

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

Organisation: Manly-Warringah Women's Resource Centre Limited
Name: Ms Barbara Kilpatrick OAM
Position: Executive Officer
Telephone:
Date Received: 23/10/2006



Manly-Warringah Women's Resource Centre Limited, ABN 35 001 510 470
PO Box 556, Dee Why, NSW 2099.
Telephone: 9971 4499
Fax: 9971 4324

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23 OCT 2006

LAW & JUSTICE

Director,
Standing Committee on Law and Justice,
Legislative Council,
Parliament House,
Macquarie Street,
SYDNEY 2000.

I am writing this submission on behalf of the Manly Warringah Women's Resource Centre. We are funded under grants administered by the Department of Community Services. Under our Board of Directors we operate the following programs for women and children victims of domestic violence and child abuse.

"Bringa", a refuge for women and children
M.W.W.R.C, a resource centre for women and children seeking counselling and information.
Pittwater Family Support Service.
Young Pregnant Women's Scheme
Manly Warringah Domestic Violence Court Assistance Scheme.

We are very concerned about the impact the changes to the Family Law Act will have on women and children. Many women have to represent themselves in the Family Court because they do not pass the draconian measures required for a grant of Legal Aid. These women will have to navigate the new system to prove the abuse perpetrated on them before they have a right to be heard before the Family Court., They will be depending on the State System to protect them and their children, so we must "get it right".

I hope you will consider the concerns we have put before you.

Yours faithfully,

Barbara Kilpatrick, OAM.
Executive Officer.
19th October 2006

Inquiry Into The Impact of the Family Law Amendment(Shared Parental Responsibility) Act 2006

Most Laypersons assume that domestic violence ends when an abuse victim finally leaves her partner. In reality, separation may cause the perpetrator to escalate the violence in an attempt to continue to control or punish her for leaving. When children are involved, there are additional complications. The use of Family Court Proceedings to control or harass former partners is a strategy used by men as a weapon to create more fear by threatening to take away the children.

Many abused women are concerned for the safety and well-being of their children, they often feel their concerns are overlooked by the legal system, community services and health professionals. They feel they are the only ones trying to cater to the needs of their children and it is made very difficult for them by the systems that should be protecting them.

(a) The impact of the *Family Law Amendment (Shared Parental Responsibility) Act 2006 (Cth)* on women and children in N.S.W.

Most contact arrangements are not resolved in court, but rather by agreements between parents. The Amendments will have little impact on the majority of cases.

Our concern is for the 10% of matters where Domestic Violence and Child Abuse is an issue. The Amendments will cause much duress to women who do not involve police in their matters because they will have no documentation of the abuse and will have to mediate with the abuser. The new definition under the Act means that a victim of violence must prove that their fear is reasonable. Women who do come to the attention of Police and the Courts will have to prove beyond a reasonable doubt that violence is an issue.

Even when victims can supply evidence of violence, research suggests that it may not be considered relevant when determining issues relating to parental responsibility. In domestic violence cases, professionals are in a difficult position. They often believe that children benefit from a relationship with both parents, even if one parent is abusive. The imperative to maintain a notion of "fairness" sometimes overrides what is in the best interests of the child. In, fact taking serious and full consideration of the impact of violence on children might be unfair to a parent, but it is just and proper when considering what is best for the child.

- (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.

I have now attended three lectures on the implementation of the New Amendments. Domestic Violence is now a primary consideration, which must be considered by the

court when making orders about where children will live and with whom they will spend time and communicate. If violence exists, this is one of the factors that may rebut the principle of shared care.

It is my understanding that there will be very serious issues arising in relation to Apprehended Domestic Violence Orders. We have been told that Interim Orders will not be recognised as an order in place and therefore will have little weight in Family Court proceedings. Does this mean that women who have Interim Orders to protect them and sometimes their children will still have to go through the process of attending a Relationship Centre? Will this also encourage defendants to delay matters and have them adjourned until Family Court Proceedings are underway?

Many Orders that proceed through the Court are granted on the basis that the Defendant enters into the Orders "without admission". That is the information in the complaint is not tested and the Defendant does not admit to but agrees to enter into an Order prohibiting certain behaviour. This is classed as a Final Order. Is this likely to bring about an increase in contested Apprehended Violence Orders as Final Orders even if made without admissions, are considered to be evidence of domestic violence?

While this is a positive step for victims of domestic violence, it is likely to lead to people contesting orders in circumstances where there are family law proceedings pending. Additionally, the amendments to the Family Law Act allow for transcripts of proceedings in any other court or tribunal to be admitted into evidence in cases involving parenting orders. Lawyers will be advising their clients to contest AVO complaints or delay the matters until the Family Court Action is underway.

The issues that we see as having an impact on the Apprehended Violence Legislation I have outlined. We must prepare the Police Service and Local Courts to be ready for problems that will arise. The Amendments to the Act have only been in operation since July, 2006. We have no reliable data to assess if it has had an impact on State Legislation as yet. There is now a False Allegations Provision in the Family Court Act where courts are required to order costs against parties 'knowingly' making a false allegation or statement (s117AB). Will this also put pressure on women to "keep quiet" about violence or abuse if they have no other witness to the abuse but themselves. It seems we have gone back in time and women and children can no longer depend on the System of Justice to protect them.