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Submission to NSW Legislative Council Standing Committee on Law and Justice:

**INQUIRY INTO THE IMPACT OF THE FAMILY LAW AMENDMENT  
(SHARED PARENTAL RESPONSIBILITY) ACT 2006 (Cth)**

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**RECOMMENDATIONS**

This submission does not attempt substantive assessment of the impact to date of the Family Law Amendment (Shared Parental Responsibility) Act 2006 (Cth).

This submission **recommends** that the Standing Committee on Law and Justice recommend in its report that:

- (1) A similar inquiry to the present one be held in one year (with a timeframe enabling appropriate community consultation) to assess:
  - (a) Such additional information and experience as is then available on the impact of the Act, including any findings of evaluative research; and
  - (b) The current and potential role of New South Wales policies and programs in ameliorating any problems identified with the Act's impact.
- (2) New South Wales Government funding be allocated to ensure thorough evaluative research into the impact of the Act by NSW Government agencies, community sector bodies and/or academic researchers, with priority attaching to research projects designed to (a) fill any gaps identified in Commonwealth-funded research; and/or (b) enable the fullest possible assessment of the Act's impact in relation to family violence.

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### **I Introduction**

#### **A About Catholic Social Services Australia**

1. Representing 62 member organisations, Catholic Social Services Australia is the Catholic Church's peak national body for social services. It advises the Australian Catholic Bishops Conference on social policy issues as well as supporting the delivery of a wide range of social service programs.

2. For 50 years, Catholic Social Services Australia has assisted and promoted better social policy for the most disadvantaged people in Australian society. This continues a much longer tradition of such engagement by the Catholic Church in Australia.

3. Catholic Social Services Australia has the mission of promoting a fairer, more inclusive society that gives preference to helping people most in need. It is committed to an Australian society that reflects and supports the dignity, equality and participation of all people. To this end, Catholic Social Services Australia works with Catholic organisations, governments, other churches and all people of goodwill to develop social welfare policies and other strategic responses that work towards the economic, social and spiritual well-being of the Australian community.

4. Our 62 members employ over 6,500 people and provide 500 different services to over a million people each year from sites in metropolitan, regional and rural Australia. In addition to family relationship services, the services provided by our members encompass aged care, community care, disability services, drug and alcohol addiction, employment and vocational programs (including Job Network, Disability Open Employment and Personal Support Program), housing, mental health, residential care and youth programs.

5. Our credentials in the delivery of family relationship services are well-established:
- Twenty-nine of our member organisations *deliver the Commonwealth-funded Family Relationship Services Program (FRSP)* from over 250 venues across the country.
  - The Commonwealth Government's FRSP makes up less than 20% of our network's Family Services portfolio.
  - Our Family Services network has the widest and most comprehensive coverage in Australia, including rural and remote locations.
  - Our network is the major provider of preventative and early intervention services in Australia.
  - 49% of our network's FRSP clientele live on low incomes.
  - Catholic Social Services Australia has four member organisation involved in running the new Family Relationship Centres (FRC), three in three different consortia; and Centacare Townsville in its own right.

## **B Purpose and scope of this submission**

6. The *purpose* of this submission is to comment on the inquiry by the Standing Committee on Law and Justice of the New South Wales Legislative Council ("the Committee") into the impact of the Family Law Amendment (Shared Parental Responsibility) Act 2006 (Cth) ("the Act").

7. The *scope* of this submission encompasses both of the Committee's terms of reference, but not with a view to contributing substantive assessments of the impact of the Act to date.

## **II Timing and context of this Inquiry into Act's impact**

### **A Factors limiting comprehensiveness of this early impact assessment**

8. Catholic Social Services Australia welcomes the NSW Parliament's interest in assessing the impact of recent family law amendments. We understand that, although a Commonwealth Government responsibility, family law legislation has significant implications for a number of areas falling within State jurisdiction (such as domestic violence programs).

9. There is certainly value in attempting early evaluation of the Act's impact, in view of the existence of major concerns about how some aspects of the amendments made by the Act would operate in practice. Among the areas conceivably affected by the Act is the safety and security of children. This subject alone is of such overriding importance that it cannot be too soon to begin to evaluate the Act's effects. Aspects of the Act warranting particularly close scrutiny in application include:

- (a) Changed criteria for determining the best interests of the child (especially the new distinction between "primary considerations" and "additional considerations").
- (b) Changed definition of "family violence".
- (c) Introduction of penalties for allegations of violence deemed "false".
- (d) Establishment of Family Relationship Centres.
- (e) Presumption of equal shared parental responsibility.

10. However, the Committee faces a challenge in attempting to assess the Act's impact just a few months after the commencement of most of the Act's provisions. This inherently difficult task is made harder still by a number of additional factors, including:

- (a) *Time lag between new law taking effect and having on-the-ground impact* – for many cases now working through the system, the applicable law remains the pre-Act family law provisions.
- (b) *Wide-ranging nature of the substantive family law changes* wrought by the Act – the full effects of which may not be apparent for some time (for example, clarifications are likely to emerge over time from judicial interpretation of the Act).
- (c) *Phased introduction of aspects of substantive family law changes* – notably the phasing in of aspects of compulsory family dispute resolution (with some provisions commencing only from 1 July 2007 and other provisions commencing later still).
- (d) *Staggered implementation of institutional changes* – the institutional changes wrought by the Act, notably the introduction of Family Relationship Centres (FRCs), are being staggered in their implementation. Although the Commonwealth Government plans to have 65 FRCs nationally (21 in NSW), only 15 (four in NSW) have so far commenced operating. Of the remaining 17 FRCs currently planned for NSW locations, seven are expected to commence operating in 2007-08 and ten in 2008-09.
  - (i) In those regions where FRCs have commenced operations, questions include how to disentangle the impact of that institutional change from the impact of the Act's substantive amendments to family law; and how the impact of FRCs can be effectively assessed at such an early stage of their existence.
  - (ii) In those regions where FRCs have not yet been established, any assessment of the Act's impact is in some respects premature as it would fail to take account of significant (albeit so far unimplemented) institutional change flowing from the Act.
- (e) *Uncertainty regarding public perceptions* – some time is required to build public awareness of the changes, and particularly to build well-informed perceptions of what is required or permitted by the amended family law:
  - (i) Anecdotal evidence to date indicates the existence of misconceptions on the part of some parents – e.g. the conviction that the law now guarantees a 50/50 split of time to be spent by children with each separated parent.
  - (ii) It is too early to know whether such misconceptions will linger into the future, or whether they will lessen noticeably when the Act has been longer in force.
- (f) *Difficulty of distinguishing teething problems from systemic flaws* – when assessing, for example, referral patterns flowing from the changed institutional arrangements:
  - (i) Catholic Social Services Australia has been monitoring the impact on our member organisations since 1 July 2006. Early indications are that some operational difficulties are arising in converting Advice Line calls into referrals to community organisations and/or into take-up of such referrals.
  - (ii) In the eight weeks from 1 July, for example, our 60-odd member organisations received a combined national total of four referrals from the 8,600 registered calls to the Advice Line. Referrals from Family Relationship Centres were also slow and patchy for that eight-week period. Subsequent monitoring showed some improvement, but to date the flow of referrals to

community organisations has not occurred as anticipated. While this outcome may merely reflect teething problems, it bears watching.

- (g) *Near-simultaneous introduction or foreshadowing of a range of other policy changes* – which do not arise from the Act itself but may, for many women and children, have a significant impact on the way in which changes brought about by the Act are experienced in practice:
- (i) New child support arrangements, which commenced on 1 July 2006 (two later stages will commence from January 2007 and July 2008 respectively).
  - (ii) New industrial relations laws, which took effect on 27 March 2006.
  - (iii) “Welfare-to-work” changes, which took effect on 1 July 2006: Especially noteworthy here are the new participation requirements and the new compliance regime, in conjunction with the family law requirement for courts to consider the child spending “equal time or substantial or significant time with each parent in certain circumstances” (Section 65 DAA Family Law Act (Cth) 1975):
    - a. Only one parent will be regarded as a principal carer – so the welfare system will take no account of the parental responsibilities of parents who have a child with them for close to 50% of the time but who are not “principal carers”.
    - b. As the amended family law legislation is designed to make more equal the time children spend with each separated parent, we can expect an increasing number of separated parents to have children for a very substantial proportion of their time while lacking the status of “principal carers”.
    - c. Implications of lacking “principal carer” status, despite having children for a considerable proportion of each week, would include being:
      - i. Ineligible for continuation of pharmaceutical benefits, concession card, telephone allowance, etc.
      - ii. Subject to a wider range of participation requirements than if accorded “principal carer” status.
      - iii. Required to accept any suitable job offer – while, by contrast, the parent classified as a “principal carer” can decline a job offer without penalty if the job brings under \$50 per fortnight as a net financial gain (i.e net of tax, childcare, travel expenses, income-related incremental increases in public housing rent, and foregone income support benefits).
      - iv. (Arguably) ineligible for “financial case management” if penalised by an eight-week suspension of income support for non-compliance with participation requirements (e.g. for declining a suitable job offer) – because such a non-principal-carer would arguably not be regarded as having “vulnerable dependants” (so would not trigger application of the “financial case management” program intended to assist “exceptionally vulnerable” people to meet essential expenses during eight-week income suspension periods).

## **B Recommendation 1**

11. Catholic Social Services Australia recommends that the Standing Committee on Law and Justice recommend in its report that:

- (1) A similar inquiry to the present one be held in one year (with a timeframe enabling appropriate community consultation) to assess:
  - (a) Such additional information and experience as is then available on the impact of the Act, including any findings of evaluative research; and
  - (b) The current and potential role of New South Wales policies and programs in ameliorating any problems identified with the Act's impact.

## **III Need to ensure comprehensive evaluative research**

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### **A Importance of ensuring funding for thorough evaluative research**

12. Catholic Social Services Australia believes that the impact of the significant changes brought about by the Act should be monitored on an ongoing basis by thorough and comprehensive evaluative research.

13. We understand that the Australian Institute of Family Studies is undertaking some relevant research over the period 2006-2008.

#### *Need for comprehensive and adequately-funded evaluative research*

14. Many community sector organisations are well-placed to conduct or participate in evaluative research into the Act's impact. Examples include agencies delivering family relationship services and domestic violence programs. However, such agencies are rarely able to finance research designed to produce solid "evidence-based" findings to guide future policy-making.

15. There is therefore a need to ensure that any gaps in Commonwealth-funded evaluative research are filled by well-targeted research projects which are designed to assess the Act's impact and funded by entities other than the Commonwealth Government. We hope that the New South Wales Government will give sympathetic consideration to funding such projects. This hope draws strength from the interest in this important topic which is evident from the Ministerial referral which initiated the present inquiry by the Committee.

#### *Evaluation of Act's impact in relation to family violence*

16. We note the following recent opinion expressed by the Convenor of the National Council of Single Mothers and their Children:

New provisions allow penalties for "false allegations" of violence and consideration of which parent would most likely facilitate a relationship with the other parent. Such provisions make it difficult for mothers to disclose violence as they may be penalised and lose residence if the court does not accept their evidence of violence against them. State restraining orders are not recognised by the Family Law System as reliable evidence of violence and child protection investigations, when they actually occur, have similarly been dismissed as not having been properly tested at law.<sup>1</sup>

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<sup>1</sup> Elspeth McInnes (2006), No safety for family violence victims in family law, *OnLine Opinion*, posted 18 October 2006, <http://www.onlineopinion.com.au/print.asp?article=5022>.

17. We also note the following disturbing statistics about the reporting of family violence and the obtaining of Apprehended Violence Orders:

- (i) Approximately 40% of women subjected to violence by their current partner do not disclose their experience to anyone.<sup>2</sup>
- (ii) 95% of women abused by their current partner did not report their last experience of abuse to the police.<sup>3</sup>
- (iii) In a study of 176 files of the Family Court in which children's matters were contested, while 95 of the files (54%) included evidence of domestic violence, an Apprehended Violence Order had not been obtained in over a third of these.<sup>4</sup>
- (iv) According to NSW Bureau of Crime Statistics and Research, 85% of subjects had experienced abuse over long periods prior to applying for an Apprehended Violence Order.<sup>5</sup>

18. In view of the unacceptability of family violence and its deep, negative and long-term consequences, Catholic Social Services Australia stresses the particular need for thorough evaluation of the Act's impact in relation to family violence. This is a complex area of vital importance, warranting thorough examination of any legislative change to guard against adverse unintended consequences.

## **B Recommendation 2**

19. Catholic Social Services Australia recommends that the Standing Committee on Law and Justice recommend in its report that:

- (2) New South Wales Government funding be allocated to ensure thorough evaluative research into the impact of the Act by NSW Government agencies, community sector bodies and/or academic researchers, with priority attaching to research projects designed to (a) fill any gaps identified in Commonwealth-funded research; and/or (b) enable the fullest possible assessment of the Act's impact in relation to family violence.

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<sup>2</sup> Australian Bureau of Statistics. (1996). *Women's safety Australia* (cat. no. 4128.0). Canberra: Australian Bureau of Statistics.

<sup>3</sup> *Ibid.*

<sup>4</sup> Melville, A. & Hunter, R. (2001) 'As everybody knows': Countering myths of gender bias in family law. *Griffith Law Review*, 10 (1), 124-138.

<sup>5</sup> Trimboli, L. & Bonney, R. (1997). *An evaluation of the NSW apprehended violence order scheme*, Sydney: NSW Bureau of Crime Statistics and Research.

#### **IV Conclusion and Recommendations 1-2**

20. Catholic Social Services Australia has appreciated the opportunity to contribute to the Committee's Inquiry into the impact of the Act, and thanks Committee members for their consideration of this submission and its recommendations.

21. Catholic Social Services Australia **recommends** that the Standing Committee on Law and Justice recommend in its report that:

- (1) A similar inquiry to the present one be held in one year (with a timeframe enabling appropriate community consultation) to assess:
  - (a) Such additional information and experience as is then available on the impact of the Act, including any findings of evaluative research; and
  - (b) The current and potential role of New South Wales policies and programs in ameliorating any problems identified with the Act's impact.
- (2) New South Wales Government funding be allocated to ensure thorough evaluative research into the impact of the Act by NSW Government agencies, community sector bodies and/or academic researchers, with priority attaching to research projects designed to (a) fill any gaps identified in Commonwealth-funded research; and/or (b) enable the fullest possible assessment of the Act's impact in relation to family violence.