting Family Relationship Centres of "too many parents fight in the Courts for years, wasting money they could be using to raise their children". This is so true.

It also wastes the Court's time and resources but we must make sure that the alternative to Court – the Family Relationship Centres and the Children's Contact Centres are adequately resourced right from the start. These must, as already stated, be easily accessible for people who must use public transport and for people in the country areas. To expect one parent or the other to drive hundreds of kilometers to access a Centre is not feasible (and this is what it may be if the parent has to take the child on Saturday morning, go home and then return Sunday afternoon, pick up the child and go home). Special attention needs to be given to this situation – the idea controlling the Centres from a base in regional or city areas is not practical. They must know the area and the problems peculiar to that area. Local knowledge is essential.

From some anecdotal evidence it appears that some of the changes are working and that those involved are satisfied with some of the outcomes. More needs to be done however in this very difficult area.

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