



29 April 2011

Committee Secretary
Senate Legal and Constitutional Committees
PO Box 6100
Parliament House
Canberra ACT 2600

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Dear Committee Secretary,

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

1. We are writing to express our support for the changes including in the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011 and to recommend further changes be made to the Bill to strengthen the family law system so that it does not jeopardise the safety of women and children.
2. WLS NSW is a community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims compensation, care and protection, human rights and access to justice.
3. We support the submission made by Women's Legal Services Australia, to which we have made a significant contribution.
4. In summary:
 - we strongly support the steps taken in the Bill to provide better protections for people who have experienced family violence within the family law system and believe that the proposed amendments are essential to place safety and protection of children and family members at the forefront of the *Family Law Act*, but that further changes are needed;
 - the safety of children should be the primary consideration when considering the best interests of the child;



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- further changes are needed immediately such as amendments to the concept of equal shared parental responsibility and its link to spending time arrangements for children;
- the *Family Law Act* should recognise the need to protect the safety of primary carers to protect children;
- the definition of family violence should be amended to include exposure to family violence where children are exposed to violence *by the perpetrator of violence*;
- further work must be undertaken to inquire into and improve the efficacy of the family law system and its response to family violence in relation to family law property issues; and
- further work must be undertaken in relation to the injunctive powers of the family law courts.

Key changes we support

4. In particular, we strongly support:

- Broadening the definition of 'family violence' to include a wider range of behaviour and removing the objective test of 'reasonableness' so that family violence can be properly considered whenever the victim actually fears for their safety. However, we are concerned that an artificial distinction remains between 'child abuse', 'family violence' and 'exposure to family violence', all of which are forms of 'family violence'.
- Taking children's rights into account
- A broader definition and understanding of child abuse
- Prioritising family violence when considering what is in the best interests of the child
- Removing the friendly parent provision
- Repealing section 117AB about costs orders relating to false allegations or denials.

Further changes that are needed in relation to children matters

5. We believe that there are a number of changes needed immediately that have not been addressed in the Bill. We urge you to consider amendments to:

- the definition of 'family violence' – this should include 'exposure to family violence' where the *perpetrator of violence exposes* the child to violence, in line with the Australian and NSW Law Reform Commissions' recommendations in their 2010 inquiry into family violence;
- the best interest of the child considerations – safety of children should be the primary consideration when considering the best interests of the child, and the need to protect the safety of primary carers should be included in the considerations;

- the definition of family violence – this should be amended to include exposure to family violence where children are exposed to violence *by the perpetrator of violence*;
- the presumption of equal shared parental responsibility;
- the concept of equal shared parental responsibility;
- the link between equal shared parental responsibility and equal time/substantial and significant time arrangements; and
- the ‘one size fits all’ approach in which it is assumed that equal time and substantial and significant time arrangements are best for children.

Family violence and family law property matters and injunctive relief

6. Family violence impacts all aspects of family law proceedings including property disputes and injunctive relief. As such it is difficult to make submissions about reforms to parenting matters in isolation from proposals for change about how family violence be taken into account in property proceedings or when making injunctions for personal protection.
7. We support the recommendation for the Federal Government to initiate an inquiry into how family violence is dealt with in property proceedings under the *Family Law Act*. We submit that the scope of any such inquiry also extend to injunctive powers under the *Family Law Act* and consider the specific disadvantages which may arise if there are parenting and property matters to be resolved in circumstances of family violence (see Recommendation 17-2 of the Australian Law Reform Commission’s report, *Family Violence – A National Legal Response*, ALRC 114, 2010).

Filing fees

8. We call for an immediate review of recent changes to the fee structure for matters filed in the Federal Magistrates Court or Family Court. As of 1 November 2010, applicants in these jurisdictions can no longer seek a waiver or exemption of court fees. If eligible for a fee reduction clients must now pay a minimum of \$60 to file a range of documents, such as applications and responses, and consent orders require payment of a filing fee of \$80.
9. We submit that these fee changes may place children at greater risk if safety is sacrificed due to a cost barrier. For example, economically and socially disadvantaged people who may previously have elected to formalise a parenting plan into consent orders to gain the benefits of certainty and enforceability may now not be able to afford the filing fee.
10. Additionally the imposition of a minimum flat fee is likely to have a disproportionate impact on victims of violence as they often progress straight to court in circumstances where family dispute resolution is inappropriate.

Conclusion

11. We the Committee to respond to the evidence-based research commissioned by the Australian Government in the past 18 months which have identified serious problems with the way family violence is dealt with in the family law system. We strongly recommend you support the expeditious passage of this Bill with our suggested amendments and recommend that further steps are taken to comprehensively respond to the

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recommendations of the Australian Law Reform Commission's report, *Family Violence – A National Legal Response*.

12. If you would like to discuss any aspect of this submission, please contact Edwina MacDonald, Law Reform and Policy Coordinator, or me on 02 8745 6900.

Yours faithfully,

Janet Loughman
Principal Solicitor