



Federation of Community Legal Centres (Vic) Inc

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*ML*  
The Secretary  
House of Representatives  
Standing Committee on Legal and Constitution Affairs  
Parliament House  
CANBERRA ACT 2600

Per email : [laca.reps@aph.gov.au](mailto:laca.reps@aph.gov.au)

Dear Secretary,

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

The Federation of Community Legal Centres Vic. Inc ("the Federation") is the peak body for fifty Community Legal Centres across Victoria, including both generalist and specialist centres. Community Legal Centres (CLCs) assist in excess of 60,000 people throughout Victoria each year by providing provide free legal advice, information, assistance, representation, and community legal education. Overwhelmingly, the people who use Community Legal Centres are on low incomes, with most receiving some form of pension or benefit. Community Legal Centres also see a considerable number of people from culturally and linguistically diverse communities.

The Federation would like to endorse the recommendations contained in the National Network of Women's Legal Service (NNWLS) submission and in particular their concern around the limited time available for consultation and response to this exposure draft. As a peak body we welcome the opportunity to respond on behalf of our members. Tight timeframes such as these make it extremely difficult for member centres to be able to consult with their communities and feed that in to a coordinated response.

We would like to take this opportunity to highlight some areas of concern

Best interests of children – Objects and Principles of legislation

In our response, dated January 2005, to the Family Law and Legal Assistance Division of the Attorney-General's Department on the government's Discussion Paper, "A New Approach to the Family Law System – Implementation of Reforms – 10<sup>th</sup> November 2004", we recommended that :

*The Family Law Act should fully protect the best interests of the child as the paramount consideration. This includes ensuring that the best interests of the child, including but not limited to their physical safety, well being and their need to be protected from witnessing violence, are not overborne by the any rights of parents to equal shared parental responsibility.*

Whilst acknowledging the exposure draft does retain the 'best interests of the child

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as the paramount consideration', it appears as a principle (s60B(2)(b)) that underlies the Object of the changes to this part of the legislation.

**s.60B(2)(b)**

**The principles underlying these objects are:**

- (a) except when it is or would be contrary to the child's best interests:**
  - (i) children have a right to spend time on a regular basis with, and communicate on a regular basis with, both their parents and other people significant to their care, welfare and development.**
- (b) children need to be protected from physical or psychological harm caused, or that may be caused by:**
  - (i) being subjected or exposed to abuse or family violence or other behaviour or**
  - (ii) being directly or indirectly exposed to abuse or family violence or other behaviour that is directed towards, or may affect, another person.**

The Objects, **s60B(1)(c) :**

**to ensure that children have the benefit of both of their parents having a meaningful involvement in their lives, to the maximum extent consistent with the best interests of the child.**

This put parents rights clearly above those of children and interests of parents ahead of those of their children. The underlying principle also ranks the protection of children secondary to the issue of time spent with parents.

Further to that, the Federation seeks further clarification on the implication of "meaningful involvement" in s60B(1)(c). Some guidance in relation to the meaning of same would prove helpful for parties. However, the clarification should not be so prescriptive as to be definitive of all cases as this needs to be able to be adapted to individual circumstances and cases.

**Section 60B(1)(b)**

**to ensure that parents fulfil their duties and meet their responsibilities, concerning the care, welfare and development of their children**

This subsection is framed in terms of 'needs' of children rather than 'rights' as referred to section 60B(1)(a). The Federation submit that if the rights of children are already accounted for in section (1) (a), then the needs of children would automatically be protected under this section.

As stated in our response to the government in January of this year, the Federation recommends that all legislation should be consistent with the Australia's obligations under Human Rights instruments such as the Convention on Elimination of Discrimination against Women, the Beijing Platform of Action, the Convention on the Rights of the Child; and other international human rights agreements

**The Federation strongly recommend that the rights of children to protection should be the first and foremost object and underlying principle of any legislation dealing with family law.**

### Adoption of less adversarial processes

The Federation welcomes an adoption of a less adversarial process in assessing children and property decisions in relationship breakdowns.

However, The Federation note that a 'less adversarial process' is only workable when factors such as family violence (in all its forms) and inequality of bargaining power (financial, educational or social) are recognised and acknowledged at the outset. Without this recognition, the expectation of a 'less adversarial process' will only work towards entrenching existing power dynamics between parties. The concept of a 'less adversarial process' should not come at the cost of fairness and ensuring that the children's best interests are paramount.

### Family Dispute Resolution

Whilst the Federation supports methods of alternative dispute resolution, the Federation notes that alternative dispute resolution can only be effective if parties' bargaining power is equal. We refer to discussion above in relation to same.

In relation to the proposed Subdivision E, the Federation comments as follows:

### ***section 60J- Family dispute resolution not attended because of child abuse or family violence***

The Federation queries the phrasing in section 60J(1)(b) that a party does not need to attend family dispute resolution if there are *reasonable grounds* to believe family violence exists within the relationship. The Federation notes that the insidious control dynamics and subsequent violent behaviour (emotional, physical or psychological) that are part of these relationships can not be underestimated. The fact that the Statewide Steering Committee to Reduce Family Violence, and its subsidiary committees have been formed is a sign of the long-awaited recognition of the seriousness and prevalence of family violence in Victoria's society.

The Federation seeks clarification of the meaning of 'family violence' within the context of the Exposure Draft and seeks further confirmation that the Court will be directed to include all aspects of family violence in determining whether it is *reasonable* for parties to not attend dispute resolution for this reason. The Federation notes that although parties are provided with greater access to alternate dispute resolution processes, the importance of parties obtaining legal advice both before and during the process cannot be understated.

### Presumption of joint parenting responsibility

The Federation notes that the proposed section 61DA creates a presumption of joint parenting responsibility as the 'starting point' in children's disputes. However, the Federation is concerned that the proposed section 61DA does not apply a presumption of no contact when family violence exists. The existence of Family Violence can only be utilised to rebut the existing presumption. Therefore, this is in fact contrary to the Terms of Reference which state:

*(c) recognise the need to protect children from family violence and abuse*

The Federation also points to the fact that it is unclear how 'joint parenting responsibility' can be ensured when power balances exist in the parties' relationship. This, in turn, can lead to further litigation which clearly has not been the intention

since the original Parliamentary Inquiry into joint custody nor of the Terms of Reference of this Committee.

**The Federation supports the NNWLS' position that the law already provides that 'parents share duties and responsibilities concerning the care, welfare and development of their children' and that both parties have 'parental responsibility for the child' unless there is a contrary order. It then is dependent upon individual cases as to how joint parental responsibility is interpreted.**

**The Federation shares the recommendation of NNWLS that if presumption of joint parental responsibility is introduced it must be accompanied by the presumption that there should not be joint responsibility in cases where there is family violence or abuse.**

Substantial time – s63DA

The Federation notes that there is no evidence that shared physical time with both parents is necessarily best for children's welfare and development. In fact, evidence suggests that "shared time" works most effectively for children in circumstances where parents have excellent communication between each other, have similar economical circumstances and the parents reside near each other. This clearly is not realistic for the majority of families following separation.

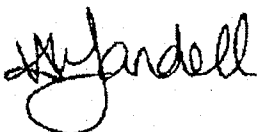
Primary Considerations – Two Tiered System s68F

The Federation questions the needs for a two tiered system as this would be likely to cause confusion and consternation. The need to protect children from violence and abuse should be the predominant concern and should be listed as the first priority ahead of the proposed s68F(a) which indicates that children should have 'a meaningful relationship with both parents'.

In conclusion, by prioritising the need for a 'meaningful relationship' above protecting a child from family violence and abuse can only work to further entrench the family violence. The Federation supports the recommendation of the Domestic Violence and Incest Resource Centre Victoria for the development of comprehensive training around family violence prevalence, types, and dynamics for all staff at Family Relationship Centres, Family Court and Contact Centres. Accredited training in recognising and responding to family violence must also be a requirement for FRC staff.

The Federation would welcome the occasion to provide a more thorough analysis of the Exposure Draft, if provided with the opportunity of adequate time to respond.

Yours sincerely,



**Helen Yandell**  
Chairperson