

**OPENING STATEMENT BY CATHOLIC WELFARE AUSTRALIA
to the House of Representatives' Standing Committee on Legal
and Constitutional Affairs Inquiry into the
Family Law Amendment (Shared Parental Responsibility) Bill
2005
Exposure draft**

Appearing on behalf of Catholic Welfare Australia are:

Mr Frank Quinlan, Executive Director, Catholic Welfare Australia

&

**Mrs Margaret Roots, Director, Member and Network Services,
Catholic Welfare Australia**

On behalf of Catholic Welfare Australia, I would like to thank this Standing Committee for the opportunity to appear today and welcome the focus this Inquiry gives to the role of family in society.

I preface our remarks by saying that Catholic Welfare Australia represents Catholic community organisations – we are not from a legal discipline, so we leave the legal arguments for those better qualified than us to make them. What we do bring to this inquiry is over eighty years of experience of dealing with couples and families in distress, across this nation.

From a Catholic perspective, family is the fundamental unit and building block of our society. Families are to be supported not just because they nurture human life, but because the sharing and co-operative values fostered by family are the same values that operate for the common good throughout the community. Whilst our members invest great efforts in education and counselling to build strong family relationships, we are also tragically aware of, and engaged in, the reality of relationship breakdown. We are steadfastly committed to supporting families during this process and are particularly committed to ensuring that the best interests of any children involved is the paramount concern when making decisions regarding the future structure of the family unit.

In the last 12 months, Catholic Welfare Australia Member Organisations collectively administered in excess of \$71 million worth of direct family programs. Approximately one sixth of these were funded through the Australian Government's Family Relationship Services Program, or about \$15½ million from the \$69 million program pool. The remaining \$55 million was funded through state government funding, Church contributions and client fees. Catholic agencies assist more than a million Australians every year.

The Catholic Church has a long history of being instrumental in the development and formulation of relationship and family law policy. As far back as the 1940's, when marriage came under State jurisdiction, Monsignor McCosker negotiated with the New South Wales State

Government for funds to provide what was then called “Marriage Guidance”. This counselling was provided independently of the Court system. These programs were the precursor to many of the programs we know today.

In general, Catholic Welfare Australia has welcomed the changes proposed by the Australian Government. Whilst we welcome the overall thrust of the legislation we are concerned that we are about to witness a significant shift in the way in which counselling and mediation services are provided in the family services arena and in the community sector. The community sector has been extremely successful in achieving results for many years. There can be no doubt that the proposed legislation will change the face of community sector programs. In this context, Catholic Welfare Australia has a number of concerns.

We begin our assessment of the proposed changes with the question “Do the proposed changes enhance the best interests of the child?” While we support the overall direction of the amendments, it seems that some of our most disadvantaged children will not reap the full benefits of the proposed changes. In circumstances where the courts make determinations (for example where domestic violence and/or child abuse has been a factor) there appears to be an assumption that this determination, and the penalties that underpin it, are all that will be required to achieve compliance. We know from our experience that this is a vain hope.

Where parents are self-determining, the amendments wisely require that dispute resolution procedures be established by the parents entering into agreements. This is a realistic means of anticipating and preventing problems. We know, however, that those who are the subject of court determinations frequently fail to comply and often remain in dispute. Non-punitive strategies to support compliance – such as case management, education and supervised access, ought to be considered at the time determinations are made in order to foster and support future compliance. Such intervention ought not be delayed until court determinations break down. Children in these circumstances are among the most vulnerable and deserve better.

Similarly, we ask what rural and remote children are offered by these proposals. The current proposals are exclusively “metro-centric” - that is they revolve around metropolitan and large regional centres with significant resources and a diversity of services available on call. If our rural and remote children are to be assisted, we must develop programs and interventions that are designed specifically for their circumstances and resourced appropriately. Metropolitan services adapted to fit into a rural or remote setting are unlikely to yield significant benefits.

We recognise that the law requires clear definitions and precision of language. However, this precision is not matched by murky reality

our staff contend with every day. As the legal system shifts further and further into the community sector, our staff, most of whom are professionals in disciplines other than law, are increasingly required to be the front line interpreters of the legislation and its requirements. This changes the nature of their work.

Our staff are frequently the interface between the legal system and the public, and therein lies a problem. This legislation is prescriptive about how particular 'advisors' (as defined by legislation) will operate. Their actions and interpretations of law will be judged by the court system, the legal fraternity, and members of the public. Given the longstanding experience of the sector identified earlier, and given the centrality of the position community based workers take on the frontline of family law, it is extraordinary that there are no proposals for formal representation of the community sector in the design and structure of this new system. Whilst we welcome opportunities for input into inquiries such as this one, formal structures must be developed to maintain input on an ongoing basis. As recently as last Friday I learned for instance that the NSW Council of Churches, who represent a raft of community based providers, had only just that day become aware of this inquiry. Formal structures and programs must provide opportunities for sector development on a systematic and ongoing basis. This is particularly true if new providers are to deliver services.

This legislation deals specifically with separation. For organisations like ours, this is only part of our work, investing considerably as we do

in education and preventative strategies. Our membership has had to fight hard over the years to protect 'privilege' in their work. We note in the proposed legislation that when speaking about 'privilege' the legislation seems to refer to 'any' court. Our experience and developing case law tell us that this is no longer so and the immunity afforded our workers on behalf of their clients relates only to the jurisdiction of the Family Court. We would appreciate clarity regarding the application of privilege as proposed by this legislation.

Catholic Welfare Australia is absolutely committed to working with Australian families as a dynamic and creative network of services providers, we are extremely confident of our ability to continue to deliver excellent services to the many hundreds of thousands of Australian families we assist each year. We are less confident that the proposed changes will adequately take account of the vast expertise of the community sector, and the complex and uncertain environment in which they work.

We thank you for your time and your interest today and look forward to exploring the issues presented in our submission.