

29 April 2011

Committee Secretary
Senate Legal and Constitutional Committees
PO Box 6100
Parliament House
Canberra ACT 2600
Email: legcon.sen@aph.gov.au

Dear Committee Secretary,

Re: Family Law Legislation Amendment (Family Violence and Other Measures) Bill

About CLCNSW

Community Legal Centres NSW Inc (CLCNSW) is an incorporated association consisting of, and representing, the network of 39 community legal centres (CLCs) throughout NSW. Community legal centres provide a variety of free legal services to disadvantaged clients and communities across the State including legal advice, casework, community legal education, law reform activities and referrals.

Advice, assistance and/or representation in relation to family law is provided by many of the CLCs in NSW. These include both generalist (geographically-based) CLCs, and specialist CLCs such as Women's Legal Services and the Thiyama-li Family Violence Service. In addition 14 of the CLCs in NSW are partnered with Family Relationship Centres to provide legal assistance. Family law is one of our major areas of coverage: for example, family law advice was provided by CLCs in NSW on over 12,000 occasions in 2008 (likely to have increased since then, due to the recent partnering with the Family Relationship Centres). CLCs also assist with domestic violence related issues: in 2008 over 3000 advices were provided in relation to domestic violence and associated protection orders.¹

We note and support the submissions that individual CLCs have provided to your Inquiry. Those submissions include valuable examples of problems with the current family law system, and its failure to protect children and their family members from family violence.

¹ Statistics recorded via Community Legal Service Information System (CLSIS) and provided by NSW Law and Justice Foundation, 28 April 2011.

Support for the Bill

The current *Family Law Act 1975* (Cth) (**Family Law Act**) and associated practices do not sufficiently protect children or their family members from family violence. There is a strong body of evidence that the 2006 amendments to the Family Law Act have failed to keep children and their caregivers safe.² The current Act causes confusion about how issues of safety and violence are to be treated by the Court.

CLCNSW supports the changes to the Family Law Act proposed in the *Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011* (**the Bill**) as a step in the right direction towards placing the safety and protection of children and family members at the forefront of the Family Law Act.

To this end we strongly support the following provisions in relation to the definition of ‘family violence’:

- Broadening the definition of ‘family violence’ to include elements of coercion and control, and a wider range of behaviour;
- Removing the objective test of ‘reasonableness’ so that family violence can be properly considered whenever the victim actually fears for their safety; and
- A broader definition and understanding of child abuse that includes exposure to violence;

The following measures in the Bill are also supported to enhance safety within the family law system:

- Prioritising protection from family violence when considering what is in the best interests of the child;
- Including the International Convention on the Rights of the Child as an additional object and principle in children’s matters;
- Removing the ‘facilitation’ aspects of the ‘friendly parent provision’ so that genuine disclosures of family violence are not deterred and genuine actions taken by a parent to protect their child from abuse are not seen in a negative light; and
- Repealing section 117AB about costs orders relating to false allegations or denials of violence.
- Removing the provision that requires the Family Court to take into consideration only final or contested family violence orders. We support a provision that requires the court to consider, and give appropriate weight to, any family violence order that applies to the child or a member of the child’s family.

² For example, Professor Richard Chisholm (2009) Family Courts Violence Review; Australian Institute of Family Studies (2009) Evaluation of the 2006 family law reforms; Australian and NSW Law Reform Commissions Report 114 (2010) Family Violence – A National Legal Response; Dr Lesley Laing, Faculty of Education and Social Work, University of Sydney (2010) No way to live: Women’s experiences of negotiating the family law system in the context of domestic violence.

Further changes recommended

While supporting the above measures proposed in the Bill, we recommend some additions to the Bill to ensure that the family law system does not jeopardise the safety of children and their caregivers.

In particular, we recommend that:

- The safety and protection of children should be prioritised above all else. Its priority should not be subject to proving an inconsistency with other considerations.
- In line with the recommendations made in the Australian Law Reform Commission and New South Wales Law Reform Commission report, Family Violence – A National Legal Response, the Act should make it clear that exposure to family violence is a form of family violence³.
- The Act should make clear that ‘exposure to family violence’ applies to behaviour by the person perpetrating violence, and not to victims of the violence. This is necessary to avoid the unintended consequence that a victim of violence may be found to have exposed the child to violence by their inability to remove the child from the violence.
- There should be no presumptions in family law: presumptions about equal time are particularly problematic.
- The Act should protect the safety of the primary carer as this increases children’s safety.
- That deletion from the definition of family violence of the example “involves the first person threatening to commit suicide or self harm, with the intention of tormenting or intimidating the second person” be reconsidered.

We also support a requirement that all judicial officers, family law solicitors, family consultants and family dispute resolution practitioners and advisors in the family law system undertake comprehensive and regular training on the dynamics of family violence and the impact of violence on children.

Conclusion

CLCNSW, based on the experiences of our member centres and the clients that they assist, strongly recommends you support the amendments suggested in this letter and the expeditious passage through Parliament of the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011.

Yours sincerely,

Roxana Zulfacar
Advocacy & Human Rights Officer

³ ALRC Report 114 (2010), chapter 5.