Dear Senate Committee,

PROPOSED FAMILY VIOLENCE AMENDMENTS

I am writing to express my grave concerns about the changes to the Family Law Act proposed in the draft Family Law Amendment (Family Violence) Bill 2010.

I am strongly opposed to the Federal Government's proposal to remove many of the sensible provisions of the Family Law Act that were instituted in 2006 to bring a much needed balance between protecting families from violence and protecting parents from false allegations of violence. The proposal would also remove sensible provisions that have led to reduced levels of litigation in Australia, as well as somewhat reduced levels of parental alienation.

Key changes I am opposed to

1. The Process.

Firstly, I would like to note my unhappiness and lack of confidence in the process used to develop the rollbacks to Family Law being proposed. The current inquiry as constituted, based on biased terms of reference (as noted by the Australian Law Reform Commission in its recent report), is totally flawed. A new public inquiry, similar to that held in 2003, is essential if such a large proportion of the population – especially children - is to be affected by these changes.

2. 'Friendly Parent' provisions

The practice by one parent of instigating and maintaining conflict to harm

children's relationships with the other parent ("Parental Alienation Syndrome") has been only partly managed by "friendly parent" provisions in the past – there are recent cases where fathers still lose custody as a result of maternal alienation (see e.g. http://www.heraldsun.com.au/news/national/fury- at- ruling- in-custody- battle/story- e6frf7l6- 1225817724269). The removal of these provisions, as proposed, will reward the parent who maliciously chooses to remove their previous partner from all aspects of their own lives through preventing any contact with their children. It will open up the use of entrenched conflict as a legal strategy. The proposed legislation appears to ignore the extensive research showing the benefits to children from having involved fathers.

3. No penalties for false allegations

Regrettably a common legal strategy in Family Law proceedings is to raise spurious allegations of violence or abuse. The proposed changes mean that there will be no penalties available for the court to discourage fabricated allegations of violence or abuse. It is absurd that this will be the only Australian Court unable to penalise those who deliberately lie in proceedings. The proposed changes encourage the use of hearsay and uncorroborated allegations by both parents and officers of government departments.

4. Increased litigation and costs for separating families (and taxpayers)

The 2006 Family Law changes led to a 20% reduction in litigation, partly as a result of the public perception resulting from those changes that fathers did have rights to see and care for their children. It is widely believed that this led to mothers taking a more conciliatory approach to matters of child access, hence the reduction in litigation. Watering down the presumption of shared parenting in law, if not in practice, will encourage more litigation.

5. Abuse of AVOs

The proposed expanded definition of Family Violence incorporates much normal conflict in separating families as well as the abusive behaviours of ongoing dominance or violence that must be addressed. It is unrealistic not to expect heightened emotions, and even raised voices and "put-downs", in most relationship breakdowns. There needs to be a distinction between this normal behaviour and the abuse of physical assault and emotional terrorism. An AVO is not subject to the test of evidence, and should not be accorded weight without investigation by the Family Court into its nature and circumstances. Many people sign up to an AVO "without admissions" simply to get the process over with, not because they have done something that is threatening or harmful.

6. The Family Court must be able to enforce it's Orders. If the Orders cannot be enforced then they are not Orders but rather "suggestions" or "guidelines".

If the Family Court is not willing or able to enforce its Orders then it should stop calling them "Orders". To continue to do so would be dishonest. If the Orders really are only "suggestions" then the Court should write "Family Court Suggestions" at the top of the page and not "Family Court Orders".

There have been many instances where one parent can alienate the children from the other parent simply by preventing the children from seeing the other parent. In order to achieve this one parent deliberately "breaches" the Family Court Orders. Usually this is the custodial parent or parent with the greater contact which is more often the Mother.

For example not sending the children to school on a Friday is a very common tactic. Many Orders say that the Father should pick up the children on a Friday from school for the weekend.

Achieving a Contravention is notoriously difficult, costly and time consuming and can often be defeated by legal technicalities. We have heard of one recent Contravention Application thrown out by a Federal Magistrate because the Orders were not stapled to the application.

It should not be left to the affected parent usually the Father to bring a Contravention at his own cost or using his own expertise or lack of expertise. Around 18 months ago the current Chief Justice of the Family Court recognized this as a problem and recommended in the media the setting up of a body to handle such enforcement.

We fully support this but so far we are not aware of any progress in this area.

7. The Judge should make the decision and not the children.

We have seen many cases recently where the children appear to be making the decision rather than the Judge. If the children are going to make the decision then the children should be sitting in the Judge's chair in the Court Room and not the Judge.

The Family Court appears to take the view that the wishes of the children are taken into account more as the children get older. On the surface this appears reasonable. However it appears that children as young as eleven are deciding very complex matters as their wishes are given far too much weight or even fully deciding custody issues. This is despite the fact that the children did not hear any of the evidence or have access to Family Reports, DOCS Reports, Psychiatric Reports etc.

The major problem with this is that this means that the children are put under pressure. If the children decide custody issues from the age of 11 then unscrupulous parents will pressure those children into taking "their side". The

result will be whoever can alienate the children from the other parent wins. We are seeing this time and time again in the Family Court. The Court then "rewards" those parents with the best alienation strategy with full or increased custody. Surely any intelligent person can see that this is not in the best interests of the children.

If a 14 year old girl says that she doesn't want to see her Father she should be told to do as she is told in the same manner that she would be told to go to school. This is providing there are no PROVEN allegations of violence or sexual misconduct on behalf of the Father. The custodial parent should be required to ensure that the children visit the other parent according to the Orders in the same manner that she would be required by law to ensure that the child or teenager attends school.

There seems to be an assumption in the Family Court that "what the children want right now" and what is in the children's bests interests are the same thing. This is an incorrect assumption particularly when the child has been deliberately alienated from one parent by the other. It is well known by Family Experts that children will usually be loyal to the parent they are living with and that the custodial parent can unduly influence their "wishes". So much so that the Court is not really taking into account the children's wishes at all but rather the wishes of the custodial parent.
So why doesn't the family Court take this into consideration? To blindly take into account the children's wishes on a particular day without considering how those "wishes" were achieved seems to us to be rather foolish.

The Family Court has used "the children's wishes" in the past to order that the children have no contact with the non-custodial parent usually their Father despite that parent having no allegations or no PROVEN allegations against him.

The custody decisions should be made by a Judge and based on what is in the best interests of the children and the rights of the children AND the rights of parents should be respected and considered.

It should be assumed that having a relationship with both parents is in the child or teenager's best interests unless there is EVIDENCE to the contrary. A Judge's opinion without any other EVIDENCE should not be considered to be EVIDENCE.

Children should have no say in custody decisions until they reach the age of 16. This is in their best interests.

8. The Family Court must have an objective of justice and fairness

Most people when they walk into a Court Room assume that the Court at least has an objective of justice and fairness. Many parents are stunned to realize that the Family Court does not have an objective of justice or fairness. This is very concerning when the Court is often dealing with serious allegations. It is not

surprising then that many of its decisions appear to be very unjust or unfair. The Family Court must have an objective of justice and fairness.

9. The Family Court should make decisions in a timely manner.

We have seen instances where the Family Court has taken years to make a decision regarding allegations against Fathers. The Court removes children from the Father's care based on an allegation with very little evidence and then takes years to decide whether or not the Father is guilty or not. In the end it doesn't really matter whether he is guilty or not because his relationship with his children has been destroyed anyway by the Family Court. Some Judges just keep delaying the decision or make no decision. This is not acceptable. Judges should not be able to keep delaying their decisions indefinitely. This would not happen in a criminal Court.

10. The Family Court's area of responsibility should be limited. The overlap of responsibility between the Family Court (Federal) and the State Courts is creating confusion for parents.

For example in NSW at the request of parents the NSW Parliament spent a large amount of time debating the issue of physical punishment of their children. Parents had asked the Premier at the time to spell out exactly what parents are allowed to do and what they are not allowed to do. Bob Carr (Premier at the time) announced that the Parliament had decided that "smacking" children in NSW will continue to be legal but with certain limitations. These limitations were that an implement is not to be used; the child is not to be hit above the shoulders and the "smack" should not leave a mark. This was democracy at work.

However most parents will find that most Family Court Judges will have a different view. These Judges are not elected by the people. Of course it depends on the Family Court Judge's individual point of view on this issue. But most parents will find that what is viewed as a perfectly appropriate form of parental discipline in NSW is viewed as "violence" or "abuse" in the Family Court. How are parents to decide on what form of discipline they will use? Why are there different laws that apply to people in NSW depending on whether they are divorced or not and whether they finish up in the Family Court? How does a parent know that they will get divorced in the future and which Judge will hear their matter and what his/her view on this issue will be?

The NSW Parliament tried to do the right thing and create some certainty for parents by deciding this issue in a democratic manner. Then the Family Court gets involved in this area and creates more confusion once again.

11. The Family Court should be responsible for the decisions it makes.

Anecdotally we know that the Family Court is destroying relationships between children and their Fathers Australia wide at an alarming rate. When an allegation is made the Court assumes that a Father is guilty and treats him as such until it can find that he is not an unacceptable risk. As we have explained this can take years. The result is often that the Father can no longer see his children and that his relationship with his children is destroyed. We would estimate that for every case of genuine abuse that the Family Court uncovers that there are hundreds if not thousands of relationships between children and their innocent Fathers that are destroyed as a result of the Family Court's heavy handed approach. Is this acceptable? We would argue that it is not. The Family Court should be held accountable for all the Family relationships that it has destroyed.

We fully expect that the Government and the Family Court will come to its senses in the future and acknowledge that removing children from so many innocent Fathers was an immoral and unacceptable thing to do. We see a similarity to the "stolen generation". We fully expect that future Governments will have to apologise to these Fathers and to these children at some point in the future and that there will be substantial compensation owing to those Fathers and to those children (now adults) as a result.

Surely a more balanced, measured and evidence based approach is what is required.

Finally, the best interests of children are not always at the forefront of the minds of a couple that is separating. The Family Court must be allowed to act in the best interests of children, which means where possible encouraging substantial contact with both parents. The proposed changes do not do this, and in fact seem designed to abet malicious litigants.

Overall, this proposed legislation is not a step forward, but a step back to a time where fathers were seen as no more than a "walking wallet", who had little interest in their children, and whose influence was unnecessary.

In conclusion, I urge you and the Federal Government to abandon the proposed changes to the Family Law Act and to commission an open and transparent public inquiry into the 2006 amendments, and any further changes that are needed to improve Family Law for Australian families.

Yours sincerely,

Name Removed