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The Family Law Courts Violence Review
c/- Family Law Branch
Commonwealth Attorney General's Department
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Dear Professor Chisholm

Family Courts Violence Review

LFAA submission

The following is a submission by the Lone Fathers Association (Australia) Inc. (LFAA) to the Family Courts Violence Review.

The submission addresses the aims of the Review, namely, "To assess the appropriateness of the legislation, practices, and procedures in relation to matters before the federal family courts when issues of family violence arise, and to recommend any improvements considered necessary"

In summary, the objectives of the Review are directed to encouragement of disclosure of family violence, provision of support for families affected by family violence, sharing of information disclosed to the courts on family violence, best practice in dealing with family violence, and appropriate legal representation in cases of family violence.

The Review is taking place in a highly politicised environment in which women's rights groups are seeking to persuade the Government to reverse the important reforms relating to shared parenting made by the Australian Parliament in 2006.

Australian family law reform and the issue of domestic violence

Statements are frequently made by women's rights groups that "95% of domestic violence (or some such figure) is perpetrated by men".

Those statements are wildly wrong. They are linked with opposition to the 2006 reforms to family law in Australia, and appear to be motivated, in part, by a desire to cast doubt on the capability of fathers to be protectors of their children when family separations occur. Claims of this kind can and do affect judicial decisions about

shared parenting after separation, and impact on child support. It is therefore important that the truth about domestic violence is understood.

Analysis by persons opposed to the 2006 family law reforms has been along the lines that:

1. Serious domestic violence, conflated with "personal safety", is endemic in Australian families.
2. Domestic violence is a principal reason for couples breaking up.
3. Domestic violence is perpetrated almost entirely by men, with the victims being women and children.
4. Equal shared parental time with children is a strategy employed by violent men to provide them with an opportunity to commit domestic violence against women and children, and avoid payment of child support.
5. Shared parenting should, therefore, through various strategies and devices be made subordinate to concerns about "personal safety", interpreted as above.

A more truthful picture would recognise that:

1. While the incidence of domestic violence in Australia is certainly significant, and should ideally be reduced to zero, it is low by comparison with most other countries.
2. Studies of the reasons why couples break up reveal that the presence or absence of domestic violence is statistically a minor cause of separations, compared with factors such as wives "not feeling appreciated", a perception of partners' "growing apart", a desire for "more space", infidelity, and so on.
3. Family conflict studies conducted in a large number of countries over the last several decades have demonstrated that women are at least as likely to initiate and engage in domestic violence as men. These studies have also demonstrated, however, that women are more likely to be afraid of domestic violence, and somewhat more likely to be injured as a result of it.

Crime and quasi-crime studies, by contrast, indicate higher ratios of domestic violence by men relative to violence by women. Those results reflect the reality that actions carried out by a man may be regarded as "criminal" which if perpetrated by a woman may not be so regarded. This reflects traditional community attitudes and beliefs and the activities of the judiciary, the legal profession, and government departments and agencies, reinforced by the dissemination of incorrect information by gender lobbyists and governments about the incidence of domestic violence.

Nevertheless, domestic violence is still domestic violence, whether recognised by the authorities or not, and whether carried out by a man or a woman.

4. The claim that men typically wish to physically and/or psychologically dominate their wives and children, who are, in consequence, reduced to passive victimhood, is

contradicted by research revealing the high incidence of female dominance in families.

5. The strategies and devices designed by gender lobbyists of a feminist persuasion to make family law reform subordinate to concerns about “personal safety” propose the creation of “specialist units” within the family court system, making use of feminist elements in the State child protection systems and feminist “investigators”, “reporters”, and “assessors” who will make decisions about future contact.

Gender lobbyists plan to push for greater use of interim DV Protection Orders which may be granted without objectively tested evidence, and which may, in a considerable number of cases, be designed primarily to gain an advantage in divorce settlements. Legislation has already been passed in most of the Australian States and Territories to facilitate such a process. This legislation provides encouragement for attendance by police at incidents where the female partner is the complainant, and for biased methods of collection of evidence. There should be no further progression down that discriminatory track.

Some recent cases

The Terms of Reference for the present Review include the clause that, “The review will take into account the case involving Darcey Freeman in considering recommendations for changes to improve responses to cases involving family violence”.

In view of the specific reference to the Freeman case, it would be appropriate for examples of recent cases involving female perpetrators also to be included in the investigation, viz:

- The mother who took her baby on a fatal bridge leap from Melbourne’s West Gate bridge (Gabriela Garcia)
- The woman who killed her infant son by jumping with him from the eighth floor of a city apartment block walks free after being convicted of manslaughter (Yeeda Topham)

Other (mostly recent) cases reported in the media that should be taken into account in the investigation include:

- Baby boy shaken to death by addict mother (unnamed female perpetrator)
- Young mother faces baby murder charge after baby injured in fight between parents (unnamed female perpetrator)
- Sydney father came home to find a trail of blood leading to the bodies of his two young children lying next to their mother (unnamed female perpetrator)
- Twin seven-month old babies found dead (suspected female perpetrator)
- Woman charged with murder of toddler (unnamed female perpetrator)

- Fresh trial for Melbourne mother convicted of murdering her two sons and sentenced to 24 years in a secure psychiatric facility (Donna Fitchett)
- Woman who allegedly tried to poison her child and husband by lacing their mashed potato with crushed sleeping pills faces Brisbane court (unnamed female perpetrator)
- Sydney woman accused of stabbing murder of her husband was “prone to aggressive outbursts” (Danielle Stewart)
- Woman charged with murder for stabbing her boyfriend to death on Christmas Day (Tamie Melehan)
- Man whose wife allegedly torched his genitals while he slept has died (Rajini Narayan)
- Former abattoir worker used her boning skills to dismember her husband’s body and cook parts of it in the kitchen of the home they had shared (Katherine Knight)
- Woman shot her former lover and dismembered his body at the couple’s Lilyfield unit (Kathy Yeo)
- Revesby woman admitted shooting her husband, chopping up his body with an axe, and leaving his body parts at locations across NSW (Joyce Mary Chant)
- Woman conspired with her alleged lover to murder her husband - shot with his own gun at his farm near Parkes (Andrea Rix)
- “Frenzied” lesbian (Francis Marshall) shot her lover six times in the head the head but failed to kill her, so she stabbed her repeatedly before slitting her throat with a knife
- Woman left mother to be eaten alive by maggots (Eve Pyrcsak)
- Melbourne grandmother Petra (Traycevska) hired a hit man to "power drill the eyes out" of the woman acquitted over her son's murder, and allegedly told the supposed “hit man” that she wanted the woman to suffer before her death and to be buried alive in concrete
- Woman “seemed possessed”, killed her father by restraining him to his bed with cling wrap and suffocating him with a pillow (Daniela Beltrame)
- Woman cut off part of the penis of an 81-year old World War II veteran as she coldheartedly tortured him to death (Nese Arkan).

The Darcey Freeman case is not an example of a general rule, but, rather, an extreme and rare exception to the rule that fathers love and protect their children. The Chief Justice of the Family Court, Diana Bryant, has several times made the point that one

cannot base sound policy on “anecdotal evidence about individual cases”. Politically-motivated attempts to base family law policy on the Freeman case are an example of the point being made by the Chief Justice.

The Australian Institute of Criminology has recently published statistics in its National Homicide Monitoring Program 2006-07 Annual Report revealing that there were 11 mothers who killed their children in that year, as compared with 5 biological fathers. Mothers are also much more likely to physically abuse their children than biological fathers.

Statistics of domestic violence

Sex distribution of domestic violence

A 2005 study by Professor Murray Straus, University of New Hampshire (USA), on "Dominance and symmetry in partner violence by male and female university students in 32 nations", examined the extent to which domestic violence in each country was perpetrated in a recent 12-month period by:

- the male partner only
- the female partner only, or
- mutually.

The Straus study is the most comprehensive study of domestic violence carried out to date in terms of the number of countries involved.

The study demonstrated that, for the adults studied, mutual violence between partners accounted for the greater part of domestic violence between adults. The next most prevalent type of domestic violence was found to be violence by female partners only. The least prevalent type of domestic violence was violence by male partners only.

Table 1 below shows the results of the study for selected individual countries.

Table 1

Country	Assault rate during the last 12 months (%)	Assault by male only (%)	Assault by female only (%)	Both violent (%)
Iran	77.1	4.0	1.3	94.6
Mexico	44.1	6.6	15.5	77.7
UK	37.5	4.2	19.2	76.5
Hong Kong	37.0	7.7	36.9	55.2
China	34.7	6.9	31.7	61.2
India	32.3	8.3	16.6	75.0
USA	30.0	8.7	20.6	69.6
New Zealand	27.9	8.7	28.2	63.0
Canada	24.9	9.4	22.1	68.3
Brazil	22.0	15.2	13.5	71.1
Japan	21.4	7.6	11.5	80.7
<i>Australia</i>	<i>20.2</i>	<i>14.0</i>	<i>21.0</i>	<i>64.9</i>
Sweden	17.9	11.8	28.4	59.7
Total for 32 countries	31.2	9.9	21.4	68.6

As the table indicates, for all the countries in the study combined, the proportion of female-only violence was more than twice that of male-only violence. There were only two out of the countries shown where male-only violence was more prevalent than female-only violence, namely, Iran and Brazil, and the difference was only marginal in the case of Brazil. The countries where men were most notably abused by their female partners were the UK, New Zealand, Sweden, and China.

The ratio between female-only violence and male-only violence in Australia was 150%, and the overall assault rate for Australia was low by comparison with most other countries surveyed.

The results of the study indicate very clearly that concerns about male-only violence in Australia in the context of child custody need to be matched by at least equal concern about female-only violence.

Comparison of different studies

Problems in estimating the prevalence of domestic violence

There are considerable difficulties in piecing together the information available from various sources on the prevalence of domestic violence in Australia. These difficulties arise from the complexity of the issues, problems in achieving consistent definitions, gaps in the data, and difficulties in interpreting results.

The following calculations for the ACT give some indication of orders of magnitude. The ACT numbers can be scaled up to give a broad indication of the corresponding statistics at the national level, by multiplying the ACT figures by a factor of 60.

Family dispute studies

If the figures given in the 2005 paper by Straus for domestic violence between adult students in a recent year were generally applied to all adults in the ACT, the number of cases of domestic violence in the ACT in a recent year would be about 53,000. This would involve perpetration of "domestic violence" during the year by about 27,000 females and 25,000 males, or about 20% of the adult population of the ACT.

An overall average of figures published from the 100 or so professionally conducted social-scientific family conflict studies in the English-speaking world, if applied to the ACT adult population, would indicate 34,000 male victims and 23,000 female victims of domestic violence during the year, or about 22% of the total adult population in the ACT. For the period since age 15, the figures would be about three times as high. But the great majority of these cases would involve relatively minor forms of physical "violence".

Australian Federal Police (AFP) analysis

The rate of domestic violence in the ACT as recorded by the AFP is about 0.4% for all domestic violence compared with 20% or so in the family conflict studies. That is, the family conflict figures are at least 50 times higher than the police figures.

The rate of offending by *spouse against spouse or ex-spouse* is much less than 0.4%, at about 0.2%. The rate of common assault or actual bodily harm in total (i.e., including other than spouse on spouse or ex-spouse) is only about 0.1%.

Data comparison

A comparison of estimates for the ACT on the extent of domestic violence experienced for the last twelve months is as follows.

Table 2

Details	Men as victims	Women as victims	Total victims	Proportion of total adult population (%)
Victims of physical abuse -				
Based on 100 leading social-scientific studies(a) (A)	33,800	23,400	57,200	22.00
Straus, 2005 (A)	27,350	25,170	52,520	20.20
Headey, Scott, and de Vaus, 1999 (A)	7,400	4,800	12,200	4.7
Personal Safety Survey, Australia(b) (B)	340	1,180	1,520	0.58
ACT Police, 2003-04(c) (B)	184	736	920	0.35
Access Economics report (C)	840	5,700	6,540	2.52
Incidents brought to the attention of the police(d) (B)-				
Total	n.a.	n.a.	2,800	1.08
Distinct persons making contact	n.a.	n.a.	1,400	0.54
Injuries brought to the attention of the police(e) (B)-				
Minor	n.a.	n.a.	540	0.21
Requiring medical attention	n.a.	n.a.	150	0.06
Hospitalisation	n.a.	n.a.	6	0.00
Offences detected/action taken by police (d) (B)-				
Offences detected, total	190	710	900	0.35
Common assault or ABH	70	250	320	0.12
Offences, spouse against spouse/ex-spouse	100	360	460	0.18
Common assault or ABH, spouse against spouse/ex-spouse(e)	50	180	330	0.09
Arrests	85	280	365	0.14

Protection orders issued (f) -				
Interim	160	640	800	0.31
Final	80	320	400	0.15
Court proceedings -				
Prosecutions	40	460	500	0.19
Convictions	35	395	430	0.16

(a) Assuming that 50% of the studies relate to a 12-month period, and the remaining studies relate, for victims, to the period since attaining adulthood.

(b) Inter-spousal violence only (current and/or former partners).

(c) Derived estimate of number of distinct persons.

(d) Includes children (about 10% of the total).

(e) Assuming that ratio of spouse/ex-spouse to total is the same as for total offences.

(f) In NSW, 27% of protection orders are granted to men.

What the above figures indicate is that, although men are 55-60% of total adult victims of domestic violence, women account for a mere 8% of convictions for domestic violence offences. The bias against men in the way that domestic violence is perceived and dealt with by the law is obviously very extreme.

Gender lobbyists commonly make the false claim that the (apparent) predominance of assaults by men in data from crime studies and battered women's shelters also applies to the population at large. Such mixing up of two different data sets for propaganda reasons is totally wrong, and very seriously misleading.

It may, on one definition, be correct to say that "50% of women are victims of domestic violence since the age of 15". But, on that same definition, it is ALSO correct to say that "60% of men are victims of domestic violence since the age of 15".

If one wishes to say, on the basis of "crime" statistics, that "men are a large majority of the perpetrators of domestic violence" (a serious distortion of the truth), then one must ALSO recognise that "only about 0.2% of women in Australia are victims of violence by their male partners in the course of a year".

What is NOT PERMISSABLE is to claim that "50% of women are the victims of domestic violence AND that "men are a large majority of the perpetrators of domestic violence". The two statements cannot go together because they are based on completely different definitions.

Comments on the specified "objectives" of the present Review, made in the context of the above statistics, are as follows.

Practices and procedures in the family courts encourage appropriate disclosure of family violence

Australian Governments have sought to maintain the integrity of the State systems relating to domestic violence, and to avoid situations where applications might be made under both sets of legislation. Where family court orders are inconsistent with State orders, family courts must explain the reasons for their rulings. State courts can amend parenting orders made in the Family Court if the best interests of the children clearly require this.

Legislation also currently provides that courts must take prompt action where allegations are made, e.g., action in relation to affidavits, forms, and letters relating to the history of the case, and also that copies of orders must be provided to all interested parties.

Where a party knowingly makes false allegations the court is required to make an order for costs. The LFAA *recommends* that the extent to which these provisions actually operate in practice and the extent to which offenders are actually prosecuted should be investigated in the present Review.

The definition of “domestic violence” used in the Family Law Act relates to actions which cause a victim “reasonably to fear or reasonably to be apprehensive about his or her personal welfare or safety”. Gender lobbyist claims that men who are violent to their female partners are necessarily also going to be violent to their children are without foundation.

Taunting and other forms of serious provocation should be taken into account in dealing with allegations of violence, and the LFAA *recommends* that suitable guidelines to clarify this issue should be developed in the present Review.

The family courts can require State agencies, e.g., DOCS, to provide documents relating to the cases they are dealing with. .

The existing “civil” standard of proof of allegations of domestic violence, based on “the balance of probabilities”, is too slack, when the far-reaching consequences of a finding of guilt are taken into account. The LFAA *recommends* that the present standard of proof should be altered to the more appropriate “criminal” standard.

Practices and procedures for the disclosure of domestic violence should be strictly non-discriminatory. An egregious example of a discriminatory approach is the current national publicity campaign directed towards violence against women but ignoring violence against men and their children. The LFAA *recommends* that this publicity campaign be radically reshaped to cater for all victims and perpetrators of domestic violence.

The LFAA *recommends* that reconsideration of existing practices and procedures in the current Review should result in practical suggestions for:

- Dismantling of existing systemic biases against fathers in the family law system
- Opposing any return to the false notion that women are the vast majority of victims and men the vast majority of perpetrators
- Strong discouragement to the practice, where it occurs, of courts too readily accepting false allegations of abuse made to gain tactical advantage and control in family law matters concerning children, property, and income.
- Correction of practices and procedures which allow persons to misuse the legal system as a “third party” abuser to hurt and harm their former partner, and
- Tough measures to bring to account persons found to be lying and/or misusing the legal system to control family members.

Appropriate support is provided within the court system for families who have experienced or are at risk of violence

In the view of women's rights groups, “families” mean “women and children”, with no place for men and fathers. That is an inappropriate, ideological concept. A correct definition of "family" (viz. “Oxford Australian Dictionary”) is “a set of parents and children, whether living together or not”. It should not be necessary to point out that that definition includes men, women, and children.

The LFAA *recommends* that the present Review should avoid supporting any changes which would have the effect of automatically excluding children from one parent on the basis of allegations by the other parent - bearing in mind that initial outcomes from such unproven allegations often harden into long term arrangements.

It is possible that there may be a need for more security guards in some of the family law courts. Local courts often provide special rooms (e.g., “Victims of Crime Offices”) for women only, with no comparable service for men. The LFAA *recommends* that similar facilities should also be provided for male victims of domestic violence.

Information disclosed to the courts by litigants or their representatives is appropriately shared or made available to the courts

This Term of Reference is unclear.

The less adversarial trials conducted in the family court system since 2006 have resulted in a greater proportion of evidence being presented orally, and this can result in evidence being more difficult to challenge. In that case, it may be appropriate to modify existing arrangements to ensure that all interested parties are fully aware of all of the evidence.

If the Term of Reference is referring to informal discussions between persons in the court system about evidence and other “quasi-gossip” that has come to their attention, the LFAA *recommends* that the Review strongly advises against any discrimination in favour of one gender against the other.

Legislation and procedures support best practice for handing family violence matters

See earlier comments on this point.

False allegations of violence or other forms of abuse are a means of achieving exclusion and control, and are used by one parent to punish, exclude, and control the other parent, with the children as innocent victims.

The bias against men in relation to the handling of domestic violence is illustrated in the Family Court’s own statistics on the outcome of cases. According to these statistics, 34% of women who fail to receive custody of their children have “mental health” problems. By contrast, only a very small proportion of men who are unsuccessful in being awarded custody of their children are classified as having the same problem. The classification preferred by the Court in the statistics for men is “violence” or “entrenched conflict”. This strongly suggests that the Family Court has an ideological notion of “MAN BAD, WOMAN MAD”. The LFAA *recommends* that the Family Court rethinks its statistical methodology in this area.

Appropriate legal representation is provided in such cases

There is a distinct variation in the quality of legal aid being made available to women and men in many cases. The parent who “strikes first” in a separation has a much better chance of obtaining quality legal assistance, e.g., through the Legal Aid Offices. This parent is almost always the mother - because the father, usually focused on keeping the family together, is taken by surprise.

There is significant variation also in the quality of the Independent Children's Lawyers (ICL’s), with many ICL assessments based anecdotally on flimsy evidence (e.g., “a phone call I made to the mother this morning”). There are some specialist ICL's, e.g., dealing in “Magellan” cases, who are genuine experts and are paid more than the general run of ICL’s. The LFAA *recommends* that the Review provides firm direction that ICL’s not wait for the opinion of the Magistrate before providing their own opinion to the court.

Supporting papers by the LFAA

Attached are some supporting papers on family violence issues prepared by the LFAA viz.:

- Comments by LFAA on “Protection orders legislation review (ACT) discussion paper, April 2004 (pb674, 675)

- Letter to Mr Richard Foster on Domestic violence and the Family Court, 18 July 2005 (*pb811*)
- Notes on shared parenting - comments on article by McIntosh and Chisholm, 4 May 2008 (*pb1146*)
- Australian law reform and the problem of domestic violence, 25 June 2008 (*pb1149*)
- Enforcement of child contact orders (*pb1266*)
- Comments on the AIFS study of the impact of the 2006 Family Law Act amendments, 6 September 2009 (*pb1327, 1331*)
- Some reported domestic violence cases resulting in homicide, 9 October 2009 (*pb1360*)

These papers provide detailed analysis of many of the key issues to be addressed in the present Review.

We will be pleased to answer any questions that you may have in relation to our submission.

Yours sincerely

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