

27 April 2011

Committee Secretary  
Senate Legal and Constitutional Committees  
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Australia  
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Dear Committee Secretary,

### **PROPOSED FAMILY VIOLENCE AMENDMENTS WILL INCREASE ENTRENCHED CONFLICT IN SEPARATING FAMILIES**

I am writing to express my grave concerns about the changes to the *Family Law Act* proposed in the draft Family Law Legislative Amendment (Family Violence and Other Measures) Bill 2011.

I am a single father who gained substantial time with my now 4-year old daughter as a result of the passage of the Shared Parenting Laws in 2006. I was also National Research Officer of Relationships Australia from 2005 until 2007 and am a qualified lawyer. I believe these laws were the greatest advancement in social policy in Australia of the last 20 years.

The current proposed amendments weaken the shared parenting laws – particularly the proposed repeal of the mandatory costs orders for false accusations and the removal of the friendly parent provision as well as the rubbery definition of family violence. *Their effect will be to make allegations of how the parents treated one another during the marriage centre stage in family law proceedings over the best interest of the child.*

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-e6frf716-1225817724269>).

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.

Regrettably a common legal strategy in Family Law proceedings is to raise spurious allegations of violence or abuse. The proposed changes, through repeal of s.117AB, mean that there will be no definite 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.

The 2006 Family Law changes led to a 20 per cent 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.

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 systematic acts of physical and emotional 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.

The dynamics of family violence are a complex matter that the courts are not properly equipped to handle. As you would be aware, the Australian Institute of Family Studies examined this issue in great detail in its report, *Allegations of family violence and child abuse in family law children's proceedings: a pre-reform exploratory study* (2007). But its findings about the complex nature of family violence and the need to avoid a one-size-fits-all approach to the issue have been completely ignored by the approach adopted in these amendments.

The proposed definition seems to accept that domestic violence always fits of typology of coercive controlling behaviour.

As the committee would also be aware, the Australian Institute of Family Studies' *Evaluation of the 2006 Family Law Reforms*, released last year, found that 53 per cent of fathers and 65 per cent of mothers had suffered family violence (physical hurt or emotional abuse) before or during separation (see pages.25-26 of the report).

Does this therefore mean that over half of Australian parents will be labelled as perpetrators of domestic violence and have their children removed from them?

Most domestic violence involves reciprocal acts of physical and/or emotional abuse. How do the courts deal with this majority of family violence cases where both parents are violent? The issue of the child's rights must not be viewed merely through the prism of one parent's allegations against the other.

The proposed new provisions will involve a totally different and vastly lower threshold under which children can be removed from one of their parents as compared to the child protection regime. The result will be that tens of thousands of Australian children will be denied their right under the Convention on the Rights of the Child to the care of protection of their parents.

The Australian Government may well be called upon in the future to make an apology to these children for violation of their human rights along similar lines to the apologies offered to the Stolen Generation and the Forgotten Australians.

***This proposed legislation is a return to the bad of days of family law that will assist the legal industry, but harm Australian families. Its effect will be to distract the court's attention away from the best interests of the child and onto allegations of how the parents treated one another during the marriage. In doing so, in direct reversal of the sensible 2006 reforms, it will increase entrenched conflict in separating families, destroy the child's relationship with his or her parent and significantly worsen developmental outcomes for children of divorce.***

In conclusion, I urge the Parliament to abandon in totality the proposed changes to the Family Law Act.

Yours sincerely,

Roger Smith, LLB, BA