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# Relationships Australia

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Ms Towner  
The Secretary  
House of Representatives  
Standing Committee on Legal and Constitutional Affairs  
Parliament House  
CANBERRA ACT 2600

Dear Ms Towner

**Response to Questions taken on Notice from Parliamentary Standing Committee on Legal and Constitutional Affairs on the exposure draft of the *Family Law Amendment (Shared Parental Responsibility) Bill 2005***

Thank you for inviting *Relationships Australia* to respond to further questions on the draft legislation of the *Family Law Amendment (Shared Parental Responsibility) Bill 2005*. We are delighted to take up this opportunity to respond to the Committee's questions from our appearance before the Committee on 21 July 2005.

Relationships Australia's response to the questions appears below.

**How will these two dispute resolution processes ('advisory' and 'facilitative') work in practice?**

Currently the definitions for practitioners under the proposed amendments appear to be workable in practice. The Committee should note that the accepted and agreed definitions across the sector are taken from the National Alternative Dispute Resolution Advisory Council (NADRAC) which has published its definitions.<sup>1</sup> The definitions used in the proposed amendments are complementary as shown below.

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<sup>1</sup> National Alternative Dispute Resolution Advisory Council: <http://www.nadrac.gov.au>  
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### Advisory

The definition used by NADRAC for Conciliation is the one that matches the 10H(2) proposed amendments. The advisory role that conciliators have requires that they also have special indemnity cover to protect them in their advisory role. This means that the provision of this service is far more expensive than that of mediation. Most conciliation is conducted by legal practitioners who have indemnity cover for the advice they provide.

### Facilitative

The definition of facilitative dispute resolution in the proposed amendments describes the process of mediation as defined by the NADRAC definitions and the *Australian Capital Territory Mediation Act 1995*. This is similar to the process that the current *Family Law Act* covers. Under this definition mediators are protected and since they provide no advice they are adequately covered by indemnity policies that are relatively inexpensive.

It is important to note that currently mediators with *Relationships Australia* can provide information, test options with clients, assist clients to negotiate the complex family law system through skilful questions and other strategic interventions that do not place them in an advice giving role. They satisfy all the requirements of section 10H(2)(b).

**Will professionals be clear about the extent of their obligations and immunities? Will it be easy for facilitative dispute resolution practitioners to understand that their role does not include advice but that they have an obligation to provide information about non-court based services under section 12G?**

### Obligations

The proposed section 12G is clear about the extent of obligations for professionals working in this field.

The difficulties lie in the cross referencing to other sections or parts such as section 12C and Part VII proceedings. This does imply that practitioners would need a familiarity with the *Act* and the ability to interpret the implications of legislation.

Some resource information for the community sector prepared by the Attorney General's Department would be most welcome when the Family Law changes are implemented.

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## Immunities

The extent of practitioner immunity is unclear in the current language. It is also not clear what a breach of the proposed obligations may result in. This would have particular importance for private practitioners because it can be envisaged that larger organisations such as *Relationships Australia* would put in place policies and procedures and written documentation to protect both their clients and their employees.

The term adviser as a descriptor of family dispute practitioners and family counsellors in section 63DA may have the serious unintended consequence of making the distinction between advisory and facilitative dispute resolution unclear. This may have an impact on the immunity of these practitioners.

### **Does the definition of dispute resolution make the dispute resolution process clearer or easier?**

The definition of dispute resolution in section 10H(1) is very broad and clear.

### **What will be the 'other things', along with the giving of advice, that the advisory dispute resolution practitioner will use to resolve disputes?**

Advisory dispute resolution practitioners would use all the skills and interventions of a mediator (facilitative dispute resolution practitioner) to provide information and education on conflict resolution, child development, relationship dynamics in a separation process, opinions about the impact of various arrangements on children.

### **In Relationships Australia what is the ratio of mediation to conciliation?**

All eight member organisations of Relationships Australia which offer services across all the States and Territories have mediators working in the Family Law area. Only two of the organisations offer conciliation in property matters that are referred by the Federal Magistrates Court. The ratio of conciliation to mediation is approximately one fifth in these two organisations both of which employ legal practitioners who are indemnified to conduct the conciliations.

### **What do we think of a 'Child and Family Protection Unit' being established in the Family Court?**

There are significant issues between the court and state child protection and it is our view that this is not working well. Under Partnerships Against Domestic Violence II (a couple of years ago) one proposal was for a national project on how court and child protection can work together as the current system was seen as putting children at risk. Relationships Australia is not aware of any analysis of problems that has been done and thus possible solutions for them and hence it is difficult to simply support the idea as it is presented. What we should support therefore is the

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concept that action in this area is required but further work may be needed before we know the best solution.

### **How do we see Arbitration working?**

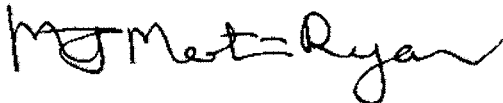
It should be noted that the definition of Arbitration in the NADRAC definitions is: *Arbitration is a process in which the parties to a dispute present arguments and evidence to a dispute resolution practitioner (the arbitrator) who makes a determination.*

Relationships Australia has not provided Arbitration to this point since none of the practices of Relationships Australia include making determinations. In referring clients to this process there has been concern that it is too close to the adversarial court processes to positively benefit clients. Relationships Australia has very rarely referred to Arbitration.

However, Arbitration is a costly process and mainly appropriate for separating parties who have large property settlements and require a determinative process. It is not a process that is effective for children's matters.

If you have any questions about the submission or require additional information, please do not hesitate to contact me on (02) 6285 4466 or via email [mmertin-ryan@relationships.com.au](mailto:mmertin-ryan@relationships.com.au).

Yours sincerely



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