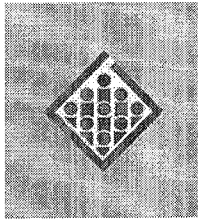


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Family Services Australia

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FSA Submission to Standing Committee on Legal and Constitutional Affairs on the Exposure Draft of the Family Law Amendment (Shared Parental Responsibility) Bill 2005

Family Services Australia (FSA) would like to thank the Standing Committee on Legal and Constitutional Affairs for the opportunity to discuss and comment on the Exposure Draft of the Family Law Amendment (Shared Parental Responsibility) Bill 2005.

This submission has been prepared by FSA National Office (Sarah Lees, Libby Davies) and Executive (Jo Cavanagh, Jennie Hannan and Tony O'Hare) on behalf of the FSA membership and in consultation with Dr Paul Murphy.

Background

FSA is the largest national Industry Representative Body for the community based family and relationships services sector with currently 88 member organisations providing family relationships and related family support services across Australia. FSA members are those organisations that are not affiliated with Relationships Australia or Centacare/Catholic Welfare Australia (list of FSA members attached). FSA members are located in more than 250 sites across Australia, offering a diverse range of services for families in metropolitan, regional, rural and remote communities.

FSA members provide services which interface with the legal profession and a range of government and non-government agencies in relation to separating and separated families. These services include Counselling, Mediation, Children's Contact Services and Contact Orders Program. The professional base of FSA members includes Psychology, Social Work, Mediation and Counselling, enabling FSA to make comment on operational aspects relating to this Exposure Draft, as opposed to legislative aspects.

FSA Comments on the Bill

FSA supports the introduction of compulsory dispute resolution for separating parents and congratulates the Australian Government for recognising this need. FSA also welcomes changes to allow the provision of client information to other agencies and the court with client consent.

Due to the very short time-frame in which to respond to this Exposure Draft, we have focused our response on three key areas of concern. The first key issue is around the positioning of statements regarding the concept of the best interests of children, the second is around the interface between legislation and practice in relation to family violence, and the third key issue relates to immunity for Dispute Resolution Practitioners.

Best interests of the child

FSA believes that the best interests of the child should be paramount at all times, and that the Bill must give this further expression. The most critical element in enabling conflicting parents to work together is to focus on what operates in the best interests of their children in both the short and long term. Dispute Resolution Practitioners have the salient skills associated with enabling parents to shift their focus to their children, rather than on their adult conflict, in order to facilitate reaching agreement on parenting.

The original intention of the Family Law Act (1975) was to protect the best interests of the child, then referred to as the 'paramountcy principle'. FSA continues to support this intention and is concerned that the current Family Law Amendment Bill may be viewed as prioritising *shared parenting* and the *rights of parents over* the principle of *best interests of the child*. The Inquiry into child custody and the draft legislation has recognised that conflict between separating parents can cloud people's judgement around parenting, and that services provided through the Family Relationships Services Program (FRSP) - such as the Contact Orders Program - can assist separating parents move past their conflict to reprioritise their children.

Legislation needs to reflect the principle of child's best interests with orders reflecting children's needs in relation to attachment, and acknowledging the disastrous long term affects that disrupting attachment relationships can have on children.

For example, Schedule 2 - 70NEAB (page 24) refers to the power of the court to make orders of compensation. The clause that refers to compensating parents for 'lost time' (clause 1) is placed before the clause that refers to the best interests of the child (clause 2). We believe that the ordering of these clauses, and others in the Bill, should be changed so that clauses referring to *the best interests of the child* come first.

Court process also need to reflect the principle of child's best interests, and FSA gives absolute support to the need for Court appointed Child Separate Representatives to speak to children prior to submissions to the court.

FSA recommends that :

- *the language of the Bill positions the 'best interests of the child' as paramount; and*
- *Court appointed Child Separate Representatives speak to children prior to the preparation of reports and associated documents, suggesting a change to 60ADL.*

Family Violence - interface between legislation and practice

Through its references to dispute resolution exemptions, the Exposure Draft has recognised that family violence is much broader than physical abuse. Family violence includes long term harassment, bullying, intimidation of one parent by the other, and entrenched conflict, which can all impact on the security, growth and development of children. Learning and social skills can also be affected by these forms of violence and abuse.

There is an extensive body of research around the effects of long term family conflict on children. In situations where families are unable to resolve their conflict through family dispute resolution and matters need to be referred to court, consideration must be given to the impact of lengthy court waiting lists and court processes on children.

A system needs to be established which allows the court to prioritise cases in *the best interests of children*. The role of Family Dispute Resolution (FDR) Practitioners is critical in assisting the court to identify those cases where lengthy court waiting periods would endanger the health and well being of children and provision needs to be made for practitioners to be able to convey this information when required. It is critical that these practitioners are highly skilled, qualified and resourced in order to identify situations of family violence and determine a path of action that is in the *best interests of children*. These skills need to be linked to best practice guidelines and competency standards.

Current FRSP service providers are very skilled in working with families where violence is present including those with current violence restraining orders.

FSA recommends that:

- *a system is developed to identify and manage priority cases in the best interests of children; and*
- *Family Dispute Resolution Practitioners are assessed against competency standards and best practice guidelines - the professional requirements of Family Dispute Resolution Practitioners must be enshrined in legislation.*

Immunity and Family Dispute Resolution (FDR) Practitioners

Schedule 4, 10M of the Exposure Draft - page 53 - refers to immunity of FDR Practitioners. This clause states that FDR Practitioners do not have protection and immunity when conducting advisory dispute resolution. There are many operational issues in relation to this clause. It would be very difficult for Practitioners to isolate their practice in this way, and for clients to differentiate between advisory and facilitative dispute resolution.

FSA recommends that:

All Family Dispute Resolution Practitioners have immunity in both facilitative and advisory roles.

Questions taken on notice

FSA was invited to appear before the public hearing of the Standing Committee on Legal and Constitutional Affairs 25 July 2005. Several questions were taken on notice at this hearing, and FSA submits the following in response to these questions.

Service Delivery Models

What should Family Relationship Centres (FRCs) look like? What services should be provided at FRCs?

- triage service - operating under a model similar to that of a Hospital Emergency Department where initial screening is undertaken by highly experienced practitioner to identify the most appropriate course of action to meet the needs of the individual / family / child;
- deflection from court to family dispute resolution and / or other appropriate family support services - including state and commonwealth funded services;
- generalist support, information and advice offered by staff with specialist expertise and clearly articulated skills and qualifications to promote effective early intervention and 'getting it right the first time';
- an expert assessment and facilitation service delivery model qualitatively different from a customer inquiry shop front / program linkage model. We caution against the use of a Job Network type model where the role of frontline staff is largely administrative. Rather FRC's need to offer specialist intake and assessment as a pathway to more intensive intervention;
- provision for information in relation to clients to be available to the Family Court and other appropriate services clients are referred into;
- appropriate salaries and training need to be provided to practitioners employed in the centres;
- a way of assisting families to identify and access the types of additional services they need across all levels of the universal, secondary and tertiary service systems; and
- connection with the wider community (eg schools) to facilitate community education and dissemination of information to promote *positive post separation relationships* as the community 'norm' - e.g. emulating successful community education campaigns such as *don't drink and drive* and *buckle up / wear your seatbelt*.

What are some of the quality issues in relation to FRCs and the expansion of the FRSP?

- need to establish an industry driven approach to quality assurance e.g. *FSA National Quality Roundtable and Quality Project* - Industry Representative Bodies (IRBs) can facilitate this but there is a need for alternate funding models to increase IRB core funding equitable to the expanding sector;
- an ongoing monitoring process needs to be identified and clear criteria established to take action in relation to providers that fail to meet quality assurance standards;
- ongoing research and evaluation of the new FRC's is critical;
- success of the first FRCs will be critical to the long term viability of the model and the promotion of positive public perception - it is critical to resource FRCs with appropriately skilled and experienced staff and to monitor the performance through national accreditation;
- priority must be given to existing FRSP providers with significant expertise in the area of working with separating parents in high conflict and are familiar with child protection issues in the selection process for FRC's; and
- best practice standards must be identified and implemented nationally - e.g. Working With Children Checks - and national training must be provided - e.g. FSA / ACCYO (Australian Council of Children and Youth Organisations) partnership approach to child protection policies.

How can FRC's support families who would not normally file in court?

- information dissemination through website, telephone, fact sheets;
- parenting groups - education and skills training;
- examples of parenting agreements;
- men's information sessions; and
- low level intervention.

Commonwealth/State interface options

What are some of the Commonwealth / State interface issues that need to be addressed?

- Commonwealth / State interface is difficult in relation to child abuse due to differences across states in reporting processes and definitions of child abuse - there is a need for national consistency around common definitions and reporting requirements; and

- there needs to be progression of the protocol arrangements currently being developed between the Family Court and state children's courts and other services eg, state welfare and police.

Government consultation

Has there been consultation with industry bodies around the establishment of FRCs?

- The Attorney General's Department held scenario planning workshops (Canberra and Perth) to discuss the models of Family Relationship Centres (June 2005) - participation in these workshops was by invitation only.
- Industry Representative Bodies were asked to identify possible participants but invitations were ultimately determined by the Department.
- Many of the participants invited by the Department would have been members of one of the three industry bodies - however, IRBs were specifically advised that a decision had been made not to invite representatives from the industry bodies (National Offices or elected representatives) themselves.
- Since this time, the industry bodies have been asked by the Attorney General's Department to participate in a discussion around the tendering process for Family Relationship Centres and the new funding under the Family Relationships Services Program.

Exemptions to family dispute resolution (FDR)

What would be the criteria around exemptions to FDR in terms of inability to access services?

- Schedule 1, Subdivision E - 60I (8e) - page 8 - states that an exemption regarding attendance at family dispute resolution may be granted where 'one or more of the parties to the proceedings is unable to participate effectively' due to 'physical remoteness' from a service.
- Various methods of dispute resolution are available to people regardless of their location - eg telephone, video conferencing, shuttle mediation.
- There is currently a shortage of primary dispute resolution services available in rural and remote locations, no rural Contact Orders Programs, and existing services across the country often have long waiting lists.
- The impact that waiting periods can have on families and children must be taken into consideration in determining exemptions.
- FSA acknowledges the commitment of government to increase services available to families and would support the establishment of good practice benchmarks around maximum waiting list periods.
- Exemptions to dispute resolution based on physical remoteness from services needs to be considered on a case by case basis.
- Exemptions should also be considered which would allow cases to be 'fast tracked' to court where this is in the best interests of the child.
- FDR Practitioners must have the skills necessary to consider the individual circumstances of each case and make recommendations in relation to primary dispute resolution exemptions.
- There is concern that individual FDR practitioners (not supported by an agency structure) may be referred difficult cases where safety concerns for the practitioner are an issue.
- Ongoing support, supervision and professional development must be provided to all accredited FDR practitioners and this be supported in legislation.

Immunity for FDR Practitioners

Would there be any negative consequences associated with the provision of immunity to FDR Practitioners providing advisory dispute resolution?

- In order to effectively meet the needs of families, FDR Practitioners have a broad skill set which allows them to switch from facilitative to advisory dispute resolution at any stage of service intervention.

- From a practice perspective, there would be no negative consequences of providing immunity for both forms of dispute resolution.
- There would, however, be negative consequences associated with not providing this immunity - e.g. client confusion, artificial boundaries between facilitative and advisory dispute resolution, difficult to explain and manage the differences etc.

Once again, FSA would like to thank the Standing Committee on Legal and Constitutional Affairs for the opportunity to discuss the Exposure Draft and respond to questions raised at the public hearing.

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