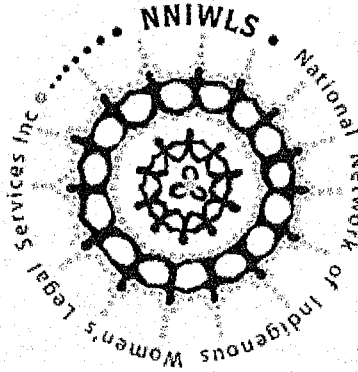


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**NATIONAL NETWORK OF INDIGENOUS WOMEN'S
LEGAL SERVICES Inc.**



Submission No.	67
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SUBMISSION:

**TO THE STANDING COMMITTEE
ON LEGAL & CONSTITUTIONAL AFFAIRS**

**INQUIRY INTO
EXPOSURE DRAFT OF THE FAMILY LAW AMENDMENT (SHARED
PARENTAL RESPONSIBILITY) BILL 2005**

BACKGROUND

The National Network of Indigenous Women's Legal Services Inc. (NNIWLS) is a national peak body for Indigenous women's legal services and programs. It is a network promoting social justice by and for Indigenous women.

The Network promotes quality service delivery and access to law and justice for Indigenous women, children and families through advocacy, lobbying and education.

The aim of the NNIWLS is:

"to empower and promote social justice for Indigenous women and Indigenous people with particular emphasis on law and justice issues"

so its focus is on addressing the disadvantage experienced by Indigenous women particularly in legal issues. The NNIWLS and its members are the experts in legal issues that affect Indigenous women.

The Network was formed by, and has a membership that consists of:

- Indigenous Women's Projects (IWP's) (legal services), funded by the Commonwealth Attorney General's Department,
- Aboriginal and Torres Strait Islander Women's Legal and Advocacy Service, Queensland, funded by Commonwealth Attorney General's Department,
- Wurringa Baiya Aboriginal Women's Legal Centre funded by the NSW Attorney General's Department,
- Family Violence Prevention Legal Services, funded by ATSI,
- Aboriginal Legal Access Project with Hawkesbury Nepean Community Legal Centre funded privately
- Mirrung Ngu Wanjarri Project with Northern Rivers Community Legal Centre funded by the NSW Department of Gaming and Racing
- individual Indigenous women who have a commitment to social justice for Indigenous women.

All these services provide legal help to Indigenous women, children and families. Every day these services see the effects of communities in pain; hurt that goes very deep that leaves many of our women and children at risk. Whilst the services provide legal help, the main aim is healing and working with women and children and often with men.

The NNIWLS is regularly invited to respond to government inquiries and has a reputation for providing relevant and appropriate responses which incorporate a specific view from Indigenous women.

The National Network Indigenous Women's Legal Services Inc. (NNIWLS) lodged a Submission – A Legal Presumption of Joint Residence –Indigenous women, children and families in response to A Legal Parliamentary Inquiry into Joint Residency Arrangements in the Event of Family Separation in 2003 and a Response to the government A New Approach to the Family Law System, Implementation of Reforms Discussion Paper in 2004. The NNIWLS was also consulted by representatives from the Attorney-General's Department in Perth in December 2004.

These documents are available on request should the Committee require them.

INTRODUCTION

Terms of Reference

The NNIWLS notes that the Committee is asked to consider whether the provisions of the Exposure Draft of the *Family Law Amendment (Shared Parental Responsibility) Bill 2005* ('the Exposure Draft') are drafted to implement the measures in the Government's response to the Every Picture Tells a Story report, namely to:

- a) encourage and assist parents to reach agreement on parenting arrangements after separation outside of the court system where appropriate;
- b) promote the benefit to the child of both parents having a meaningful role in their lives;
- c) recognise the need to protect children from family violence and abuse, and
- d) ensure that the court process is easier to navigate and less traumatic for the parties and children.

('the Government's measures')

Shared Responsibility/Care

It is recognised and acknowledged that the presumption of 50% shared residency is not present in the amendments and that the presumption is about sharing in the long term arrangements for children. This is a good thing.

However it's important that where family violence is present the best interest of the child is paramount over the sharing.

Where family violence is present there is going to be an issue of getting both parties to the table to talk, and then agree on matters of importance for the best interest of the child/children.

There is a risk that shared responsibility will take priority. In New Zealand there is the possibility of a two year cooling off period. This maybe an option in cases of family violence in Australia especially if at some stage parents are expected to sit out and work things out together for their children. This would give mothers and children time to get over what they've been through and find stability and strength and confidence to deal with any emotions, feelings that will arise when they are faced with the prospect of meeting their father/spouse.

Children are murdered by their fathers after the parents separate. An article in the Daily Telegraph "Police seek new posers on-the-spot-AVO's" mentions a case where two children were murdered by their father as well as the father of the mother.

1. Consultation Timeframe

The NNIWLS supports the National Network of Women's Legal Services concern in relation to the timeframe given to consult, i.e.

"The NNWLS welcomes the Government's decision not to re-open discussions on the proposal of 50/50 custody, this proposal having been thoroughly examined and rejected by the Parliamentary Inquiry into Child Custody Arrangements in the Event of Family Separation. However, we note that the Exposure Draft still makes very significant changes to family law – according to the Government, 'the most significant changes to the family law

system in 30 years'.¹ We believe that the three week timeframe for consultation on these changes is patently inadequate and are concerned that there is insufficient time for carefully considered input to be obtained from the range of stakeholders who should be engaged in this process."

The timeframe provided effects the ability of the NNIWLS to seek feedback widely from its member services and Indigenous women. Many of the Indigenous women work in legal services, community organisations and provide outreach to regional and remote community locations. As a consequence their time is valuable and to be given the opportunity to response effectively it is vital that sufficient and appropriate timeframes are provided by the Minister.

2. Changes to give greater recognition to Indigenous family structures and culture

Overall the NNIWLS is pleased that the Standing Committee has recognised that Aboriginal and Torres Strait Islander children need to still have connection to their culture in a positive way after separation.

¹ Attorney General's Department Media Release 116/2005, *Government Responds to 'Watershed' Child Custody Report*, 23 June 2005.

This is welcomed but if the Australian Government is serious about addressing the issues faced by Indigenous people in family law arrangements in a manner that is appropriate, taking into consideration cultural ways Indigenous people have to be provided with the training, employment, information, community legal education in the family counselling services.

Funding has to be provided to allow this to happen.

Consideration should also be given to how Family Law is treated in remote areas. The recommendations in this submission are crucial to dealing with family law under the Shared Parental Responsibility amendments.

RECOMMENDATION 1

Funding is available to train Indigenous people as family counsellors.

Indigenous people are employed in the family counselling services.

Indigenous organisations are provided with the resources to provide the family counselling service in urban, regional, and remote areas where there is a high percentage of Indigenous people.

In the NNIWLS original submission – A Legal Presumption of Joint Residence a number of case studies were presented on the experience of Indigenous women and Indigenous children in relation to discrimination and racial issues after separation from a Non-Indigenous spouse and father. The amendments have clearly dealt with many of these issues. However there needs to be information provided on the process if there is a breach of the amendments.

To demonstrate the importance of the issues faced by Indigenous women and children here is a case study from the first submission:

Case 1. Identity and Aboriginal children

A couple, an Aboriginal mother and a Non-Aboriginal father have separated after a 15 year relationship. They have 3 children between the ages of 8 – 14 years.

Throughout the relationship and during arguments the father often resorted to racial abuse of the mother, by calling her a “black slut” and “useless black cunt”. When the mother attempted to separate from the relationship the father physically abused her and emotionally manipulated her.

The father would denigrate Aboriginal people and culture openly in front of the mother and children as a means of enforcing control on relationships and family dynamics.

The mother eventually left with the children. However, the father refused to return the children after a period of contact. The father told the mother that 'if she left no Court would ever let her keep the children once he had finished with her'.

The mother was so scared to attempt to apply to the Court of intervention that she eventually considered returning to the relationship.

The children exhibit symptoms of cultural identity crisis, low self-esteem and maternal alienation.

Even though the amendments are being made to the Family Law Act to take into consideration the importance of children still being able to maintain their culture and connections this will not change how Indigenous women and children are treated in an relationship with a Non-Indigenous parent and family.

How is the Minister intending to deal with this when it continues to happen?

RECOMMENDATION 2

The Minister explores ways and puts into place processes to deal with the continuing violence and abuse against Indigenous women and children and their culture after separation.

Information and education is provided and available for Indigenous people to show clearly what steps can be taken to deal with any breach of the amendments.

3. Contact over Safety

The NNWLS acknowledges there are issues of conflict in relation to contact over safety as raised by the National Network of Women's Legal Services Response to the Amendments and supports their recommendation.

NNWLS Recommendation 1

That s60B(1)(c) not be introduced.

Alternatively, at a minimum, that s60B(1)(c) be redrafted by removing the reference to 'maximum extent' and to focus more clearly on children's rights (eg wording similar to that proposed for s68F(1A)(a) is preferable) AND that this provision and s60B(2)(b) should be located together in either the Objects sub-section (1) or the Principles sub-section (2) AND NNWLS Recommendation 12 should be adopted.

NNWLS Recommendation 2

That s60B(2)(a) be redrafted to read 'The principles underlying these objects are that, if it is in the best interests of the child:

(i) etc

**4. Part II - Non-court based family services, Division 1 -
Family Counselling under 10A Definition of a Family counsellor and
Family Counselling.**

Family counselling is a process in which a family counsellor helps:

- (a) one or more persons to deal with personal and interpersonal issues in relation to marriage; or
- (b) one or more persons (including children) who are affected, or likely to be affected, by separation or divorce to deal with either or both of the following:
 - (i) personal and interpersonal issues;
 - (ii) issues relating to the care of children.

NNIWLS Response

In the case of Aboriginal and Torres Strait Islander person/s, an Aboriginal or Torres Strait Islander Counsellor or Counselling service is to be approved/provided, if an Aboriginal or Torres Strait Counsellor or Counselling service can not be provided then an non-Indigenous culturally appropriate Family counselling services should be considered, and that all Family Counsellors undertake cultural awareness training.

RECOMMENDATION 3

The Minister to provide specific resources to employ Aboriginal and Torres Strait Islander people as Family Counsellors.

Non-Indigenous Family Counsellors undertake cultural awareness training relevant for the particular group/s in the region that the service is provided.

5. 10J Definition of family dispute resolution practitioner

A family dispute resolution practitioner is a person who is:

- (a) authorised by an approved family dispute resolution organisation to offer family dispute resolutions on behalf of the organisation; or
- (b) engaged under section 38R to perform family dispute resolution services under this Act; or

- (c) an officer or staff member of the Family Court authorised by the Chief Executive Officer to provide family dispute resolution under this Act; or
- (d) an officer or staff member of the Federal Magistrates Court authorised by the Chief Executive Officer of that court to provide family dispute resolution under this ACT; or
- (e) appointed under a law of a State as a dispute resolution practitioner in relation to the Family Court of that State; or
- (f) a person, other than a person mentioned in paragraph (a), (b), (c), (d) or (e), who meets the requirements specified in the regulations.

RECOMMENDATION 4

The Minister allocate funding for Aboriginal people to undertake training as family dispute resolution practitioners.

6. Subdivision B - Approval of family counselling organisation.

10E Approval of family counselling organisations

- (1) The Minister may, by notice in writing to an organisation, approve the organisation as a family counselling organisation if, and only if, the Minister is satisfied that:
 - (c) the organisation is currently receiving, or has been approved to receive, funding under a program or part of a program designated by the Minister under subsection (2); and
 - (d) the organisation is receiving, or has been approved to receive, that funding in order to provide services that include family counselling.

Note: If an organisation meets the requirements for approval under both this section and section 10N, the Minister may approve the organisation as both a family counselling organisation and a family dispute resolution organisation.

NNIWLS Response

It has been proven and acknowledged time and again that the most effective services for Indigenous people are those that are provided by Indigenous organisations and indigenous people. There are no Aboriginal or Torres Strait Islander specific family counselling organisation funded to provide appropriate services to Indigenous people.

A clause is added to take into consideration Aboriginal and Torres Strait organisations that have the infrastructure to be an identified service provider to offer family counselling to Aboriginal and Torres Strait Islander people.

RECOMMENDATION 5

That the Minister provide funding to an appropriate Aboriginal organisation in order for them to provide family counselling.

7. 11B Definition of family child specialist

A family and child specialist is a person who is:

- (a) appointed as a family and child specialist under section 38N; or
- (b) appointed as a family and child specialist in relation to the Federal Magistrates Court under the Federal Magistrates Act 1999; or
- (c) appointed as a family and child specialist under the regulations; or
- (d) appointed under a law of a State as a family and child specialist in relation to a Family Court of that State.

Note: The Chief Executive Officers of the Family Court and the Federal Magistrates Court have all of the functions and powers of family and child specialists, and may direct specialists in the performance of their functions. See Division 1A

NNIWS Response

In case of an Aboriginal or Torres Strait Islander child that the Aboriginal Children's Service and Secretariat of National Aboriginal & Islander Child Care receive funding and provide family child specialists.

RECOMMENDATION 6

The Minister allocate funding to the SNAICC to provide family child specialists.

7. Family Relationship Centres

Sixty-five centres will be set-up across Australia over a number of years. How will the distribution of the centres be worked out? Will it be by population basis?

Concern: The rural, regional and remote communities will not have access to the relationship centres. Access to lawyers currently is very limited in these regions.

The family relationship centres are only for those who are able communicate and agree if there is no presence of family violence. Where there is family violence/abuse present it is unlikely that Indigenous people will attend to mediation and parenting planning sessions.

The family relationship centres are set-up to reach out to both parties to come together and agree on a parenting plan. If this outcome is not reached what happens then?

Recommendation 7

Consideration is given when identifying the location of the Family Relationship Centres to communities/towns 1) that have a large percentage of Indigenous people and 2) that Indigenous people can access the centres.

8. Interpretation of Family Violence

If a resolution is not satisfactorily reached in the mediation through the family relationship centres how will family violence/abuse be interpreted and who will interpret it? Will the family relationship centre family counsellor be trained to interpret FV especially taking into consideration the experience and meaning by Aboriginal people.

Concern: Family/violence and abuse is experienced in different ways. A supposed victim may not see being abused in a certain way to mean family violence is being perpetrated. Who makes the decision on what family violence means?

This is important if a certificate has to be issued by the family relationship centre if mediation is not successful and the parents have to attend court.

Recommendation 8

Training is provided to the family counsellors to recognise the different forms of abuse and particularly in relation for Indigenous people.

9. Family Violence

It has been the experience of lawyers in family violence prevention legal services that Aboriginal parents have a problem in communication because of the issue of family violence so how are they going to attend mediation at the family relationship centres to start with given the expectation of the Attorney-

General that parents will come together to discuss parenting plans without the need to go to court.

A lack of willingness to participate in dialogue plus a history of conflict and dominance by one party over another tends to hinder attempts to reach agreement through mediation. In cases of extreme subjugation or violence it is not only unsuitable but also unachievable to get the parties to discuss issues without support of a government based system.

It is known that where mediation has been attempted in cases of family violence that the perpetrator has only to growl and the victim is intimidated immediately and withdraws from the discussions and any further attempts to sort out the issues.

It is very rare to have parties come together to mediate when family violence is present. However, even when parties are not involved in family violence the fact that the parties need to seek an independent facilitator in order to deal with issues relating to children is suggestive of an unwillingness or ability to cooperate regardless of services available to mediate.

However it is fair to say that Indigenous people attend mediation when a court order is issued for them to come together and sit down to come to an agreement on family law matters. It is the experience of Indigenous legal centres that most couples in dispute (those needing the help of agencies such as the legal centres) will not mediate unless ordered by a court, regardless of previous attempts to seek mediation.

Conclusion

The National Network of Indigenous Women's Legal Services Inc. calls on the Minister and the Standing Committee to consider seriously the recommendations in this submission. The NNIWLS is available if the Minister or Standing Committee wishes to discuss anything further.

NATIONAL NETWORK OF INDIGENOUS WOMEN'S LEGAL SERVICES

21 July 2005

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