frsa Family & Relationship Services Australia
Linking services, supporting relationships

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By email: cressida.limon@unimelb.edu.au

Dear Cressida

Family & Relationship Services Australia (FRSA) welcomes the opportunity to inform the Family Law Council's consideration of the terms of reference from the Attorney-General's Department regarding its review of parentage laws. As a national peak body providing leadership and representation for services that work to strengthen the wellbeing, safety and resilience of families, children and communities, the purpose of this letter is to comment on the policy principles and issues relevant to the review, drawing on the experiences of our members.

For the most part FRSA's submission is in response to the first 2 references:

i. Whether the provisions in Part VII of the Family Law Act that deal with the parentage of children lead to outcomes that are appropriate, non-discriminatory and consistent for children.

ii. Whether there are any amendments that could be made to the Family Law Act that will clarify the operation, interaction and effect of the relevant provisions.

FRSA believes that the legal definition of 'parent' has not kept pace with changing family types, changing methods of family formation, diverse cultural practice or community attitudes to family and parenthood. The question of who is a parent and what that means is a confusing area, with overlapping State/Territory and Federal laws, and presumptions that do not serve increasingly diverse families. This leaves a range of significant people in a child's life, who may have a loving and close relationship with the child, at a disadvantage. While the best interests of the child should remain paramount in deciding arrangements for children, a definition of 'parent' that is too vague or narrow may not bring about outcomes that serve these best interests.

The experiences of FRSA member organisations, who work on a daily basis with families and children across Australia, support the premise that families are increasingly diverse. Children may have a range of adults, which may or may not include their biological parents, who are significantly involved in their nurture and development. Moreover, the nature of these relationships may be organic and evolving, rather than one that can possibly be defined in advance or at conception. Such family forms include, but are not limited to:

- Couples, including lesbian couples, who conceive a child together using a sperm donor or IVF program;

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- Couples, including gay male couples, who enter into surrogacy arrangements (altruistic or commercial) in order to become parents;
- Co-parenting situations involving three or four parents, some of whom may be same-sex attracted;
- Adoption of a child, including by the non-biological same-sex parent;
- Same-sex attracted parents who bore children within previous heterosexual relationships;
- Step, blended and extended families where the primary carer is not the biological parent (eg grandparent carers); and
- Indigenous or traditional cultures for whom practices in relation to family formation and child rearing deem responsibility for children to be broader than biological parents, with multiple caregivers drawn from family or community members.

FRSA member organisations delivering post-separation services report that children can have very significant and loving attachments to persons who do not fit the legal definition of 'parent'. Such a person may invest significantly in the wellbeing of their non-biological child, but may then be particularly vulnerable if separation occurs. The biological parent will often claim entitlement as the 'real' parent, sometimes stopping all contact with the non-biological parent, or relocating to stop them spending time with the child, resulting in conflict and confusion for the child. Non-biological parents may be unsure of the law and, particularly if the child is very young, by the time they reach court an emotional disconnection due to distance may already be established.

FRSA believes that it is not necessarily in the best interests of the child that there is only one mother and one father. For example, in some instances the relationship between the stepmother or stepfather and the child is loving, close and supportive. In such circumstances it may be appropriate for that significant person to be considered a 'parent'. The relationship between step-parent and child is sometimes stronger than the biological relationship.

In Aboriginal families aunties are called 'mothers' and cousins are called 'brothers' and 'sisters'. FRSA member organisation *Centacare Catholic Family Services Country SA* works closely with local Aboriginal communities and reports that children often relate to these significant family members in the same way as they relate to their biological parents. The 'mothers' may discipline, teach and nurture children whether or not they are biological parents. It is not unusual, then, if the biological parent is unable to care for the child, for the child to move into the household of a non-biological 'parent' and for the transition to be relatively seamless.

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FRSA member organisation *drummond street services* recently identified situations from among the families with whom they work who remain outside the definitions of sections 60H and 60HB of the Family Law Act.[1] Examples include:

- Co-parenting arrangements where there are more than two parents;
- Artificial conception procedures involving women without a partner;
- Where a parent is recognised as a parent under parenting orders but not under section 60H or 60HB; and
- Lesbian couples who are not in a de facto relationship as the time of conception.

FRSA believes the clarification of the legal definition of parent is important in relation to family functioning and cohesion because lack of clarity has a number of negative consequences. It can:

- lead to protracted disputes;
- result in discrimination against families whose circumstances sit outside current definitions; and
- cause decisions and consequences that are inappropriate, discriminatory and inconsistent for the children and families involved.

We also believe that, although the terms of reference are prescribed in terms of outcomes for children that are 'appropriate, non-discriminatory and consistent', the treatment all the parties involved should also meet these standards. Indeed, the best interest of a child is intricately linked to the best interests of his or her parent/s or carer/s. The status and role of certain adult individuals may be particularly vulnerable. These individuals include sperm donors, women providing surrogacy services, intending parents in surrogacy cases and lesbian co-mothers.

FRSA supports the review of parentage laws and the need for reform as outlined above. We thank the Family Law Council for the opportunity to add our views. For more information on any of the matters described above, please feel free to contact me.

Yours sincerely

Steve Hackett
Executive Director

[1] drummond street services (2010) *Child Support Policy Research Project – Policy Paper 1, Queer families and the Child Support System Access and Awareness.*