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Catholic Welfare Australia

A COMMISSION OF THE AUSTRALIAN CATHOLIC BISHOPS

15 July 2005

The Hon Peter Slipper MP
Chairman
Standing Committee on Legal and Constitutional Affairs
House of Representatives
Parliament House
Canberra ACT 2600

By Fax: 02 6277 4427

Dear Mr Slipper,

Catholic Welfare Australia welcomes the opportunity to comment on the Exposure Draft of the **Family Law Amendment (Shared Parental Responsibility) Bill 2005**. Catholic Welfare Australia is the peak body representing 56 social service organisations of the Catholic Church at the national level. Over the past seventy years, delivery of Family Services has been a core function of our Member Organisations, providing services to enhance the relationships of Australian families regardless of their composition. As a partner with the Commonwealth in providing services to Australians, Catholic Welfare Australia offers assistance to all, regardless of religion, race, or sexual orientation.

Catholic Welfare Australia Member Organisations collectively administered \$15.4 million from the \$69 million Family Relationship Services Program (FRSP) allocation in the 2004-05 financial year. Hence, Australian Government funding pays for just under one sixth of direct family work carried out by our agencies (in excess of \$71 million), with the rest of the services provided being funded through state government funding, Church contributions and client fees. As a major provider of family services across all of Australia, we make comment on this legislation not as professionals who are specialists at critiquing legislation, but from the community perspective as specialists who work to assist Australian families at critical periods in their lives, struggling to operate within the parameters of such legislation.

THE NATIONAL NETWORK OF CATHOLIC SOCIAL SERVICES

22 Theodore Street (PO Box 326) Curtin ACT 2605
Phone: (02) 6285 1366 Facsimile: (02) 6285 2399
Email: admin@catholicwelfare.com.au
Website: www.catholicwelfare.com.au

ABN: 18 810 059 716

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Catholic Welfare Australia has worked closely with Government throughout this current review of the Family Law legislation and continues to regularly talk to representatives from both the Department of Family and Community Services and Attorney General's Department in reference to these matters. We believe that this is vitally important, as experience shows us that, from the community perspective, much of the impact of these reforms of the legislation will flow through in the operational detail.

It is of concern to Catholic Welfare Australia that in legislation, Family Relationship Centres (FRC) will be the 'single' point of entry to the Family Law system. The messages given at meetings with the Departments are that the FRCs would be one of many places that families can enter the Family Law system. However in the Explanatory Statement to the Bill, the emphasis appears to be that once rolled out, the 65 FRCs will be the 'single entry point' for the vast majority of cases, except for those dealing with family violence or abuse, 'serious disregard' for a contravention order, circumstances of urgency, and where a party is unable to participate effectively in family dispute resolution.

Catholic Welfare Australia applauds the premise behind changing terminology in order to decrease confusion around the processes of relationship counselling and dispute resolution. However, Catholic Welfare Australia remains concerned about the new terminology that has been chosen for inclusion in the Bill. In 63DA(3) the Bill defines four advisors roles, a legal practitioner, a family counsellor, a family dispute resolution practitioner and a family and child specialist. While such definitions may work within the context of a Family Relationship Centre and Court system, with only 65 FRCs Australia wide, these definitions may create confusion within the broader community service provision sector. The general public will not necessarily make these distinctions, and is likely to use one descriptor for all four roles. Catholic Welfare Australia believes that terminology that more closely approximates that which is currently used within the community service sector might be beneficial, such as counsellor, mediator, or conciliator.

This is particularly critical as the roles have different standing in terms of privilege and immunity under the new legislation. Catholic Welfare Australia endorses the changes in legislation that will protect those working in the community sector (family counsellors and family dispute resolution practitioners) by making the records and details of their consultations inadmissible. It is noted that the Bill allows that a Family Court officer or staff member can be authorised by the Chief Executive Officer of the Family Court to provide family dispute resolution services. This has led us to question whether this designation is independent of the competency criteria demanded in 63DA of the legislation?

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Catholic Welfare Australia applauds the focus that this current legislation places on children's 'views', as opposed to 'wishes'. We believe the changes to the wording from 'residence' to 'lives with', and 'contact' to 'spends time with' and 'communicates with' are helpful changes that will resonate with the public.

The acknowledgement of the importance of relationships children have with their wider family, in particular their grandparents, and the inclusion of provisions which provide for a greater role of the extended family are to be commended.

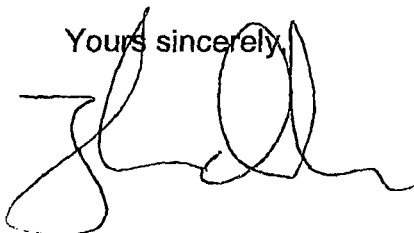
It is noted in S60J (2) that 'risk' of abuse is a determining factor in whether a family has to attend family dispute resolution. The legislation gives no indication of what constitutes 'risk' and as such leaves 'risk' open for liberal interpretation. To ensure safety of children, clearer guidelines need to be included in the legislation otherwise the 'risk factor' will become embroiled in the arguments if one party wishes to proceed straight to court and the other wishes to take the dispute resolution option.

It is noted in the legislation S10D (c) & (d) when referring to inadmissibility that it refers to "any" courts. It is presumed that this means any family court jurisdictions? Case law over recent years has made rulings excluding inadmissibility in criminal matters. Clarity around this point would be especially helpful to community organisations, which end up spending time, effort and money on this point when involved in situations where privilege has to be contested.

Australian families in distress and the Catholic Welfare Australia Member Network, which works with these families, are very reliant on high-quality legislation to aid them at critical times of need. With this in mind, Catholic Welfare Australia is committed to continuing to work closely with Government in the rolling out of these important and over due changes to the Family Law system.

If I may be of any further assistance, please do not hesitate to contact me on 02 62851366 or 0409 655 460

Yours sincerely,



Frank Quinlan
EXECUTIVE DIRECTOR