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Family Law Legislation Amendment
(Family Violence and Other Measures)
Bill 2011



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29 April 2011

Julie Dennett
Committee Secretary
Senate Standing Committees on
Legal and Constitutional Affairs
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Ms Julie Dennett,

Enclosed is a copy of our submission in response to the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011. This submission has sought to outline the many issues with the legislation and the detrimental effects the legislation will generate.

As an agency which deals extensively with families going through the pain of divorce, we have seen firsthand the distress and anguish that can arise from a parent being unfairly denied contact with their children as well as the negative effects of fatherlessness on children.

We have combined our extensive knowledge and experience of men, women, children and the Family Law System with widespread secondary research that has provided us with some overwhelming support for our conclusions. These include studies and statistics from government and non-government agencies, and medical and academic journals.

We have provided a list of recommendations for the committee in regards to the proposed legislation.

If you have any questions or require further information from us in regards to this submission, please contact Dads4Kids using the details provided at the top of this letter.

Sincerely,

Maxine Petrovic, *with the assistance of,*

Warwick and Alison Marsh

Dads4Kids Fatherhood Foundation

Senate Legal and Constitutional Committees – Family Law Inquiry

Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011 [Provisions]

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1.0 Introduction

The Dads4Kids Fatherhood Foundation is a harm prevention charity dedicated to the promotion of excellence in fathering. The Dads4Kids Fatherhood Foundation is dedicated to protecting children from harm. The Dads4Kids Fatherhood Foundation not only protects children but mothers and fathers as well. The Dads4Kids Fatherhood Foundation is against all forms of violence and has campaigned extensively to stop violence against men, women and children.

Unfortunately the root causes of domestic violence are not often taken into account. Statistics show that most forms of family violence are accompanied by serial addictions such as drugs, alcohol, gambling and sexual addictions. In many cases there are generational violence problems inherent in particular families, which are often associated with endemic fatherlessness in both sons and daughters.

Also a far greater proportion of domestic violence occurs in de-facto relationships. Marriage is a great protector of women and children and should be promoted by government as part of the solution. A recent study by Friedman and Martin (The Longevity Project) states, “Parental divorce during childhood emerged as the single strongest predictor of early death in adulthood. The grown children of divorced parents died almost five years earlier, on average, than children from intact families.” Supporting and strengthening marriages is one of the best ways to help women and children. The government needs to put a greater emphasis on harm prevention if it is serious about eradicating domestic violence.

Having said this Dads4Kids strongly opposes the proposed Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011. This legislation will remove the sensible provisions of the Family Law Act that were incorporated in the 2006 reforms to bring a much needed balance between protecting families from violence and protecting parents from false allegations of violence.

There is a need to acknowledge that the 2006 reforms were initiated due to too many children being denied the opportunity to develop a meaningful relationship with both of their parents. We are very disheartened to see the shared parenting legislation be reversed under the guise of reducing family violence.

The cost of fatherlessness and the associated harm caused by fatherlessness is very high in emotional, physical and monetary terms. The lack of involved, protective, committed, responsible and loving father has been shown through social science research to contribute to an increase in child poverty, child sexual abuse, child emotional abuse, child physical abuse, child and adult drug abuse, child and adult increase in suicide, child and adult self harm, and much other destructive and abusive human behaviour.

We have prepared this submission in order to demonstrate the various negative outcomes that will be resultant of the proposed legislation.

2.0 Lack of Objective Research and Comprehensive Consultation

In 2009, the Attorney-General's department published the report 'Towards a National Blueprint for the Family Law System'. It was the result of consultation with various organisations who are considered to be key players in the Family Law System. These organisations were cited in section 52 of the report:

3. For the purposes of this paper, the Family Law System includes the Family Courts of Australia and Western Australia, the Federal Magistrates Court, legal and aid commissions, community legal services, private legal practitioners and services funded under the Family Relationship Services Program (FRSP) (including family relationship centres).

4. Other important institutions that work in the area of family law or family law related matters include State courts, Centrelink, the Child Support Agency, Child Protection and Family Violence agencies and other (non-FRSP) **funded** family and crisis support services.

(Attorney-General's Department, 2009)

The newly created National Council to Reduce Violence Against Women and their Children, initiated and sponsored by the government, ensured their consultation process called for contributions from 2000 domestic violence organisations who are listed as assistance providers to women and children. There was complete exclusion of non-government funded

groups who are on the front line representing men, fathers and their children while assembling contributions for this report (Price, 2011).

The Attorney-General Mr McClelland (2011) stated that there was widespread community support for the measures proposed in this bill. However, we argue that Dads4Kids and similar non profit organisations are without the time, funds, resources and knowledge to create strong submissions. Therefore, their opinions, which are of just as much importance as highly funded organisations, were effectively ignored.

3.0 Family Law Amendment 2006

3.1 Background

In 2003, a committee which comprised of both Coalition and Labor Party members recommended the 2006 reforms to the Family Law System (House of Representatives Standing Committee of Family and Community Affairs Child Custody Inquiry, 2003). The committee heard evidence relating to false allegations, the misuse of domestic violence legislation to gain an advantage in family court proceedings and the existence of one parent using calculated means to prevent the other parent's participation in their child's life (Price, 2011). This committee acknowledged the importance of a father's involvement in their child's life. Some inclusions in the legislation were:

- a strong move towards 'equal shared parenting'
- the creation of 65 fully funded Family Relationship Centres to facilitate compulsory community-based mediation in all parenting disputes, and
- the inclusion of the 'friendly parent provision' which obligates parents to encourage a healthy relationship between the children and the other parent.

The recommended reforms would take place over a period of two years between 2006 and 2008.

3.2 Reform Assessment

In 2007, the Australian Institute of Family Studies devised a program to assess the changes and their affects on parents and children. The full program appraisal was set for 2013, with a ten year ongoing longer-term evaluation.

The full time period is needed to allow for the changes to take effect and to allow for a significant shift in attitudes among service providers, the courts and the general public towards an understanding of the need for children to have a meaningful relationship with both of their parents (Price, 2011).

The previously mentioned evaluation of the new Family Law System occurred far too early. This process needs time for effective evaluation. The evaluation of the reforms should be completed in 2013, not 2011.

The government's lack of support for these reforms seems evident as the 2010 budget had withdrawn \$50 million from the Family Relationship Centre programs. The government seems more focused on restoring the pre 2006 combative family law approach, which will be the outcome if the current proposals are adopted.

3.3 Inclusion of Family Violence Legislation

The shared parenting legislation specifically refers to “the need to protect the child from the risk of physical or psychological harm caused by family violence or child abuse” (The Family Law Amendment Bill 2006 [s60CC 2(b)]). The legislation also clearly establishes that where shared care has been ordered by a court, the presumption of shared parental responsibility is

dependent on there being no family violence or child abuse (The Family Law Amendment Bill 2006 [s61DA 2(a)]). Putting a child into a possibly violent situation is in breach of the law, therefore the new legislation is unnecessary and excessive. The government seems intent on introducing these regressive changes to satisfy the complaints from a small selection of women's groups dedicated to maintaining their status and control of domestic violence services and who are unrepresentative of the general community's beliefs.

Over the last few years a well orchestrated campaign has been mounted to make the claim children are at risk from violent fathers and their mothers are subjected to domestic violence.

Over the last few years a well orchestrated campaign has been mounted to make the claim that children are more at risk from violent fathers and that there has been an increase in child homicides at the hands of biological fathers.

The horrific death of Darcey Freeman at the hands of her father on the Westgate Bridge gave added impetus to that claim. This prompted a number of parliamentarians to consider that perhaps the shared parental responsibility changes in 2006 had taken a step too far.

Unfortunately those parliamentarians and the general public were unaware of another tragedy on the Westgate Bridge that occurred less than twelve months prior to Darcey's death.

Mother, Gabriella Garcia, caused the horrific death of her 22 month old son Oliver by jumping off the Westgate Bridge with her son strapped to her chest, having made the claim she was afraid the Family Court might give custody of her son to the father. The tragic irony is that the father had made no applications to the court and had no intention of seeking custody. However this tragedy did not make headlines and the only recriminations were to

criticise the authorities for not “jump proofing” the bridge. Sadly, both of these cases had involvement with the Family Law Court.

Bettina Arndt was right when she said, “No gender has a monopoly on vice.” Both mothers and fathers are responsible for terrible tragedies involving their children. Whilst many have suffered grief because of these tragedies involving the death of innocent children, this is not cause for ill-considered and hasty change to a family law reform process that has actually reduced child homicides as we shall demonstrate later in this submission.

The Attorney-General’s office should seek or provide evidence to prove the claim that the Family and Federal Magistrates Courts are handing over children to violent fathers, before any changes are made to the current legislation (Price, 2011).

4.0 Death Rates Relating to Family Law Legislation

4.1 Child Homicide

It is often presumed that fathers are the main offenders in child homicide cases. However that is not the case. According to the Australian Institute of Criminology's 2006-2007 National Homicide Monitoring Program Report, there were eleven homicides involving a mother and eleven homicides involving a male family member. However, when the 'male family member' category was broken down, five perpetrators were biological fathers and five were de-facto partners of the mother who lived with the child (one father murdered two children) (Dearden & Jones, 2009). If we place these figures into perspective we find that mothers or their de-facto partners were responsible in 73% of the child homicide figures.

A study in the Medical Journal of Australia found similar results. They stated that fatal child abuse was the most common cause of death and the offender was most commonly the child's mother or her de-facto partner (Nielssen at al, 2009).

Unfortunately there is a deficiency in the co-ordination of evidence collected by family protection agencies with various terminologies used to define victims, the identity of perpetrators and relationships and the evidence is rarely released in its entirety (Bromfield & Horsfall ,2010). This leads to ongoing ignorance of the public and politicians to the facts surrounding child homicide and family violence. It might be noted that child homicide has gone down almost 50 % since the introduction of the much fairer 2006 reforms according to NSW figures. The NSW Child Death Team Annual Reports stated:

- In 2005, twelve children aged between 0-17 died by fatal assault
- In 2007, nine children aged between 0-17 died by fatal assault. 2007 had the lowest child mortality rate observed over 1996-2007. This is the year directly after the reforms were instigated.
- In 2009, seven children aged between 0-17 died in six incidents.

(NSW Child Death Review Team, 2011)

These results indicate the 2006 reforms reduced the lethal danger to children. It is our belief that child homicides could well go back to their pre 2006 levels with the new proposed reforms. This would be an appalling outcome for our children.

4.2 Male Suicide

Men account for around 80% of all suicide deaths. Much is reported about suicide associated with isolation and social disconnectedness. Disconnection and often despair emerging from marriage breakdown are significant triggers. Separation and divorce are extremely distressing experiences for many men, particularly when they are denied access to their children. Data from Queensland indicates that separated men are twelve times more likely to commit suicide than separated women (Monaem et al, 2008). If the government reverts to the pre 2006 legislation an increase in male suicide is more than likely with a resultant increase in fatherless children.

5.0 Family Violence Definition - Schedule 1. Item 3, subsection 4(1)

This amendment will broaden the definition of family violence. It will not be restricted to physical or mental abuse but will be completely open ended. The family violence definition will include any behaviour that a party claims to have made them feel threatened

“irrespective of whether that behaviour causes harm” (Family Law Amendment Bill 2011).

This means claims can be unreasonable and are completely subjective. These amendments are so broad that they may lead to the resources of the court being misused to assess how the parents behaved towards each other during the relationship, rather than examining the best interests of the child into the future and the child’s right to a meaningful relationship with both of their parents. Children will suffer as a result.

6.0 No Requirement to Provide Evidence

6.1 Mandatory costs removed - Schedule 1. Item 43 Subsection, 117AB

The amendments would see the removal of section 117AB from the legislation (Family Law Amendment Bill 2011) meaning the mandatory cost order enforced upon persons knowingly making false allegations would no longer apply. The effect of the removal of this legislation combined with the all-embracing provisions on what constitutes family violence will cause a significant increase in the number of these allegations being made.

Compensation should be provided by the state or the false accuser to lessen some of the expenses that the accused has incurred while proving their innocence as well as compensation for possible damage to their reputation (Price, 2011).

Taking away cost penalties for knowingly false accusations will greatly increase the likelihood of parents using abuse claims to prevent the other parent from contact with their child.

6.2 Criminal Accusations and Perjury

Sur Price stated “proof has been identified as a little known commodity in family court proceedings” (2011). In family court, accusations of abuse are made in applications, and immediately a father’s access to his children is suspended while he goes through the lengthy and expensive task of attempting to prove himself innocent.

Criminal accusations should be made through police for proper investigation. Only proven offences should be taken into account in the Family Court. “No contact orders” should only be issued after thorough inquiry to confirm the necessity of such an order.

Lying in the Family Court should be treated in the same manner as if you lied in a criminal court. Extreme harm can be caused to the wrongly accused resulting in the removal of their family, possessions and the life they have created while the person guilty of perjury escapes any penalties (Price, 2011).

6.3 Legal - Administrative Abuse

The removal of penalties relating to false accusations actively facilitates legal-administrative abuse. Legal-administrative abuse is abuse in which someone uses legitimate services in a way that abuses the rights of others. This includes such issues as making false allegations in order to acquire a violence restraining order, taking actions to deny a father access to his children and undertaking distressing actions in the Family Court or through Child Support Agency.

A study into types of abuse noted that some perpetrators manipulate legal and administrative resources to the detriment of their male partners. They noted that this was possible due to the stereotypes held by government and non-government agencies of men as perpetrators and females as victims (Tilbrook, Allan & Dear, 2010).

7.0 Damage to Credibility of the Family Law System

There is a widespread view that apprehended violence orders (AVOs) are being used as a tactic to aid a persons case to deprive their former partner contact with their children. This is caused by the fact that judges are required under the Family Law Act to consider such family violence orders in determining the best interest of the child. The proposed legislation will take the law back to what it was prior to 2006, without any explanation as to why Parliament would reverse its decision.

Various studies have confirmed the suspicion of the misuse of AVOs in the Family Law System. A study of magistrates in NSW found that 90% agreed that AVOs are used to deprive a former partner contact with their children (Hickey & Cumines, 1999). A similar survey of QLD magistrates found 74% agreed with this statement (Carpenter, Currie & Field, 2001). A study of over 180 parents who have been involved in family law disputes found a strong perception that their former partners sought a family violence order to assist them in winning their case (Parkinson, Cashmore & Single, 2011). In addition, a study of family lawyers in NSW found that almost all solicitors thought tactical applications of AVOs occurred and a majority believed it happens often (Parkinson, Cashmore & Webster, 2010).

The retention of provisions that allow this kind of behaviour increase legal costs, case time and put excess pressure on the Family Court System. These proposed changes will damage the credibility of the Family Law System and they should be rejected by the government as retrograde reform.

8.0 Conclusions

This submission has outlined the various issues associated with the new legislation including:

- A lack of formal and objective research into the current legislation
- The move away from equal shared parenting
- The removal of the friendly parent provision encouraging healthy relationships between both parent and their children
- A rushed evaluation of the 2006 reforms
- Overstated and unnecessary legislation regarding family violence
- Legislation that may increase child homicide
- Legislation that may increase male suicide
- An all-encompassing family violence definition making violence claims unreasonable and completely subjective
- The removal of cost penalties increasing the likelihood of parents using abuse claims to prevent contact between the other parent and their child
- The removal of penalties relating to false accusations which will facilitate legal-administrative abuse
- An increase in legal costs, case time and pressure put on the Family Court System
- Further damage to the credibility of the Family Law System

We believe the 2011 legislative reforms will adversely effect the 2006 legislation which created greater equity and justice in parenting orders made by the Family Court. In turn, this will increase fatherlessness, raise rate of child homicide and increase levels of both male and female suicide. We believe the legislation is inadequately thought out and should be rejected

9.0 Recommendations

- We recommend the proposed amendments should be abandoned
- The friendly parent provision should be retained in order to obligate parents to encourage a healthy relationship between the children and the other parent
- The mandatory costs for knowingly false accusations should be retained
- There should be a continued focus on equal shared parenting
- The Family Relationship Centres should receive continued funding and support of the government and maintain the mediation of parenting disputes out of the Family Law Court
- An open and transparent inquiry should be commissioned into the 2006 amendments and any further changes that are needed to improve Family Law from Australian families
- There should be a Government focus on healthy marriages and the prevention of relationship breakdown

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