

Submission
No 13

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

Organisation: Relationships Australia
Name: Ms Mary Mertin-Ryan
Position: National Director
Telephone: 6285 4466
Date Received: 20/10/2006



NATIONAL OFFICE

20 October 2006

Hon Christine Robertson MLC
Committee Chair
Standing Committee on Law and Justice
Legislative Council of NSW
Parliament House
Sydney NSW 2000

Dear Madam

NSW Legislative Council - Inquiry into the *Impact of the Family Law Amendment (Shared Parental Responsibility) Act 2006 (Cth)*

Thank you for your letter of 27 September 2006 inviting Relationships Australia to make a submission regarding the impact of the Family Law Amendment (Shared Parental Responsibility) Act 2006 on:

1. women and children in NSW; and
2. the operation of court orders that prevent family violence perpetrators coming into contact with their families.

By way of background Relationships Australia (RA) is a not for profit, community-based federated organisation. The Relationships Australia organisations in each state and territory provide relationship support to people regardless of age, religion, cultural background, gender, social or economic background or lifestyle choice. We are committed to enhancing the lives of communities, families and individuals and supporting positive and respectful relationships. Relationships Australia provides family support services to over 90,000 Australians per year.

Although it is early days to be making comments about the impact of the Act which came into effect as recently as 1 July 2006, Relationships Australia would like to make some initial comments. These comments are provided on a national basis and while this response includes comment from NSW, it is not NSW specific. We acknowledge it will take some time before the impact of the new Act can be appropriately assessed.

Relationships Australia believes that a distinction needs to be made between legislation, government funding for appropriate services and the provision of those services. Our response is to the legislation.

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Relationships Australia Inc. • ARBN 063 560 332
15 Napier Close, Deakin ACT 2600 • PO Box 313, Curtin ACT 2605
Ph: (02) 6285 4466 • Fax: (02) 6285 4722
email: natoffice@relationships.com.au website: www.relationships.com.au

Relationships Australia fully supports the overall aim and intention of the Act which is to promote shared parental responsibility, a role for both parents in a child's life after separation as well as to encourage parties in family law disputes, where safety is not a issue, to pursue less adversarial approaches, such as community-based mediation, rather than litigation. There has been a history of concern as to the effect of family law legislation and decision making on the safety of women and children experiencing family violence and we therefore endorse the Committee's decision to monitor the effect of legislation in NSW.

The impact of the Act on women and children in NSW

Relationships Australia wishes to register a number of areas of concern in relation to the impact of the Act on women and children.

1. The interface between family law and state legislation in relation to child protection and family violence continues to be a matter that requires ongoing attention. This is an area that could be considered further by the Community Services Ministers' Advisory Council (CSMAC). Given the lack of consistency in funding domestic violence programs nationally, due to differences between Australian Government and State and Territory funding priorities, there is considerable difficulty in establishing an effective national system and protocols which suit the Australian Government as well as all the States and Territories. This inconsistency is then played out at the service provision level.
2. The Act states that when making an order the Court must apply a presumption that it is in the best interests of the child for the parents to have equal shared parenting responsibility (Section 61D). This does not apply when there are **reasonable** grounds to believe there is abuse of the child or family violence. Relationships Australia endorses this emphasis on safety but is concerned that the requirement that each parent be willing and able to facilitate a close and continuing relationship with the other parent may put a child in jeopardy. Where one parent has genuine concerns about violence, abuse or neglect they risk either acting to protect their child by stating their concerns but being deemed the 'non-facilitating parent' or not stating their concerns thereby increasing safety concerns for the child but being seen by the Court to facilitate meaningful relationships.

We believe this contradiction must be further examined and the impact of it closely monitored.

3. We note that in relation to implementation of the Act, effective, high quality screening and assessment protocols for family violence are important at every stage of the process. There is a need for service providers including courts to take account of the safety of the outcome of the process for women and children, particularly in relation to shared parenting plans.

The development of screening and risk assessment protocols with detailed attention to safety require a systematic implementation process and adequate staff training.

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Protocol development involves:

- clarity about the difference between risk assessment and screening;
- identified points of service provision where each of the strategies can be implemented;
- appropriate design of screening and risk assessment tools;
- application and ongoing review; and
- whole of organisation approach taking into account that 'victims' of domestic violence are tentative about disclosure and that no disclosure at one point does not mean no violence.

There remain however the limitations of the overall system. Whilst current legislation does enable some communication in high risk cases of family violence, knowledge sharing is often unable to occur for other cases of concern. Relationships Australia believes that improved coordination and information sharing between agencies are required to more effectively ascertain and respond to high risk cases of family violence and other cases of concern. Each state has family violence initiatives in response to this fragmentation and we note that Non Government Organisation involvement needs to increase and be included as part of governments' strategies.

The impact of the Act on the operation of court orders that prevent family violence perpetrators coming into contact with their families.

Relationships Australia acknowledges and endorses the Australian Government's increased funding for the Family Relationships Services Program (FRSP) in particular the establishment of the Family Relationship Centres (FRCs), and continued funding for Children's Contact Services, Parenting Orders Programs, Men's Services and FaCSIA-funded violence programs. However, all of these services currently work within a fragmented context of Federal and State legislation.

One example of this is the lack of clarity in relation to the ability of police to act on breaches of state-based family violence orders in a context where a Family Court Order is in place. It is clear that the existence of the family violence order must be taken into account in the issuing of the Family Court Order but police action on breaches or a state family violence order appear to be hampered by Family Court Orders. In our experience there is an inconsistent and unpredictable response to breach of family violence orders by the police and courts. This is a serious concern for the safety of women and children currently subjected to domestic violence and requires further attention.

Relationships Australia is mindful of the need to remain vigilant as to issues that may arise with regard to possible unintended negative effects of certain provisions of the Act. Following are a number of issues which will require careful monitoring:

- We are concerned about the upcoming use of certificates and their admissibility in court (Section 60I (8) Attending family dispute resolution before applying for Part VII order). We see that any explanation on any category, especially the 'inappropriate' category could be problematic and could raise risk to one of the parties and the children.

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- Anecdotal evidence from our members indicates that since July 1 2006 strong linkages between FRSP service providers (including FRCs) and local state-funded services are being developed and that these are needed to support the effective implementation of parenting plans by each party. As referrals to state-funded service providers increase, there may be a need for additional service provisions to meet this increased demand, such as programs for perpetrators and programs for victims to support them in developing parenting programs.
- We want to ensure that the various 'exclusion criteria' for shared parental responsibility do not force people to use these strategically in order to achieve an outcome that they want which may not be in the best interest of the child. For example one party deciding to keep conflict high between the couple.
- Community understanding of the changes may differ from the understanding of solicitors and family dispute resolution practitioners, which may continue to result in confusion and misleading expectations.

The above is provided as anecdotal evidence. We reiterate that it is too early for any comprehensive assessment of the impact of the new Family Law Act and welcome ongoing monitoring of the issues and look forward to participation in further assessments of the impact of the legislation. Relationships Australia will be monitoring the impact of the changes closely and will be undertaking research, through our national Family Dispute Resolution (FDR) Network, on outcomes for clients from our family dispute resolution services. We anticipate that the results of this research will feed into the ongoing efforts to assess the impact of the family law reforms.

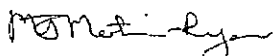
We trust the Committee will keep abreast of research into the family law changes being conducted by the Australian Institute of Family Studies (AIFS).

You may be interested to know that the Australian Government has provided much needed intensive training on the Family Law Changes for the Family Relationship Centres as new entities and will do so while these are being rolled out over the next two years. As a large proportion of the service delivery will continue to be provided through current delivery channels, we are encouraging the Australian Government to roll out comprehensive complementary training and resources to other Family Relationships Services Program services in addition to the FRCs, as they are seeing the same client base.

Relationships Australia welcomes the opportunity to provide a response to this Inquiry. We are committed to ensuring that the best interests of the child are firmly protected, that all family members are safe and that due consideration is given to the factors raised above.

Should you require further clarification of any of the matters raised in this submission, please do not hesitate to contact me on 02 6285 4466 or via email at mmertin-ryan@relationships.com.au

Yours sincerely



Mary Mertin-Ryan
National Director

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