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## A Wider Meaning of “Parent” under the Victorian Children and Young Persons Act

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**Her Honour Judge Jennifer Coate is President of the Children’s Court of Victoria. In this article written especially for *Australian Children’s Rights News*, she reflects upon how recent relationships law reform will affect families in her court.**

I am pleased to write this short piece explaining why I welcome the amended definition of “parent” in the *Children and Young Persons Act 1989* (Vic.) (the CYPA) that has been introduced by the *Statute Law Further Amendment (Relationships) Act 2001* (Vic.).

The CYPA regulates the intervention of state authority into the lives of children in their families. That intervention is triggered by either significant concerns about the safety and best interests of a child or charges that a child has broken the criminal law. In both sets of circumstances, the CYPA sets out a legal framework which must be applied by workers such as child protection and juvenile justice staff in their dealings with children and their families. It also guides the Children’s Court of Victoria when it determines protective and criminal allegations, and where the cases are made out, what order should be made in respect of the child.

Not surprisingly, the CYPA makes frequent reference to “parents” and previously defined the term as follows:

- “parent”, in relation to a child, includes—
- (a) the father and mother of the child; and
  - (b) the spouse of the father or mother of the child; and
  - (c) a person who is living with the father or mother of the child as if she were his wife or he were her husband (as the case requires) although not married to him or her; and
  - (d) a person who has custody of the child; and
  - (e) a person whose name is entered as the father of the child in the register of births in the Register maintained by the Registrar of

Births, Deaths and Marriages under Part 7 of the *Births, Deaths and Marriages Registration Act 1996*; and

(f) a person who acknowledges that he is the father of the child by an instrument of the kind described in section 8(2) of the *Status of Children Act 1974*; and

(g) a person in respect of whom a court has made a declaration of, or a finding or order regarding, the paternity of the child;”

As a result of the amending Act, paragraph (c) now reads “the domestic partner of the father or mother of the child”. The meaning of “domestic partner” is the basic definition discussed in Danny Sandor’s article in this newsletter, and whether or not a person is a “domestic partner” is to be determined by having regard to the matters contained in section 275(2) of the *Property Law Act 1958* (Vic.).

So how will the broadened definition advance children’s best interests?

The new definition is a sign of respect for the reality of some children’s lives - that there are children who are cared for within family units which comprise a father or mother in a non-heterosexual relationship. That is of more than abstract importance. I would hope that it helps us make better decisions about children by encouraging family members to be more candid about their relationships and their circumstances. For this to occur, appropriate sensitivity needs to be shown by all people in the system who are involved in such cases.

The practical legal effect of the new definition extends certain obligations to the parent’s domestic partner. For example, section 261 of the CYPA establishes an offence of intentionally causing harm or failing to protect a child from harm. It applies to persons with a duty of care towards a child and the law clearly recognises that a parent has such a duty.

The procedural rights of domestic partners under the Act are also enhanced by the more inclusive definition of “parent”. Some illustrations can be seen in:

- The Court's obligation to take steps to ensure (with interpreter assistance if necessary) that the proceedings are comprehensible to the child's parents and allowing parents to participate fully in the proceeding;
- The requirement that the Court is respectful of the cultural identity of the child's parents;
- The Court's obligation to explain the orders that it makes to parents;
- The duty upon probation officers to consult and co-operate with parents when directed by the court to visit and supervise a child and in making any inquiries, to cause as little prejudice as possible to the reputations of the child concerned and of his or her parents;
- The duty of child protection investigators to inform the child's parents that any information they give may be used for the purposes of a protection application;
- The presumed entitlement of a parent to know where a child has been placed by protective interveners;
- The right of a parent to receive a copy of reports and to call a report writer for cross-examination;
- The standing of a parent to apply to the Victorian Civil and Administrative Tribunal for a review of certain administrative decisions concerning the child
- The capacity of a parent to enter into an undertaking on behalf of the child under the Bail Act 1977 (Vic.).

In conclusion, there is no downside to the CYP A amendments and it is a credit to the Victorian Parliament that the bill appears to have progressed fairly smoothly to enactment. Now it falls to all the various organisations concerned with children, including the Children's Court, to incorporate these important changes into their programs, practices and training.

The South African Law Commission recently released an Issue Paper on domestic partnerships, a clear prelude to law reform in this area. The Issue Paper includes attention to relationships of the indigenous culture and can be accessed at: [wwwserver.law.wits.ac.za/salc/issue/issue.html](http://wwwserver.law.wits.ac.za/salc/issue/issue.html)

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## Youth Representative in Australia's Delegation to the United Nations General Assembly

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### EXPRESSION OF INTEREST

Closing Date: 20th December 2001

The United Nations Youth Association is pleased to announce the opening of Expressions of Interest for the position of Youth Representative in Australia's Delegation to the United Nations General Assembly 2002. Each year, a young Australian is chosen to be the Youth Representative in Australia's delegation to the United Nations General Assembly. The Youth Representative spends approximately 8 weeks as a fully accredited member of the Australian Delegation to the United Nations General Assembly in New York.

The Youth Representative is fully briefed by the Australian Department of Foreign Affairs with regard to Australia's policy concerns and stances and will be representing Australian concerns to the General Assembly. However the Youth Representative is not only an Australian representative but also acts as a consultant on youth opinion, providing a youth perspective within the Australian delegation and the General Assembly.

In addition to performing a consultative role, the Youth Representative must undertake a number of tasks while at the General Assembly, including preparing and delivering a statement on behalf of Australia on the biennial youth resolution. Other aspects of the role include increasing the priority placed on youth issues by United Nations member States, assisting the Australian Mission in a variety of ambassadorial and administrative tasks, building strong relations with the Youth Representatives from other nations and encouraging other countries to include Youth Representatives in their delegations.

The Expression of Interest form is available in an online format at <http://www.unya.asn.au/>