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COUNTRY WOMEN'S ASSOCIATION OF NEW SOUTH WALES



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SUBMISSION

**TO THE HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS ON THE REVIEW
OF THE EXPOSURE DRAFT OF THE FAMILY LAW
AMENDMENT (SHARED PARENTAL RESPONSIBILITY)
BILL 2005**

TO: The Secretary, ^{NH}
House of Representatives Standing
Committee on Legal and
Constitutional Affairs,
Parliament House,
CANBERRA ACT 2600

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15th July, 2005

***Review of Exposure draft of the Family Law Amendment
(Shared Parental Responsibility) Bill 2005***

In General:

These proposed changes to child custody arrangements in the event of a broken relationship are timely. The emphasis on agreement, conciliation, resolution of conflict in place of adversarial, legal wrangling should have improved outcomes not only for those involved directly or indirectly in the break up, but for society as a whole.

But, is it "pie in the sky"? Every relationship is between human beings who, anecdotally at any rate, by and large do not behave altruistically when upheaval occurs in their lives, especially when they perceive themselves as wronged in or by that upheaval. It is difficult to imagine many events more traumatising than marriage or relationship break ups, particularly when children are involved.

The Prime Minister pointed out his Framework Statement on Reforms to the Family Law System, on 29th July 2004, the inquiry into this matter received 1700 submissions, demonstrating "the significant community concerns about these issues". Fathers have banded together to form lobby groups to have legislation drafted which will give them a fairer deal, greater access to their children and a more equitable sharing of the financial costs of raising children. They have appeared particularly incensed at what they see as a denial of access to those children yet being forced to pay considerable monetary support. On the other hand, mothers tell grim tales of fathers who refuse to pay, at best, inadequate support for their children.

One of the most encouraging aspects of these changes then is that move away from court confrontation; the provision of parties having had to try and negotiate an agreement through a Family Relationship Centre or some other form of recognised counselling, has to be an improvement, provided all is in place for such negotiation/mediation to happen.

The rolling out of the 65 Family Relationship Centres across Australia will by common sense take time and major resourcing – both of trained personnel and infrastructure, communications networks for only one example. Parenting Plans may be feasible for many partners in a break up, but it is difficult to accept that the majority of respondents will be happy to be involved in the long term. While courts have the right to impose penalties for failure to comply with the initial meeting or with aspects of the Plan once they have been agreed to, again this is not a simple, rapid process.

The Explanatory Statement and the Prime Minister's Statement put a positive gloss on the legislation. Neither seems really aware that it is dealing with people who tend to become angry when changes are imposed on them, changes they have no desire to be part of, that is, arguably, the majority of relationship breakdowns. Furthermore, the whole process will continue to be an expensive one. "Information, advice and the first three hours of dispute resolution sessions will be free", according to the 29 July Statement. How many major dispute resolutions, including marriage break up and child custody for years and years, can be sorted out in 3 hours?

A major concern to both parties in such break ups is child support. That the Government recognizes this to be so is apparent in the Prime Minister's Statement, when he talks about the establishment of a Child Support Taskforce "to report back by March 2005". While rumours of its recommendations have occasionally found their way into the media, there is no direct reference to the mechanisms of setting and being bound by reasonable child support, in either the Exposure Draft (23/6/05) of the Bill, the Explanatory Statement or on the Committee's website. What were the Recommendations of the Taskforce (it was due to report in March 2005) and to what extent have they been incorporated into this Exposure Draft?

In Particular:

a) The emphasis on parents having to move away from an adversarial court system has to be a positive provided there are sufficient alternative forms of resolution in place, adequately resourced and accessible; and with the exemption provisions laid out in the Bill, of violence, etc. taken into consideration.

Also positive is the emphasis on shared responsibility for children, not as is often currently the case, you pay, I make the decisions, but joint legally binding responsibility for all MAJOR decisions affecting a child's life. Parenting Plans appear to be a real improvement on court-handed-down decisions; both parties discussing their children's best outcomes with a trained, independent mediator ensuring the focus is on the children and not either of the parents, sounds so positive. Again, though, we are talking about real people with capacity for revenge and bloody mindedness.

That there is provision for enforcement of such Parenting Plans appears a positive – but will the procedure really be any more simple and accessible for the wronged partner than current defaulting procedures? The ideas are great, the reality possibly less so.

The determination to keep lawyers and courts out of the negotiating process may not be palatable to all. The separation time is traumatic; how can people be expected to make sound decisions, even with a counsellor present, decisions that may well be regretted later? For instance, if a relationship has been one-sided before the break up, the "weaker" party is hardly going to become so empowered through a mediator that he/she will not continue to be subservient to the dominant one's wishes (demands couched more gently in the planning sessions?)

b) The roles of both parents in a child's life after relationship breakdown are vitally important; no court orders or parent plan though is going to be able to prevent viciousness and hostility about the other partner when speaking to children. The public education campaign to accompany this legislation has to become part of the social fabric of our lives, not a short term thing, but a permanent moral yardstick. I do not know how anyone or anything stops parents using children as power plays when either party feels the need – and I am not limiting that observation to broken relationships.

For both parents to have meaningful roles, both must have access regularly and sustainably. As the Bill points out, if physical access is not always possible (and how often do we hear of the custodial parent changing suburb, city, state, country) there has to be at least good communication access. The provision that both parties must agree on major aspects of their children's upbringing, their education, health, culture, etc. has to be a positive, even if idealistic at times,

Another positive, especially from the point of view of those parents with whom the children do not generally live, is that compensation in terms of time, has to be made if access is denied at any time for no good reason. Currently, anecdotal evidence offers many examples of children about to become ill or having to attend a function so that they simply cannot go out with the other parent though he/she has the right to have them.

One of the most heartening aspects of this Exposure Draft is the clearly spelt out role of the extended family and the recognition of their rights, especially of grandparents. We can only hope that this legislation translates into reality, although here again we could have "Not your parents – but mine!!" Figures released July 2005 reveal that grandparents supply one-third of all child care in Australia – mostly at no cost - so that the parents can both work and/or study. In a marriage break up, the strain on the grandparents would be increased.

c) The provisions to protect children from abuse and violence are just common sense. Important too is the provision that reports of such violence and/or abuse have to be evidenced and that changes to access will be made should such claims be found to be untrue.

d) The establishment of a new, combined registry for family law matters should do away with some of the difficulties faced by people caught up in the system. That this registry may often be the first port of call and will then refer people to a Family Relationship Centre also appears a positive.

In summary, the new provisions appear most timely, but have yet to be tested in a number of ways, most particularly in their being resourced in line with a government's stated belief that the family is Australia's most important social foundation; and secondly, in remembering that ultimately, the new laws are dealing with people who are often traumatised, frustrated, angry and even vengeful at being overtaken by a fate not of their choosing. So the children are often used by the respective parents to play one off another.