15th August 2011

Committee Secretary
Senate Legal and Constitutional Committees
PO Box 6100
Parliament House
Canberra ACT 2600
(submitted via email/on-line)

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

I thank you for the opportunity to comment upon the proposed family law reforms relating to the safety of children and violence. On 15 June 2011, the Senate granted an extension of time for reporting until 16 August 2011 for this Inquiry; and has advised me I can make a submission before then. I note that the Government is proposing a *Family Law Amendment (Family Violence) Bill 2011,* and a very short public consultation process was held in January 2011 during the floods. I note there have been some media releases, but there seems to have been little or no discussion on national TV or radio.

I request that my name and personal details are NOT published or distributed in **any manner**. I do wish for this submission to be considered equally with other submissions you may receive.

I am a parent and have experienced a marriage breakdown and have some experience in the Family Law system. Thanks to the judges, magistrates and professionals in the Family Law system my children enjoy extremely happy adult lives and have meaningful relationships with both parents. Our children have made great achievements in their lives so far.

Violence is a very serious issue in Australian society. I am sure all responsible Australians totally condemn violence and abuse in Australia without any further legislation.

The five key areas in the Consultation Paper that led to the *Family Law Amendment (Family Violence) Bill 2010* do not appear to provide compelling reasons to amend the current legislation.

1. Prioritising the safety of children

There is no clear evidence to support any changes to the Section 60CC of the Act. I do not support this amendment of the Act. I have confidence in the existing Family Law legislation, which upholds the interests and the safety of the children.

There appears to be no agreed and comprehensive statistics that support proposed changes to the Section 60CC of the Act. A review on the Family Law Council website shows that the latest "Statistical Snapshot of Family Law 2003-2005" is dated April 2007. Table 25 of that report on page 48 summarises "Issues raised in appeals in the Family Court of Australia". Not once does "violence", "assault", "harm" or "abuse" rate a mention as an issue. This leads one to believe that the existing legal and policing systems are very capable of dealing with any "violence", "assault", "harm" or "abuse" issues.

2. Changing the meaning of 'family violence' and 'abuse' to better capture harmful behaviour

The Consultation Paper states at paragraph 6:

> Presently, the Family Law Act defines 'family violence' to mean 'conduct, whether actual or threatened by a person towards, or towards the property of, a member of the person's family that causes that family member or any other member of the person's family reasonably to fear for, or reasonably to be apprehensive about, his or her personal wellbeing or safety'. Recent reports have highlighted concerns about this definition.

The paper also highlights:

> Item 3 of the Family Violence Bill proposes a new definition of 'family violence' that better specifies the types of behaviour that constitute family violence. The proposed definition recognises that family violence can take the form of physical assault, harassment, emotional manipulation, financial abuse and threatening behaviour.

I do not support this item as an amendment of the Act. There is no clear or substantiated evidence to support changes to the Act in relation to definitions of violence. There appears to be no agreed and comprehensive statistics that support proposed changes any definitions in the Act.

There is more than adequate legalisation and enforcement action in place to deal with physical assault, harassment and threatening behaviour. If the risk is immediate and serious, then all Australian citizens and older children know that they should call the Police on 000 and the matter may then be heard fairly in a criminal proceeding. If the risk is less immediate or less serious, the Family Law system has proven itself capable of dealing with such matters. There are endless opportunities in the current system for parties to raise any concerns about physical assault, harassment and threatening behaviour. The Family Law system deals with such matters quickly, if there is substance to any allegations.

In terms of the equally serious, yet less tangible and visible, matters of emotional manipulation and financial abuse, the Family Law system has proven itself capable of dealing with such matters. For many years, family counsellors have effectively assisted families and provided written reports to the courts. The Family Law Council states that 3,023 Family Reports were released in 2004-05. Any emotional manipulation issues are quickly made available to the courts, and the magistrates and judges in my experience are quick to act upon any risks to any family members. Also for many years, financial abuse has been controlled by the very strict provision regarding "full and frank disclosure" in affidavit and Form 13.

The Consultation Paper also highlights:

> Item 1 of the Family Violence Bill proposes a new definition of 'abuse' in relation to a child for the purposes of the Act. This would expand the existing definition to include the forms of abuse recognised in State and Territory laws such as physical abuse or non-accidental physical injury, sexual abuse and exploitation, psychological abuse (including where this is caused by exposure to family violence) and neglect.

I do not support this item as an amendment of the Act. It is understood that where "abuse" issues are made known to magistrates and judges they quickly act upon any risks. I am aware that court officials often have a very heavy case load, and at times excessive, case load. Perhaps, increased Government funding into magistrates and judges would solve that problem.

3. Strengthening the obligations of lawyers, family dispute resolution practitioners, family consultants and family counsellors

The Consultation Paper highlights:

> Items 22-24 of the Family Violence Bill would introduce new obligations on advisers who discuss matters arising under Part VII of the Family Law Act and amend existing adviser obligations in relation to parenting plans. The adviser obligations would encourage parents to consider the child's best interest as the paramount consideration. They would also require parents to prioritise protecting the child from harm where family violence and abuse are concerns.

I do NOT support these items as amendments of the Act. It is my observation and experience that the Family Law system is full of well-intentioned and well-qualified lawyers, family dispute resolution practitioners, family consultants and family counsellors. Most, if not all of these professionals earn incredibly high incomes based on the misfortune of their clients. Psychologists and counsellors for example earn $150 to $200 per hour and sometimes add very little value to a case. Lawyers can earn anywhere from $300 to $600 per hour, and some of them often end up prolonging and complicating cases. All of that can add up in a case that lasts one to four years, and the financial costs start to mount up from $50,000 to $150,000 very quickly. Multiply that by two for the family, and you are **up to $300,000**. Now there is some **serious financial abuse** across Australian society! And the children may miss out too!

There is no evidence to suggest that lawyers, family dispute resolution practitioners, family consultants and family counsellors are withholding information currently about any "violence", "assault", "harm" or "abuse" issues. If that is the case, surely these "professionals" are in contravention of their code of professional conduct, and may even be committing a criminal offence. In which case, there are many existing and proven remedies that can be applied to these "professionals".

From my experience and knowledge, the Family Law system for many years has enshrined the rights, interests and the safety of the children as a paramount legal consideration. I am aware that in recent years, court officials often have a very heavy, and at times excessive, case load. So perhaps again, increased Government funding into magistrates and judges would ensure that all relevant admissible evidence is made available.

I do not support these items as amendments of the Act. There is no evidence to suggest that professional advisers are withholding information currently about any "violence", "assault", "harm" or "abuse" issues. It is understood that these professionals are already intimately involved in the Family Law system. I am concerned that some of these professionals can prolong cases and charge for their services at extraordinary high hourly rates (often $200 to $500 per hour), which ultimately **hurts** Australian families.

4. Ensuring courts have better access to evidence of family violence and abuse

The Australian legal system and the courts are all about making decision based on evidence. In my experience there has been no shortage of parties to a case bringing forward information that normally turns into admissible evidence in a court case. I have seen family law affidavits that run to 400 pages in length. The Consultation Paper highlights:

> Item 29 of the Family Violence Bill would require parties to proceedings who allege family violence to file a Notice of Child Abuse or Family Violence with the court. Once reporting occurs, the court would be required to act promptly to ensure that the issues are dealt with expeditiously.

I do not support this item as an amendment of the Act. Is this item about "violence" or "abuse"? It is not clear. There is ample legalisation and enforcement action in place in Australian society to deal with physical assault, harassment and threatening behaviour. If the risk is immediate and serious then all Australian citizens and older children know that they should call the Police on **000** and the matter may then be heard fairly in a criminal proceeding.

The Consultation Paper highlights:

> Item 21 of the Family Violence Bill proposes new provisions that would impose obligations on parties to proceedings to tell the court if a care order under a child welfare law is in place for the child and if the child is or has been the subject of a notification to or investigation by a child welfare authority. The provisions would allow other people to tell the court that same information.

I do not support this item as an amendment of the Act. It is understood that there is usually no shortage of relevant information in family law cases. Perhaps judges need more time in which to analyse that information.

The Consultation Paper highlights:

> Items 18 and 20 of the Family Violence Bill would remove the 'friendly parent' provisions of the Family Law Act, namely, paragraph 60CC(3)(c) and subsections 60CC(4) and (4A). Removing the 'friendly parent' provision would not prevent the court from considering a range of matters relevant to the care, welfare and development of the child such as a parent's attitude to the responsibilities of parenthood.

I do NOT support these items as amendments of the Act. There is no evidence that this "friendly parenting" provision is in any way a disincentive to any party to disclosing any information. In my experience there has been no shortage of parties to a case bringing forward relevant information. The facts of the case and the evidence will speak for themselves before a magistrate or a judge. The removal of the "friendly parenting" provision could in fact encourage child abuse through emotional manipulation or financial abuse. It seems logical that being "unfriendly" is a form of emotional abuse.

The Consultation Paper highlights:

> Item 37 of the Family Violence Bill would remove the mandatory cost order provision in section 117AB of the Family Law Act.

I do NOT support this item as an amendment of the Act. There is no evidence that cost orders are in any way a disincentive to any party to disclosing any information. Cost orders are rarely issued in the Family Law system as far as I am aware, and then only normally for the most vexatious litigants.

The Consultation Paper highlights:

> Item 32 of the Family Violence Bill proposes that courts who are dealing with applications for parenting orders should inquire about past or future risk or previous experience of the children concerned in relation to child abuse and family violence. In giving effect to Principle 3 of the Principles for Conducting Child-Related Proceedings, as set out in subsection 69ZN(5), this new provision would impose a duty on the court to take steps to identify the parties' views on past risk or experience or future risk to the children.

There is no evidence that Courts are currently in any way a disincentive to any party to disclosing any information. The conduct of cases must surely be based on facts and evidence, rather than officials guiding parties down a certain path that may have nothing to do with the real case at hand.

5. Making it easier for state and territory child protection authorities to participate in family law proceedings where appropriate

Again in my experience there has been no shortage of parties to a case bringing forward relevant information. State and Territory Welfare Authorities already participate freely in the Family Law system. There is an apparent growing trend for community, church and school organisations and individuals to become involved in the Family Law system. Sometimes this involvement only prolongs or complicates a case unnecessarily. The Consultation Paper highlights:

> Item 36 of the Family Violence Bill would amend section 117 of the Family Law Act to provide immunity from cost orders to child welfare authorities and officers of the State, Territory or Commonwealth who intervene to become a party to proceedings under the Family Law Act at the request of the court where the officers act in good faith in relation to the proceedings.

I do NOT support this item as an amendment of the Act. There is no evidence that child protection authorities are currently failing to disclose any information. All Australian individuals, organisations and Government Authorities should participate in the Family Law system with the same legal rights and responsibilities as for any other party to a case. It is my experience that some psychologists may have made false and misleading reports to the Court. From time to time, these people should be held accountable for such behaviour.

Conclusion

I do not support any further amendment of the *Family Law Act 1975 (Cth).* I have confidence in the existing Family Law legislation, which upholds the interests and the safety of the children

It also probable that some vexatious litigants are "clogging up" the Family Law system and wasting judges' precious time, and thus preventing the real violence and abuse cases from being heard properly. The Government is encouraged to consider increasing Government funding into magistrates and judges to ensure that all relevant and admissible evidence is made available to the Courts.

I would be happy to be interviewed by your committee should you need further information.

Yours sincerely,

Name withheld, 15th August 2011, approximately 7pm