

**FAMILY LAW LEGISLATION AMENDMENT
(FAMILY VIOLENCE AND OTHER MEASURES)
BILL 2011**

SUBMISSION TO INQUIRY

CAXTON LEGAL CENTRE INC.

Caxton Legal Centre Inc.
1 Manning St
West End Qld 4101
Phone: 3214 6333
Email: caxton@caxton.org.au

CONTENTS

	Page/s	
1. Background to this submission	3	
2. About our experience in the field of family law		3
3. Submissions	4	
4. Conclusion	6	

1. Background to this Submission

On 25 March 2011, the Senate referred the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011 (“the Bill”) to the Legal and Constitutional Affairs Legislation committee for inquiry.

This submission is provided to that parliamentary inquiry into the Bill, with thanks to the Standing Committee on Legal and Constitutional Affairs for the invitation to do so.

This submission has been prepared by Stephanie Ewart, solicitor, and is submitted subject to ratification by the Caxton Legal Centre Inc. management committee.

2. About our experience in family law

Caxton Legal Centre Inc. (the Centre), the oldest legal centre in Queensland, regularly advises clients about a wide range of family law disputes.

The Centre provides advice and assistance through:

- Drop-in advice sessions staffed by volunteer solicitors and co-ordinated by staff
- A generalist solicitor dealing with a significant number of family law matters
- A full-time family law solicitor
- A social worker dealing with a significant number of family law matters
- Solicitors and social workers in the Seniors Legal and Support Service (SLASS) and Seniors Advice and Information Legal Service (SAILS) dealing with a significant number of family law matters
- Solicitors attending at a Family Relationships Centre in family law matters
- A duty lawyer service at the Family Court and Federal Magistrates Court, Brisbane.

Clients assisted by the Centre in family law matters come from a diverse range of socio-economic and ethnic backgrounds, including:

- A roughly equal number of women and men
- Clients who are both applicants and respondents in court matters
- Clients in both parenting and financial matters
- Clients in parenting matters who are mothers, fathers, grandparents, other family members and carers of children
- Clients who are both the aggrieved and the respondent in Domestic Violence (Protection) Orders
- Clients of all ages, including older people who are affected by family violence

The overwhelming majority of the Centre’s clients are not in receipt of a grant

of Legal Aid and are not represented by solicitors; in matters before the Family Court or Federal Magistrates Court, these clients will be self-represented litigants.

3. Submissions

All references to legislative sections are to the Family Law Act (1975) unless otherwise stated.

3.1 Definition of child abuse and of family violence

The Centre supports the broadening and clarification of the definitions in sections 4(1) and section 4AB on the basis of the increased protection provided for children and the assistance to parties and practitioners afforded by the specificity contained in the definitions.

However, the Centre notes that child abuse is a form of family violence and recommends that it be acknowledged accordingly.

3.3 Giving effect to the International Convention on the Rights of the Child

The Centre supports the inclusion of an additional object at the end of section 60B to give effect to the Convention done at New York on 20 November 1989.

3.4 Considerations in determining the best interests of the child

In the experience of the Centre, judicial officers typically prioritise the need to protect children over all other considerations, including the other primary consideration under section 60CC.

The Centre supports prioritising the safety and protection of children. The Centre proposes that there be no primary considerations mandated, and that instead all relevant considerations be listed provided that the safety and protection of children is listed as the first consideration and appropriately prioritised. This proposal is intended to ensure that children are safeguarded whilst removing the complexity involved in multi-tiered judicial decision-making.

Alternatively, the Centre proposes that there be one primary consideration – the safety and protection of children.

Whatever approach is ultimately taken, any amendment to section 60CC should require that the safety and protection of children should be the foremost consideration in determining their best interests.

3.5 Consideration of facilitation of relationship with the other parent

The Centre does not support the removal of sections 60CC(3)(c), (k) and section 60CC(4)(b) on the basis that the consideration of a parent's willingness and ability to facilitate a child's relationship with the other parent, and the extent to which they have done this, may be a relevant consideration in parenting matters.

The Centre recognises that this consideration can unduly affect victims of family violence attempting to protect themselves and their children, and parties who, through no fault of their own or due to the actions of the other party, have lost contact with the other parent.

However, it is submitted that the consideration of a parent's facilitation of children's relationship with the other parent is generally relevant to the determination of children's best interests.

At the risk of burdening judicial officers with overly prescriptive legislative pathways, it is recommended that a parent's willingness and ability to facilitate children's relationship with the other parent be retained as a consideration in determining the best interests of a child, provided that, if the relationship has not been facilitated, consideration be granted to the reasons for this, including child abuse or family violence.

3.6 Consideration of family violence orders

In relation to the amendment proposed to section 60CC(3)(k), it is recommended that the consideration of "any family violence order that applies to a child or a member of the child's family" be extended to provide for such consideration to include the circumstances in which the order was made.

This facilitates consideration of whether an order is interim or final, made on a contested or consent basis, sought by police or by an aggrieved person, and whether it is made in the context of mutual orders made both for the protection of and against the same parties.

3.7 Informing court of arrangements, investigations and notifications under child welfare laws

The Centre supports the amendments proposed to be made pursuant to sections 60CH and 60CI, on the basis that such amendments may facilitate increased co-operation and the sharing of information between agencies where required.

3.8 Advisers' obligations

The Centre does not hold any concerns about the proposed section 60D and considers that it may assist in ensuring clients are properly advised.

3.9 Costs consequences

The Centre supports the proposal to repeal section 117AB on the basis that the remaining provisions in relation to costs are sufficiently comprehensive and the section proposed to be repealed unnecessarily complicates issues of costs.

3.10 Education and support services

In view of the numbers of clients representing themselves in family law disputes and funding pressures on services, the Centre is extremely concerned about the already pressing need for:

- (a) Legal services for clients who cannot afford to retain solicitors and are not eligible for grants of legal aid (given the tightening of eligibility criteria);
- (b) Support services, other than legal services, for parties in family law disputes (for example, there are currently waiting lists months long for parties to enrol in post-separation education courses and contact centre services); and
- (c) Community legal education to provide information about family law, especially to self-represented litigants, which will become even more important if the Bill is passed.

4. Conclusions

Issues of family violence and child abuse in family law disputes are prevalent among and highly distressing to the Centre's clients. Clients' ability to deal with these issues in the context of court proceedings is extremely limited where they are self-represented; this in turn increases the difficulty busy judicial officers face in deciding matters beset by these issues.

The proposed amendments go some way to both prioritising the safety and protection of children and to codifying the issues which need to be addressed in court proceedings.

The amendments do not alter the difficulties for clients, community legal centres and court staff which are the result of funding pressures on community legal centres, Legal Aid, and courts.

The increasing number of self-represented litigants in the family law system is unlikely to abate, and although education for practitioners, judicial officers and court staff is imperative, it will not be sufficient where such large numbers of clients will be unable to access legal representation.

The proposed changes are significant and if the Bill is passed, significant community legal education will be required.

CAXTON LEGAL CENTRE INC.

29 April 2011