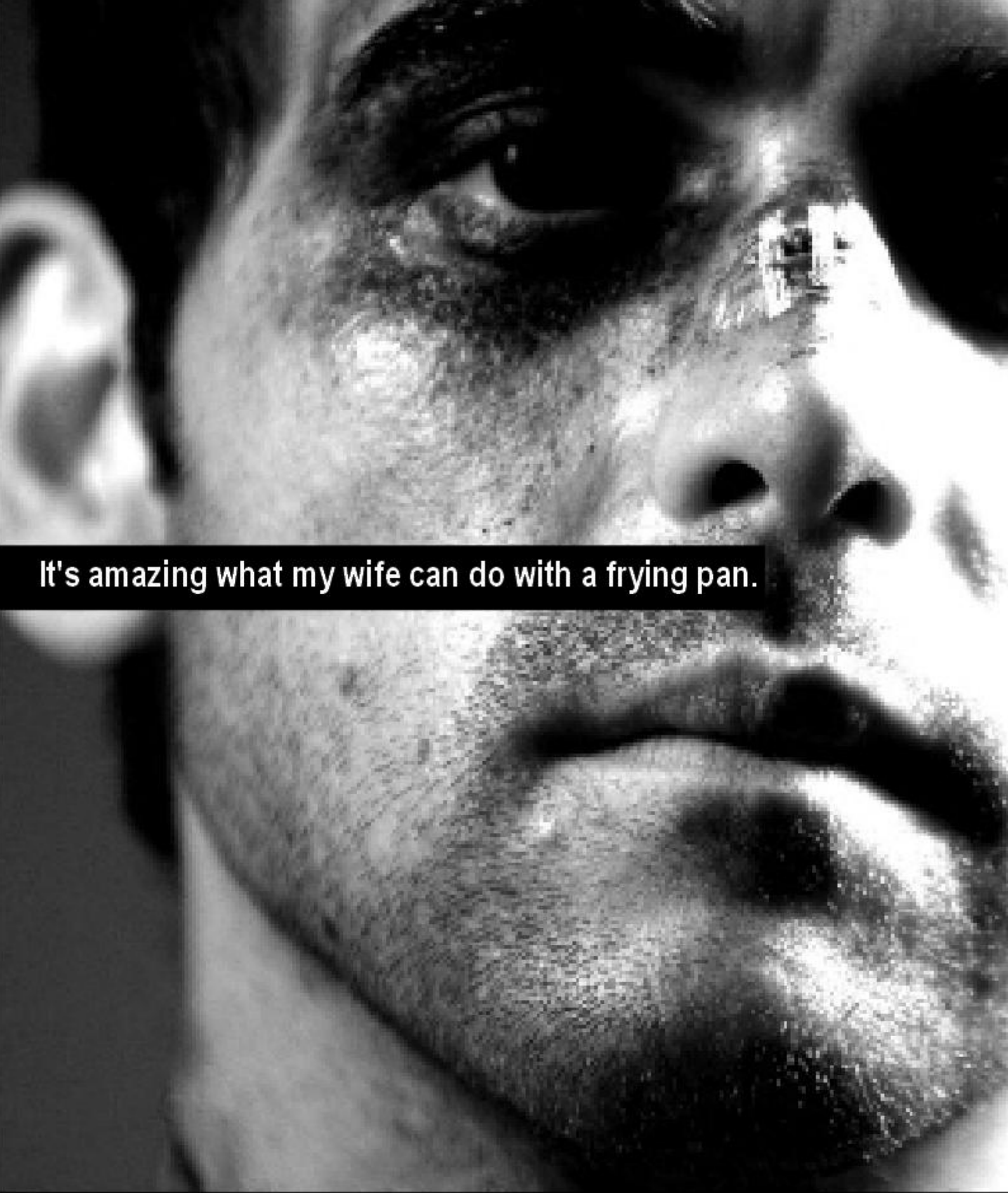

Family Courts' Violence Review

Men's Rights Agency October 2009

Contact: 07 3805 5611 www.mensrights.com.au

Family Courts' Violence Review
October 2009

Review of legislation, practice and procedures relating to family violence in the Family Courts

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In 2006 substantial changes were made to family law legislation with the introduction of the *Family Law Amendment (Shared Parental Responsibility) Act 2006*.

The Act provided for a presumption that parents would be declared suitable to participate jointly in the major decisions in their children's lives, which was basically a reworking of the previously described "special issues" consideration, which in turn was a derivation of the prior 'guardianship' provisions, but without the attached notion of parental rights remaining, just duties and responsibilities.

Following on from this finding of parental suitability, the Act orders that judges MUST consider shared parenting time etc or if not practical or suitable, then substantial contact, with the overriding proviso that all decisions made should consider the best interest of the child.

Equal shared parental responsibility can be rebutted if the court is satisfied the conflict between the parents is too intense and unlikely to diminish or if there are 'reasonable grounds' to believe that a person has engaged in child abuse or family violence.

At the time when the Bill was introduced this Agency objected to the elevation of the domestic violence issue into the principles and objectives of the Act, particularly as we considered the issue was adequately addressed in other parts of the Act and other State based legislation. One of our barristers was so concerned by the inclusion, he remarked *"that this is the Family Law Act, not a manifesto for a women's domestic violence service".*

Undoubtedly, the particular focus on family violence has led to a situation where even publications such as the Australian Master Family Law Guide[1] (2008 p282) discusses the issue purely from the perspective of the Act disadvantaging a woman leaving a violent relationship, where she and/or children have been abused as if it never occurs that a man may be the carer of the children and they may be the people at risk of violence and abuse perpetrated by the mother.

[1] CCH Australia Ltd., 2008 Australian Master Family Law Guide,2nd Edition, CCH Australia

Furthermore, the same text questions the difficulties a women might experience in leaving a violent relationship if she is then regarded as being “unwilling to facilitate and encourage a close and continuing relationship between the child and the other parent”, S60CC(3)(c)[2].

The bias displayed by this prestigious guide in failing to recognize that men and their children can be victims of a mother’s abuse or even abuse at the hands of her boyfriend or other family/friends whom she enlists to support her cause is surprising and should be subjected to widespread condemnation.

No doubt the “elevation of domestic violence” within the Act occurred as a result of heavy lobbying from women’s groups, who tend to advise their members to apply for an easily gained domestic violence order and/or to make false allegations of child abuse to give them an advantage before the Family Courts.

The portrayal that women are the only victims of interpersonal or family violence is incorrect and the longer this falsehood is allowed to be used as the determining factor guiding the Federal/State governments’ response to reducing violence within families, the more likely it is their proposals will fail. Providing solutions to “deal with” only one half of the problem has never been a successful strategy and is likely to exacerbate the very problem it seeks to resolve. The abuser, if undetected become more powerful, perhaps resulting in serious harm or death of their victim and the abused, if not recognised, will become more submissive until perhaps they can no longer live with the abuse, take their own life or retaliate with such force the unintended consequence is the death of the abuser. The battered wife syndrome could be said to apply equally well to battered husbands, but our society has convinced itself that women can be excused their violence if they claim to be a victim of abuse – no such allowance is made for men who are abused.

Similarly, if this inquiry should continue under an invalid assumption that only women are victims of men’s abuse and children’s only risk is from their fathers, then the outcome will

[2] Family Law Act 1975

be to put children at greater risk as they are placed with mothers who may be skilled in hiding the child abuse they commit and/or ignore the signs of abuse committed by their live-in boyfriend/defacto/step partner preferring to cherish their adult relationship above the protection of their child.

It is not our intention to deny any violence committed by biological fathers, but sadly as is known, mothers are more likely to neglect, assault and kill their children than biological fathers. The children are also at considerable risk from mother's boyfriends, defactos, step fathers, siblings or other relatives.

This Agency is suggesting a balanced approach should prevail and we should not be contemplating changes to the Family law legislation based on the sad death of one little girl or the presumption that only women and children are in need of protection.

Of course, women and children should be protected from violence and abuse BUT so should men and children!

Unfortunately, statistical information about the reasons cited for separation has become fragmented because the latest figures only include data from the Family Court of Australia[3]. A more comprehensive understanding of the reasons cited for the breakdown of a relationship would have been available if the statistics from the Federal Magistrates Court had been included. As it is, the percentages of abuse claims are bound to be higher in the FCoA for this is where most of these cases involving serious allegations are heard. To gain a true picture of abuse experienced by separating couples interacting with the Family Courts we need access to the figures from the Federal Magistrates Court as well. Prior to the introduction of the Federal Magistrates Court, Table 3[4], shown below defines abusive behaviours in some detail and shows 9.6% of women and 0.4% of men claim *"Physical Violence to you or your children"* as the reason for the breakdown of the marriage.

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[3] Family Court of Australia, 2009, *Shared Parental Responsibility* [accessed online at http://www.familycourt.gov.au/wps/wcm/resources/file/eb6b6f033263e7d/SPR_org_02_03_09.doc]

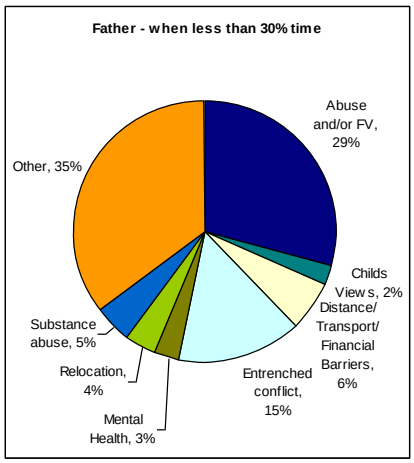
[4] Wolcott I. and Hughes, J., 1999, Towards understanding the reasons for divorce, Australian Institute of Family Studies, [accessed online www.aifs.gov.au/institute/pubs/WP20.pdf]

Table 3. Perception of main reason for marriage breakdown by gender (*n*=633)

Main Reason	Women (*n*=354)		Men (*n*=279)		All (*n*=633)	
	%	*n*	%	*n*	%	*n*
Affective issues						
Communication problems	22.6	80	33.3	93	27.3	173
Incompatability / 'drifted apart'	19.8	70	22.6	63	21.0	133
You or former spouse had an affair	20.3	72	19.7	55	20.1	127
Abusive behaviours						
Physical violence to you or children	9.6	34	0.4	1	5.5	35
Alcohol/drug abuse	11.3	40	2.5	7	7.4	47
Emotional and/or verbal abuse	2.5	9	1.1	3	1.9	12
External pressures						
Financial problems	4.0	14	5.7	16	4.7	30
Work/time	1.7	6	3.9	11	2.7	17
Family interference	0.3	1	1.1	3	.6	4
Physical/mental health	4.2	15	5.4	15	4.7	30
Other						
Spouse's personality	0.8	3	1.4	4	1.1	7
Children problems	2.0	7	.7	2	1.4	9
Other	.8	3	2.2	6	1.4	9

Notes: Missing cases=17 (no reason given). $\chi^2(11)=59.38$, $p<.001$ (women's reports versus men's reports).

The latest figures from the FCofA[5] provides the reasons why both mothers and fathers were only granted a limited amount of contact. However, the figures do not represent a complete picture for the reasons discussed previously and below.



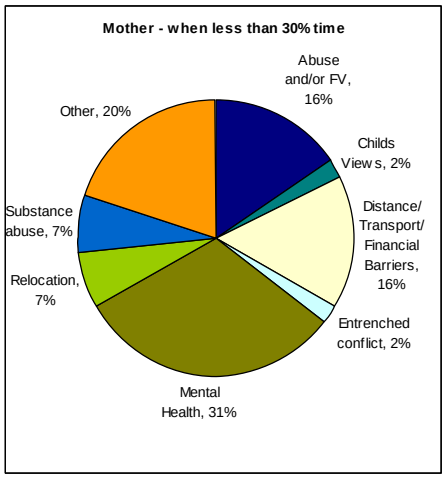
CASES WHERE THE FATHER RECEIVED LESS THAN 30%OF TIME

Note: 'Other' includes where the reason is unknown such as; the parties consenting during the litigation process, the reason is not covered by a category, or there is multiple and complex reasons.

NOTES:

[1] A sample of 1448 litigated cases were taken from total of 6992 litigated cases finalised in 2007-08
[2] The term 'litigated cases' includes all Applications for Final Orders finalised, by agreement or judgment, in the Family Court of Australia
[3] A sample of 2719 consent cases were taken from a total of 10,575 consent cases finalised in 2007-08
[4] The term 'consent cases' includes all Applications for Consent Orders finalised in the Family Court of Australia
[5] For data collection purposes 50/50 time was defined as between 45 % and 55% of the time spent with a child or children.

CASES WHERE THE MOTHER RECEIVES LESS THAN 30% OF TIME



CASES WHERE THE FATHER SPENT NO TIME WITH THE CHILDREN

- In 6% of litigated cases, the father was ordered to spend no time with the children.
- Where the parents came to an early agreement, it was agreed in less than 1% of cases that the father have no contact with the children.

CASES WHERE THE MOTHER SPENT NO TIME WITH THE CHILDREN

- In 1% of litigated cases, the mother was ordered to have no contact with the children.

[5] Family Court of Australia, 2009, *Shared Parental Responsibility* [accessed online at http://www.familycourt.gov.au/wps/wcm/resources/file/eb6b6f033263e7d/SPR_org_02_03_09.doc]

The **main reasons** for the order included:

Reason	Percentage of cases reviewed overall (1448 out of 6992 litigated cases)			
	Fathers	6% of 6992 cases = 420**	Mothers	1% of 6992 cases = 70**
Abuse and family violence	38%	160	15%	10
Entrenched conflict	10%	42	0%	0
Distance/transport/financial barriers	0%	0	8%	5
Relocation	2%	8	8%	5
Mental health issues	2%	8	31%	22
Other	42%	176	31%	22
Missing data*	6%	26	7%	4

* Not all categories are shown in this table therefore it does not add to 100%. 'Other' includes where the reason is unknown such as; the parties consenting during the litigation process, the reason is not covered by a category, or there is multiple and complex reasons.
**The FCofA has not explained whether the percentages shown in the tables apply to the 1448 reviewed cases only or applied to 6992, the overall number of litigated cases.

Were the participants selected randomly or was another criteria applied? As already noted, cases from the Federal Magistrates Court were not included, neither were interim decisions. Anecdotal evidence over 15 years tells us that a considerable number of cases go no further than an interim hearing. The writer does recall at the time of the study, the then Chief Justice of the Family Court, Alastair Nicholson did refuse to allow the Canberra staff to supply, even the number of fathers and mothers participating and how they were recruited.

Notwithstanding, the questions regarding the selection of the reviewed cases it is interesting to note the significant difference in reasons given for "no contact" orders being applied to mothers and fathers. The main criteria for fathers are *Abuse and family violence* and mothers – *Mental health issues*. However, if we recognize that symptomatic of mental health issues, depending on the diagnosis, can be a tendency towards violent behavior. This is particularly the case with bipolar[6] mood disorders. It is possible that some mothers have been categorized as having *mental health issues* rather than being classified as abusive and violent in an attempt to minimize and excuse women's violence. Again we are frequently told of a father's knowledge or suspicion that his wife is suffering from a mental disorder – most often described as "bipolar".

[6] Carlson N.R. and Buskist W., 1997, *Psychology: The Science of Behaviour*, Allyn and Bacon, USA, (p 593)

If we combine the two categories of *Abuse and family violence* and *mental health* issues, 40% of these particular fathers were denied contact for these reasons and 46% of mothers. However, these percentages cannot be taken as representative of Australian separating population.

Clearly problems of parenting in fathers are more likely to be described as *Abuse and family violence* and in mothers as *mental health issues,* although the statistical difference would seem to be contrary to the data available for child abuse and now family violence gathered from State Government departments.

Mental health pleadings are tendered for consideration when a mother is accused of killing her children, but rarely when a father is accused of a similar crime. Despite the difficulty of imagining that any person who kills their own child could be described as “being in their right mind,” fathers are, more often than not, held fully accountable for their actions and mothers are excused due to their claimed incapacity.

In the following pages we present data detailing the numbers of victims/perpetrators of domestic violence and child abuse. Where possible we have included the gender of the person who is the victim or perpetrator and their relationship to each other.

Misuse of domestic/family violence legislation and making false allegations:

In 1991, Supreme Court Justice Terence Higgins[7], when overturning a Canberra woman's domestic violence protection order against her estranged husband, described "as nonsense the woman's assertions that the statements attributed to the man had represented a threat to her safety" and he further said "the woman was a liar and that she and her sister have fabricated their allegations". Justice Higgins pointed out that "harassing or offensive behavior could justify an order if the spouse feared for her safety. But that fear had to be an objective one and a reasonable response to the situation. "Mere criticism, nagging, even unreasonable persistence cannot credibly be described as 'violence".

His Honour questioned the practice of the Magistrates Court "in issuing protection orders merely to prevent annoyance by one party to a domestic relationship of another" and suggested that in this case "it seems to me that the resources directed towards eradicating or at least controlling violence in our society are being sadly misdirected". He concluded the woman's evidence was deliberately false and revealed a consistently vindictive attitude.

In 1995, Queensland's Chief Stipendiary Magistrate Mr Stan Deer acknowledged the problem of domestic violence orders being misused when he stated "some women are using domestic violence orders to gain a better position in child custody cases"[8].

Estimates provided to this Agency at the time, by court staff/prosecutors suggested that only 5% of applications for domestic violence orders were legitimate in their claims.

In 1999, a survey conducted with 60 serving NSW magistrates, conducted by the Judicial Commission of NSW found that most (90 percent) believed domestic violence orders(AVOs) were used by applicants – often on the advice of a solicitor – as a tactic in Family Court proceedings to deprive their partners of access to their children[9].

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[7] Canberra Times XYZ

[8] Horan, M., 1995, Women abusing violence orders: top SM, Courier Mail, 5 July 1995, Brisbane

[9] Noonan G., 1999, *Call for tougher checks on AVOs,* Sydney Morning Herald, 30 August 1999, Australia and

A further study of Queensland Magistrates found three out of four who responded believed parents use domestic violence protection orders as a tactic in divorce and custody battles[10]. Like their counterparts in NSW several Queensland Magistrates believed many women applied for domestic violence orders on the advice of their solicitors.

An extract from an email communication from a female friend (an academic and health professional) to a woman, separated from her husband, advising her on how to effect a separation provides an example of the attitude towards using the domestic violence legislation for nefarious purposes:

From: Mary@XYZ.edu.au
To: Joanne@12345.com

No need to thank me for the coffee this morning darling. Its [sic] always a pleasure to catch up with you. If you want David out of your life altogether that AVO idea isn't as silly as it sounds, is it? A few crocodile tears in front of a stupid cop and they will be happy to do all the work for you. You will be back sunning yourself in (coastal town) before David's feet hit the ground. Put yourself first Joanne. You are single now, you don't have to worry about his feelings any more.

Joanne wrote previously:
Thanks for the coffee this morning. Can't believe I left home without my purse! Got a lot on my mind I suppose. David was here today, he is moving to a unit in (suburb)! Says it will be great because it is across the road from the school. Says he want the kids to stay over 2 nights a week! Woe is me.
Joanne

Having had one AVO interim order dismissed, the mother tried to take out another and again sought the advice of her friend, Joanne:

July 2006
Hi Mary,
Big day for me today – not nice either. I wonder if you can help me with something…

Online Executive Summary, Judicial Commission of NSW
http://www.judcom.nsw.gov.au/Monograph20/Executive%20summary.htm (no longer available at this URL)

[10]Nolan J., 2001, Domestic violence orders 'abused', Courier Mail 14 March 2001, Brisbane, Queensland, and Field R., and Carpenter B., 2003, Issues relating to Queensland Magistrates Understandings of Domestic Violence, School of Justice Studies, QUT Brisbane [accessed online at http://eprints.qut.edu.au/3726/1/3726.pdf]

The constable who came on Saturday would not take out an AVO for me so I have to start again with another officer but I was told that I should write a letter of complaint about him first. Trouble is I don't know what to say. If I were to get some ideas together would you be willing to draft the letter for me? Please don't agree unless you feel comfortable with this.. Joanne.

Mary replied:

Of course I can!

I'll try and give you a call later to see what the lawyer said.

M.

The mother moved away taking the children with her and the father found himself in receipt of another AVO issued by another police officer in another place. He was also arrested for an alleged breach and eventually cleared. This father spent $140,000 to clear his name and reestablish contact with his children again – all because of the ease of taking out a 'fake AVO'.

Another father has survived 5 AVO applications based on false allegations the wife made to the police. This has resulted in 10 court appearances – all dismissed. The father complained to the Judge on the last appearance and she said, "she didn't care if it was the 90th application that there are new allegations and they must be tested in court".

Other fathers have expressed their experience in this way:

John says:

I called the police once because my partner was hitting and throwing things at me. The officers talked to both of us individually and seemed understanding. The joke came when the officers came back up and said yes you were right in calling us and she is out of control but you need to leave the premises because if they get a call again to this premise I will be the one going to the lockup for the night. I asked why and the answer was that the man is the one who gets taken away for the night. How is this fair? She was the aggressive one. I will lay money down if the roles were reversed I would have been taken away and charged. Now if someone can tell me how that is justice I would like to hear it.

Or Michael described to MRA his experience as follows:

He called the police to calm his mentally ill wife and prevent her from taking off in the middle of the night, worried she might harm herself. Following procedure, the couple was separated, the

female officer talking to his disturbed wife and the male officer talking to Michael. The outcome: Michael was arrested and bailed several hours later and told not to return to his house. Michael was his wife's day to day support, his wife knew she relied on him and was devastated when she realised the outcome of the police actions. The police aggressiveness, unwillingness to listen to the real problem and determination to proceed using the domestic violence legislation nearly tore this couple apart. Neither party wanted to proceed with a DVO. The interim application was refused, but a mix up with the dates for the next hearing meant the respondent husband was not present. An adjournment requested by his solicitor was refused and a final order made without hearing his side of the story. During the application made by the husband to revoke the order, which was supported by his wife, the Magistrate identified that the husband had been "seriously prejudiced" by the making of the order under those circumstances. Many thousands of dollars later spent in legal fees, the Magistrate revoked the DVO.

Or in David's words:

This year I experienced first- hand the bias shown toward men when they try to seek protection. On 6 occasions I tried for a DV orders after being verbally abused and physically attacked, including times in front of my 4 year old daughter. The Police were called on 2 occasions, and each case I was advised to seek a DV order. My lawyer handling the legal matters advised me to seek a protection order. But it seems that the staff at the courts had different ideas, in fact the indifference shown by the staff was insulting.

When I set out to protect myself and my children from the violence and abuse by an ex partner and her boyfriend the application should not be so easily dismissed. To be told "that is a matter for the family courts" is just wrong! To add insult to injury, when the ex found out that I had been recording conversations, she was IMMEDIATELY granted an intervention order. The other allegations were "not paying bills and using her credit card". There has NEVER been any physical violence on my part, nor listed on her intervention order. She found out after I made it known that my lawyer and I had a copy of the conversation where she and her new boyfriend made threats of "putting a bullet in my head" and "taking me to the police station and beating the shit out of me".

And this is justice???

To ignore the violence committed against men and their children, who have been victimized and abused by the very person expected to nurture and care for them is both discriminatory and colluding to excuse women's abusive/criminal behavior.

British philanthropist Lord Astor remarked in 1993:
"Everyone starts out totally dependent on a woman. The idea that she could turn out to be your enemy is terribly frightening"[11]

Perhaps this explains in part, why there is such a reluctance to acknowledge women's capacity for violence. Or as we have previously observed, the promotion of "women only as victims and men only as perpetrators" has enabled many pro- feminist organizations to fund their continuing existence with public monies handed out by politicians who see more votes in providing services for women and children than for men and children. Greed is a powerful motivation to ignore others who need assistance as victims of women's violence.

Many millions of dollars have been provided at both federal and state level for counselling and refuge services for women. Ask the question – is violence against women reducing at a rate commensurate with the expenditure? It is reducing, but perhaps improved responses would produce a more noticeable reduction and monies intended to protect victims of violence could be directed towards those people, rather than to people who claim to be victims for ulterior purposes. Then consider asking the question: why is women's violence against men increasing? Statistics confirm this and some commentary has appeared in the media in relation to younger women's aggression and violence as well.

Services for men are limited to a small number of anger management courses. The greatest indignity for any man who is a victim of abuse is to be referred to an anger management course, as if the abuse they have suffered is their fault. MRA has been aware of this occurring numerous times. It sounds absolutely contrary to the mantra of women's groups – *"the violence is never her fault*" doesn't it?

Perhaps, somewhat cynically, we should add a rider to clarify that this statement only applies to women who are victims. If you're a male victim, then your female attacker seemingly has every right to claim *it's not my fault, he made me hit him!*

[11] Pearson, P., 1997, When she was bad: Violent Women the Myth of Innocence, Viking Penguin, USA

Anger management courses for women are few and far between!

Police frequently ask men seeking protection from a female abuser, *"what did you do to make her hit you?"* Then suggest they should be *"be a man about it"* asking *"are you a whimp or what?"*

For a man who is a victim of abuse and who is trying to protect himself and his children it is difficult enough to admit being abused by his wife without being exposed to this unhelpful reaction when seeking the assistance from the authorities.

This administrative abuse is not restricted to police only. Over the years our clients have frequently reported difficulties in making a court appearance – refusal to accept applications; refusal to arrange urgent hearings for temporary protection orders; of being asked to wait in a room away from the court, while the hearing into his application for protection is heard in his absence and as you might have anticipated – a protection order is refused because he didn't appear; being given a wrong time for appearance or the magistrate refusing point blank to hear his evidence or finally a failure by the police to serve the initiating summons or the domestic violence orders on women who are perpetrators of abuse.

Other men who have committed no violence/abuse whatsoever, are persuaded to accept a domestic violence order 'without admissions' after being persuaded that the outcome is not going to affect his life or his contact with his children. Various reasons are put forward such as "*why spend the money on defending the wife's application – you don't really want to see her anyway*!" Or "*The order is only a civil order"* without explaining that the DV order is entered onto the police data base and they could be accused at anytime of breaching the order, which then becomes a criminal offence and the existence of any DV order is going to be used against them in future hearings, especially those involving family issues.

Correcting the false, mistaken or misleading presentation of statistics in relation to interpersonal and family violence:

The following is a small sample of the statistical evidence available from Australian data which illustrates a significant number of men/husbands/partners are the victims of interpersonal/family violence.

- 1999 – In South Australia 32.3 per cent of victims of reported domestic violence by a current or ex-partner (including both physical and emotional violence and abuse are male
- 2005 – In New South Wales 28.9 percent of domestic violence assault victims are men[12]
- 2005-2006 – In Victoria 26.45% of adult domestic violence victims are men according to police records[13].
- 2006 – In Australia 29.8 per cent of victims of current partner violence since the age of 15 are male[14]
- 2009 – In Queensland 39.9 of domestic violence orders were issued to protect men[15]

[12] Peoples, J. (2005). "Trends and patterns in domestic violence assaults", in Contemporary Issues in Crime & Justice, No 89, October, NSW Bureau of Crime Statistics and Research (http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/cjb89.pdf/$file/cjb89.pdf);

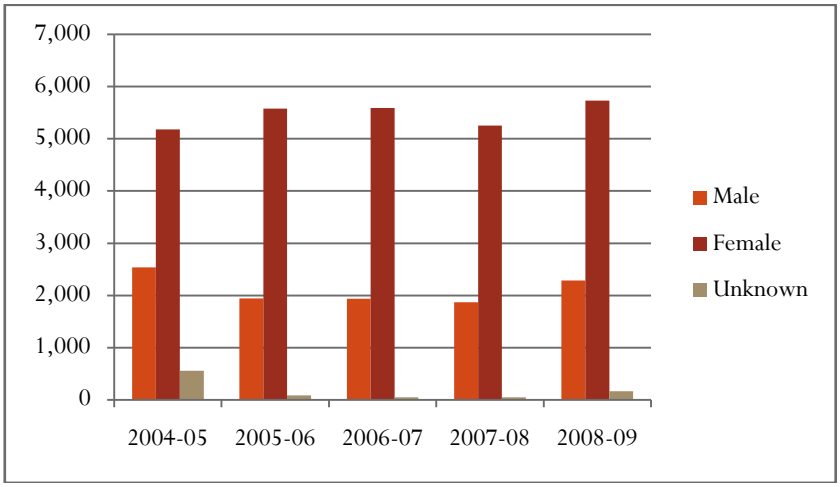
[13] Victims Support Agency, 2008, The Victorian Family Violence Database Volume 3): Seven-Year Report, Victorian Government, Department of Justice

[14] Australian Bureau of Statistics. (2005). Personal Safety Australia (http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4906.02005%20(Reissue)?OpenDocument)

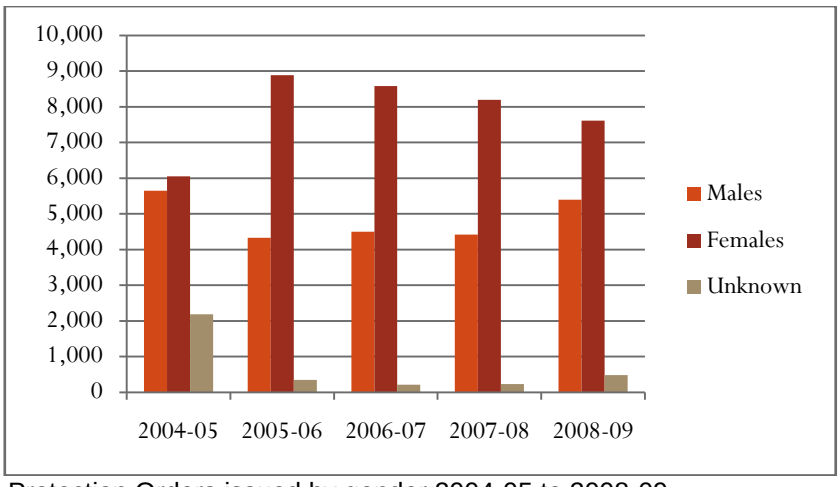
[15] Queensland Department of Communities, Gender based domestic violence orders and applications made between 2004-05 and 2008-09

Domestic and family violence orders: Number and type of order by gender, Queensland, 2004-05 to 2008-09 Department of Communities, October 2009

	Temporary protection orders				Protection orders			
	Males	Females	Unknown	Total	Males	Females	Unknown	Total
2004-05	2,535	5,181	559	8,275	5,650	6,057	2,187	13,894
2005-06	1,945	5,576	84	7,605	4,331	8,889	347	13,567
2006-07	1,937	5,592	51	7,580	4,501	8,585	219	13,305
2007-08	1,871	5,255	52	7,178	4,423	8,201	234	12,858
2008-09	2,285	5,732	165	8,182	5,395	7,616	481	13,492



Temporary Protection Orders issued by gender 2004-05 to 2008-09



Protection Orders issued by gender 2004-05 to 2008-09

Domestic and family violence applications: Number and type of application by gender, Queensland 2004-05 to 2008-09

Department of Communities, October 2009

Domestic and family violence orders: Number, percentage and type of order by gender, Queensland, 2004-05 to 2008-09

Year	Temporary Protection Orders							Protection Orders						
	Males	M %	Fem	Fem%	Unkn own	Unk%	Total	Males	M%	Fem	Fem%	Unkn own	Unk%	Total
2004-05	2535	30.63	5181	62.61	559	6.76	8275	5650	40.67	6057	43.59	2187	15.74	13894
2005-06	1945	25.58	5576	73.32	84	1.10	7605	4331	31.92	8889	65.52	347	2.56	13567
2006-07	1937	25.56	5592	73.77	51	0.67	7580	4501	33.83	8585	64.53	219	1.64	13304
2007-08	1871	26.06	5255	73.21	51	0.72	7178	4423	34.40	8201	63.78	234	1.82	12858
2008-09	2285	27.93	5732	70.06	165	2.01	8182	5395	39.99	7616	56.45	481	3.56	13492

The above statistics from the Queensland Department of Communities confirms the growing incidence of men as domestic violence victims.

Many International studies support the claim that women and men can be equally violent to each other, with women becoming increasingly violent For further information on these studies we refer you to Professor Martin Fiebert's updated bibliography[16] which examines 256 scholarly investigations: 201 empirical studies and 55 reviews and/or analyses, which demonstrate that women are as physically aggressive, or more aggressive, than men in their relationships with their spouses or male partners. The aggregate sample size in the reviewed studies exceeds 253,500.

The great taboo ..... silencing the truth about domestic violence

Researchers and women's advocates have found little opposition to the reams of research they have produced over the past thirty years, much of which could be described as self-select opinion polling.

UK neurophysiologist Dr Malcolm George, who has spent many years commenting on domestic violence, and researching 'men as victims' refers to Kate Fillion's comments to support his explanation of the methods use to "silence the truth" about domestic violence.[17]

When initial evidence of the gender equality of intimate violence emerged in the work of Straus et al. (1980), the authors faced not only criticism but also a barrage of abuse, falsehoods and threats from women's advocates that is now well documented (Gelles, 1994; Luccal, 1995; McNeeley, Cook, & Torres, 2001; Straus, 1993). Similarly, when attempting to resurrect the argument, McNeeley (see McNeeley & Robinson-Simpson, 1987) also faced hostility and abuse. Robinson-Simpson was allegedly an oppressed female who had been duped by a malevolent misguided male (McNeeley, Cook and Torres, 2001). As a result, according to Fillion (1997):

Currently, findings on all types of female physical and sexual aggression are being suppressed; academics who do publish their research are subjected to bitter attacks and outright vilification from some colleagues and activists, and others note the hostile climate and carefully omit all data on female perpetrators from their published reports. (pp. 229-230)

This suggests that some twenty years of silencing had occurred beginning with publications in the mid- to late-1970s. (Dr. Malcolm George)

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[16] Fiebert, M.S., July 2009, *References examining assaults by women on their spouses or male partners: an annotated bibliography*, California State University, Long Beach, USA [Accessed online http://www.csulb.edu/~mfiebert/assault.htm]

[17] Malcolm J. George "The "great taboo" and the role of patriarchy in husband and wife abuse". International Journal of Men's Health. FindArticles.com. 29 Jun, 2009. [accessed online http://findarticles.com/p/articles/mi_m0PAU/is_1_6/ai_n27283522/]

Australian Micheal Woods, a Senior Lecturer with the University of Western Sydney confirms[18]:

The domestic violence industry in Australia is a multi-million dollar enterprise, ostensibly designed to ensure that women live free of violence. However, it seems that some sections of this industry such as the White Ribbon Campaign (WRC) are engaging in the use of dishonesty to further the interests of organisational growth rather than contribute to addressing a social problem. While questions of probity are important where substantial amounts of government funds are involved, the dishonesty being practiced is also contrary to the interests of those women the industry claims to champion.

John Coochey, a well informed critic of the misuse of poorly conducted research told the Australian Crime Commission conference[19]:

It is in the Australian Capital Territory that this lack of intellectual rigor seems to have reached its zenith. In March 1996 the ACT Department of Health released a report entitled Review of ACT Sexual Assault Services (9) which stated without any evidence that one in four women had been the victim of sexual assault. It was largely based on an earlier report *Many Paths for Healing* prepared by the Canberra Women's Health Centre, funded by the Commonwealth and Territory Governments. This had found 20 per cent of respondents to a survey had been the victims of organized ritual abuse, formerly known as satanic ritual abuse-black masses torture chambers etc. This obviously means the ACT must have more covens complete with torture chambers than Catholic Grammar schools. And absolutely ridiculous study, but which was accepted publicly by the ACT Government! In fact a British Government study found only three such cases over a four year period and in the US only one out of 12,264 cases was substantiated. The origin of this insanity can perhaps be found in the WHS report, page 7.

"Feminist research methodology

· The distinction between subjective and objective research is rejected. All research occurs in a social context and reflects the researchers' way of seeing the world.
· The production of emancipatory knowledge and empowerment of those who are being researched is a central focus.
· The research process should contribute positively to consciousness raising and transformative social action"

Published content within *Beyond these walls,* a report from the Queensland Domestic Violence Taskforce 1988[20] provides an early example of blatant misuse of others' research.

[18] Woods. M., 2006, Dishonesty in the domestic violence industry, University of Western Sydney, Australia

[19] Coochey, J., *Myths and Realities or All the Facts that Fit we Print*, Australian Crime Prevention Council, Melbourne 17 - 20 October 1999.citing Courtney, J Williams, L, 1995, Many Paths to Healing: the counseling…. Canberra Women's Health Centre

[20] Queensland Domestic Violence Taskforce, 1988, Beyond these walls

On page 47, a table taken from the Conflict Tactics Scale method of research (Straus and Gelles 1986) is illustrated. It shows the category **"Husband to Wife Overall and Severe Violence**, but neglects to show the 'other half' of the table – the column showing "**Wife to Husband" violence**. If the other column had been included it would have shown women were equally violent and in some categories more so, challenging the authors' statements made on page 16 that they would refer to the perpetrator by the "masculine pronoun and the victim - the feminine".

The authors chose to engage in academic misrepresentation and were dismissive of the 41 male respondents out of a total of 661 who answered the questionnaire. This dishonest report formed the basis for the creation of the Queensland response to domestic violence.

Research can be easily manipulated – by asking the questions one knows will produce the response one is seeking or by ensuring those who might give unwanted answers are never given the opportunity to respond.

The Queensland Crime and Misconduct Commission was tasked to report on the Queensland Police response to domestic violence[21]. The writers claim to have consulted widely with domestic violence victims, the judiciary, police and domestic violence and women's legal service providers. They note that *"Most survey participants were female (one male participant)"* and that "*only one person indicated that the perpetrator of domestic violence was female". (p.8)*
Quite how the CMC expected to reach male victims of domestic violence we are unsure, particularly when questionnaires were only issued via women's domestic violence services and those services do not have contact with male victims – their door is firmly closed to them. Needless to say, the CMC did not contact this Agency.

Michael Flood, one of the authors of a report[22] written for the 2008 White Ribbon Day campaign has been forced to acknowledge they incorrectly published a statement relating to teen violence, which resulted in considerable damage to the reputation of young Australian men.

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[21] Queensland Government, 2005 *Policing domestic violence in Queensland: Meeting the Challenges* , Crime and Misconduct Commission, Queensland.

[22] Flood M. and Fergus, L., 2008, *An Assault on Our Future:The impact of violence on young people and their relationships*, White Ribbon Day [the corrected version is online using the excuse of a typographical error http://www.whiteribbonday.org.au/media/documents/23546WhiteRibbonYouthSummary.pdf]

Flood and Fergus wrote: **"that one in three boys believed it was not a big deal to hit a girl",** making headlines around the world!

The statement which was taken from an original report by the National Crime Prevention 2001 study[23] into teen violence referred instead to **"girls hitting boys".**

Men's Health Australia researcher Greg Andresen, who uncovered the blatant misrepresentation, persisted in securing a retraction from the ABC and other media.

A media release from Men's Health Australia[24] details that the NSW Government has confirmed making substantial errors in its current *Discussion paper on NSW Domestic and Family Violence Strategy*. In errata published on the Office for Women's Policy webpage, the Government admits errors that clearly over-inflate the female victimisation rate from partner assault by at least 65 per cent while downplaying the prevalence of violence against men by their former partners.

Academic researchers have been guilty of hiding the facts or have been so swayed by the prevalent agenda and media messages portraying men/husbands/fathers as being the violent ones, their ability to design studies that will expose the true status of abuse and violence has been affected. Studies are only as good as the questions asked and if the right questions are not asked then policy makers will continue to be fooled by the agenda to protect women as entirely innocent victims, never the perpetrator or as the person who encourages another to perpetrate abuse on her behalf.

We also refer you to the following attachment:

Do we ignore men who are victims of domestic violence[25] details the available evidence, showing the level of IPV/family violence committed against men is far too high to be ignored any longer? The current government has chosen to focus on providing assistance only for women and children who may be victims of violence, ignoring men who find

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[23] National Crime Prevention (2001) Young People & Domestic Violence: National research on young people's attitudes and experiences of domestic violence. Canberra: Crime Prevention Branch, Commonwealth Attorney- General's Department.

[24] Andresen, G., 2009, *Call to stop demonizing men and boys*, [accessed online http://www.menshealthaustralia.net/files/MHA_Release_030909.pdf]

[25] Woods, M., and Andresen, G, 2009, *Do we ignore men who are victims of domestic violence*, Men's Health Information & Resource Centre University of Western Sydney and Men's Health Australia
[accessed online at http://www.menshealthaustralia.net/files/WRD07.pdf]

themselves in a similar situation. These policies suggest the Government has rejected their obligation under the United Nations International Covenant on Civil and Political Rights which clearly dictates that discrimination based on 'sex' is prohibited.

Statistics detailing who's responsible for child neglect, abuse and homicide

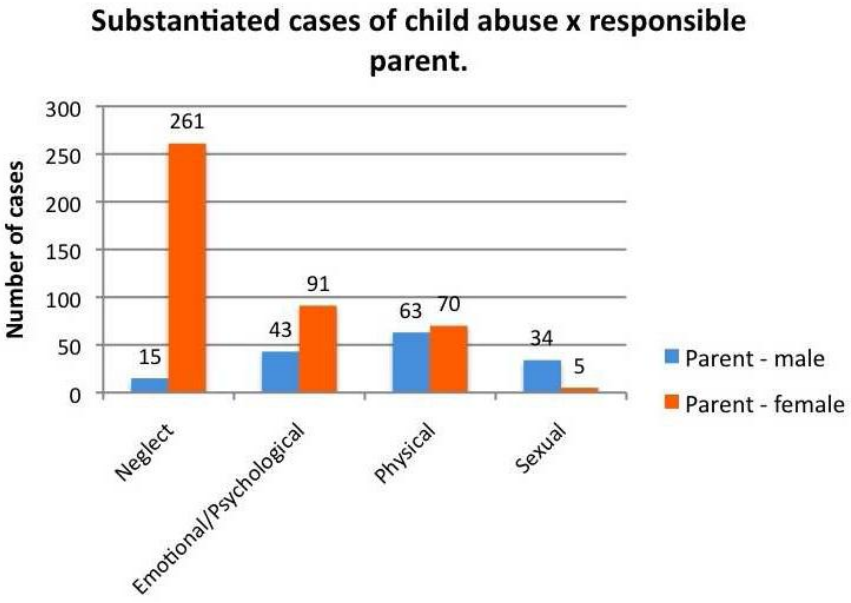
Child Abuse

In 2007, Desley Boyle the then Minister for Child Safety in Queensland issued a press release[26]:

"People may be surprised to hear that women, just as much as men are responsible for child abuse," Ms Boyle said.

"We have an idealised image of mothers – that they feed their kids before themselves – but I'm sorry to say, it's not always true."

Dads not the demons[27], a fact sheet containing data accessed via FIO from the Department of Child Protection (DCP) in Western Australia highlights statistical evidence to show that natural mothers are far more likely to abuse children than their natural fathers. The DCP should be congratulated in properly defining the relationship of the abuser to the child. For too long now departments involved in child protection throughout Australia have failed to properly categorise "men" into de factos, live-in boyfriends, step fathers, other male visitors, and biological fathers etc., creating a false impression that fathers present a far greater risk to their children than is evident. In other studies instead of categorising biological fathers and mothers they might be described as 'parents' only, again creating a false impression.



[26] Boyle, D., 2007 Dads and Mums responsible for child abuse and neglect, Ministerial Media Statements, 11/04/07, Queensland Government

[27] Woods, M., and Andresen, G, 2009, *Dads not the demons*, Men's Health Information & Resource Centre University of Western Sydney and Men's Health Australia
[accessed online at http://www.menshealthaustralia.net/files/dads_not_the_demons_09.pdf]

The above chart focuses on abuse committed either by a mother or father, but it is interesting to view the full table of statistics for 2005-2006 from the West Australian Department of Children detailing the relationship of the abuser to the victim.

The recognition has been a long time coming and still most government authorities charged with 'keeping the books' fail to define the exact relationship of the abuser to the child.

Response:

Relationship to Child of Persons Believed Responsible for Substantiated Maltreatment 2005-06

Relationship of Person Believed Responsible	Nature of Maltreatment					
	Neglect	Emotional/ Psychological	Physical	Sexual	No Suitable Caregiver	Total
Aboriginal kinship-male	1	0	0	1	0	2
Aboriginal kinship-female	0	0	0	0	0	0
Defacto of parent-male	7	9	25	16	0	57
Defacto of parent-female	0	0	1	0	0	1
Foster carer-female	3	4	1	1	0	9
Friend/neighbour-male	0	0	0	24	0	24
Friend/neighbour-female	0	0	1	0	0	1
Guardian-male	0	1	1	0	0	2
Guardian-female	5	5	0	0	0	10
Loco parentis-male	0	0	0	1	0	1
Other-male	0	1	3	9	0	13
Other-female	1	0	0	0	0	1
Other relative-male	3	1	2	36	0	42
Other relative-female	4	0	6	0	0	10
Parent-male	37	41	65	22	0	165
Parent-female	161	72	76	3	0	312
Sibling-male	0	0	1	10	0	11
Sibling-female	0	1	1	0	0	2
Step parent-male	0	4	19	11	0	34
Not recorded	96	32	66	63	6	263
Total	**318**	**171**	**268**	**197**	**6**	**960**

Note: The department's client database has the capacity to record multiple persons believed responsible for each child. This table shows the first recorded person believed responsible only. The person believed responsible is sometimes unknown or does not meet the criteria for recording.

Prepared by: Kaija Ward, Demand Planning, Research and Evaluation
Source: CCSS snapshot nat2006 dated 4 September 2006

The West Australian Department of Children is the first to provide via FOI application a detailed breakdown of the relationship of the person believed responsible for the abuse to the child.

Surely this level of evidence of just who commits abuse against children cannot be ignored any longer?

Child Homicide:

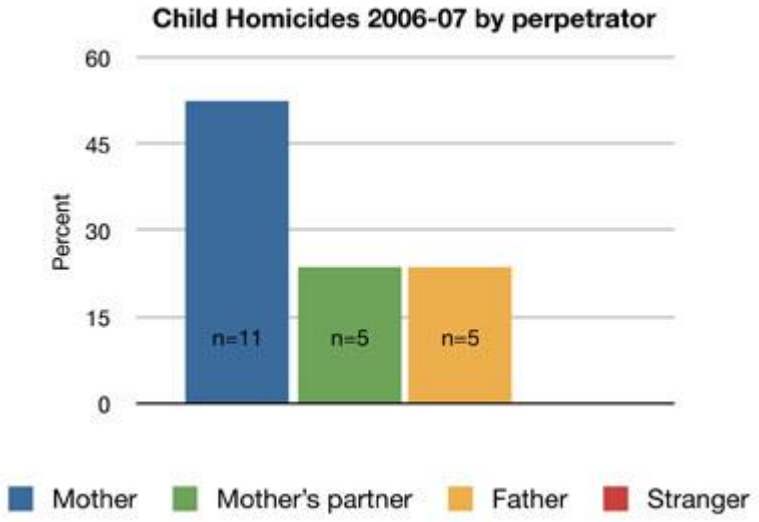
In recent times it has been uncovered that the Australian Institute of Criminology had published incorrect statistics relating to the homicide of children and the relationship of the perpetrator to the victim.[28] The following commentary and chart provides the correct statistics and clearly identifies mothers as killing more children than biological fathers.

[28] Andresen G., Men's Heath Australia http://www.menshealthaustralia.net/index.php?option=com_content&task=view&id=750&Itemid=102

Mother's boyfriends are also identified as killing children who are not their biological off spring.

The Australian Institute of Criminology has recently corrected an error in its National Homicide Monitoring Program 2006-07 Annual Report[29].

The original report stated that 7 homicides involved a mother and 15 involved male family members. The corrected report states that 11 homicides involved a mother and 11 homicides involved a male family member. When the category of 'male family member' is broken down, we see that only 5 perpetrators were fathers, while another 5 five were de-facto partners of the mother who lived with the child (one father murdered two children). Importantly, no child victims were killed by a complete stranger in 2006–07.



The AIC has also acknowledged that "the usage of male family member and mother is not a useful way of classifying relationship between a child homicide victim and their offender. In future reports we will employ classifications that provide a more detailed classification of the relationship between child victims and offenders."

According to a NSW report[30] into the deaths of the 60 children, who died in violent circumstances between January 1996 and July 1999, mothers were responsible in the majority of cases.

The Fatal Assault of Children and Young People report published in 2002 disclosed that more children died as a result of the mother' violence/neglect than as a result of the biological father's violence/neglect.

[29] Australian Institute of Criminology, 2006-07 National Homicide Monitoring Program 2006-07 Annual Report, http://www.aic.gov.au/publications/current%20series/mr/1-20/01.aspx

[30] Fattore T. and Lawrence R., *The Fatal Assault of Children 2002,* Commission for Children and Young People, NSW

The report divides the deaths into four categories, non-accidental injury, mental illness, family breakdown and teenage.

In the first category - non accidental injury, there were 19 deaths. In 9 cases, the primary suspects were men and for the remaining 10 it was the children's mother. Of the nine male offenders, 5 were designated as the mother's boyfriend, 1 a border known to the child and only 3 being the biological father.

In the mental illness category all 11 deaths resulted from the mother's violence.

In family breakdown, of the 7 incidents, 3 were committed by the father and 4 by the mother. More than one child was killed in three cases.

The teenage category resulted in 13 deaths, none of which were committed by parents or defactos. 12 were committed by males and 1 by a female.

The results across all four categories show: 26 females and 25 males killed children under 17 years old. Excluding the findings in the teenage category, we find that of the 12 remaining males identified as primary suspects, 6 were biological fathers, 5 defacto boyfriends and 1 live-in border.

Overwhelmingly this report shows mothers are over 4 times more likely to kill their children than biological fathers.

In 2000, researcher Jenny Mouzos included in her 10 year homicide study, *Homicidal Encounters* the statement that *"Biological parents, usually the mother, were responsible for a majority of child killings in Australia. Very rarely are children killed by a stranger".*

Despite this information being put to Government Ministers and more recently to the Attorney General. Rob McClelland there is still an unacceptable level of denial that mothers present a far greater risk to the safety of their children than biological fathers. To highlight the case of Darcey Freeman, who was allegedly killed by her father after the parents rewrote their parenting agreement or a new parenting order was issued by the Family Court of Australia, reducing the time the children could spend with their father as being an event precipitating this inquiry is incomprehensible. Particularly, when less than

12 months prior a woman, Gabriella Garcia strapped her 22 month old son to her chest and jumped from the same Westgate Bridge, fearing she was about to lose custody of her son. The father denied he was making any applications for residency to the family courts. The media did not give the same coverage to this murder/suicide at the time and the father's family have complained recently amidst the furore surrounding the Darcey Freeman death. Anita Allen, Oliver's aunt wrote:

> "When my little nephew died at the hands of his mother, it went almost unnoticed because she committed suicide, there was little the media could say. And because it was a closed coronial investigation, there is little my family know about this tragedy other than our own loss, disbelief and grief. How could she? It seems that my nephew's life became invisible because his mother killed herself in the process."

Apart from calls to fence the sides of the bridge to prevent 'jumpers' little was mentioned in the media. When the media does cover a woman killing her children they seem to go to extreme lengths to provide excuses for her actions – "she loved her children to death" or as was recently reported, Garcia took a "Deadly bridge leap to 'save son from a bad life'[31]. Comments were sought from an expert to relay the impression her actions were irrational. We would have to agree! According to the journalist:

> Detectives found the **shared custody arrangements were "amicable".**
> According to the coroner's summary of the incident compiled by the homicide squad, it was at this time that Garcia became convinced that Allen (the father) wanted to claim full custody and was poisoning Oliver's mind against her.
>
> She further believed that Allen was teaching Oliver objectionable and abhorrent things about her. There is no direct evidence to substantiate these thoughts or verify that Allen was making any attempt to secure the full custody of his son", it read.

Fathers are not offered any such excuse, although it would seem to be quite reasonable to suggest that 'no one in their right mind', mother or father, kills their children.

There are many examples of mothers killing their children, some in response to family law orders and these have been detailed in an extensive submission from Nuance. We do not intend to repeat the listing, but refer the Inquiry to the submission.

[31] Rout M., 2009, Deadly bridge leap to 'save son from bad life', The Australian, p 1. 14 July 2009, News Ltd.

The evidence of mothers killing their children has been known for many years, but the extent has remained largely hidden from public view because the killings are viewed as an aberration of the mind rather than a deliberate act. We have noted over the years that mothers arrested for such crimes are more likely to be referred to a psychiatric institution, medicated, remaining there until she responds satisfactorily to the treatment, when she will, more than likely, be released.

Family Violence and the Family Law Act

It needs to be said at this stage that only a minority of parents cause harm to their children or each other. When serious abuse occurs it should be handled via the normal channels at a State level, under their respective criminal codes. The domestic violence legislation has confused the boundaries for dealing with criminal assault. A civil response not only allows the authorities to ignore cases requiring some investigation and possible prosecution, it has allowed the State to provide an avenue for disgruntled partners to avenge themselves for the smallest of perceived insults. Just by calling the police and making the wildest of accusations, without any proof whatsoever, and unwanted partner/parent can be removed from their home and denied contact with their children.

We are concerned the purpose of this inquiry is to draft legislation that will instruct the FCoA judiciary to 'take more notice of domestic violence orders' despite the existence and clear guidance contained in the:

Family Law Act 1975 – S.68R Power of court making a family violence order, to revive vary, discharge or suspend an existing order, injunction or arrangement under this Act.

We consider the above and other sections contained in the Act adequately cover the need to take the question of abuse into account.

Suggestions have been made this Inquiry may lead towards encouraging the States to adopt the family violence legislation now used in Victoria.

The legislation has been expanded to include not only violence and threats of violence, damage to or threat of damage to property, but to cover various other issues described as 'social values'.

The Preamble to the Victorian *Family Violence Protection Act 2008* states:

Preamble

In enacting this Act, the Parliament recognises the following principles—

(a)that non-violence is a fundamental social value that must be promoted;

(b)that family violence is a fundamental violation of human rights and is unacceptable in any form;

(c)that family violence is not acceptable in any community or culture;

(d)that, in responding to family violence and promoting the safety of persons who have experienced family violence, the justice system should treat the views of victims of family violence with respect.

In enacting this Act, the Parliament also recognises the following features of family violence—

(a)that while anyone can be a victim or perpetrator of family violence, family violence is predominantly committed by men against women, children and other vulnerable persons;

(b)that children who are exposed to the effects of family violence are particularly vulnerable and exposure to family violence may have a serious impact on children's current and future physical, psychological and emotional wellbeing;

(c)that family violence—

(i)affects the entire community; and

(ii)occurs in all areas of society, regardless of location, socioeconomic and health status, age, culture, gender, sexual identity, ability, ethnicity or religion;

(d)that family violence extends beyond physical and sexual violence and may involve emotional or psychological abuse and economic abuse;

(e)that family violence may involve overt or subtle exploitation of power imbalances and may consist of isolated incidents or patterns of abuse over a period of time.

The Parliament of Victoria therefore enacts:

PART 1—PRELIMINARY

1 Purpose

The purpose of this Act is to—

(a)maximise safety for children and adults who have experienced family violence; and

(b)prevent and reduce family violence to the greatest extent possible; and

(c)promote the accountability of perpetrators of family violence for their actions.

We query when the legislators decided it was tolerable to include statements about the gender of the people expected to offend against any act? Profiling on a gender basis has never been considered acceptable and could be construed as generating hatred against men. Some of the issues described in the Act can hardly be claimed to constitute ‘violence’. The legislators in Victoria obviously consider they are entitled to impose a kind of Kafkaesque doctrine of behaviour on the general public. When legislation is drafted to impose a standard of behaviour that is reliant on another’s interpretation of acceptability the Government is intruding too much.

5 Meaning of *family violence*

(1)For the purposes of this Act, ***family violence*** is—

(a)behaviour by a person towards a family member of that person if that behaviour—

(i)is physically or sexually abusive; or

(ii)is emotionally or psychologically abusive; or

(iii)is economically abusive; or

(iv)is threatening; or

(v) is coercive; or

(vi)in any other way controls or dominates the family member and causes that family member to feel fear for the safety or wellbeing of that family member or another person; or

(b)behaviour by a person that causes a child to hear or witness, or otherwise be exposed to the effects of, behaviour referred to in paragraph (a).

Examples

The following behaviour may constitute a child hearing, witnessing or otherwise being exposed to the effects of behaviour referred to in paragraph (a)—

- overhearing threats of physical abuse by one family member towards another family member;
- seeing or hearing an assault of a family member by another family member;
- comforting or providing assistance to a family member who has been physically abused by another family member;
- cleaning up a site after a family member has intentionally damaged another family member's property;
- being present when police officers attend an incident involving physical abuse of a family member by another family member.

(2)Without limiting subsection (1), ***family violence*** includes the following behaviour—

(a)assaulting or causing personal injury to a family member or threatening to do so;

(b)sexually assaulting a family member or engaging in another form of sexually coercive behaviour or threatening to engage in such behaviour;

(c)intentionally damaging a family member's property, or threatening to do so;

(d)unlawfully depriving a family member of the family member's liberty, or threatening to do so;

(e)causing or threatening to cause the death of, or injury to, an animal, whether or not the animal belongs to the family member to whom the behaviour is directed so as to control, dominate or coerce the family member.

(3)To remove doubt, it is declared that behaviour may constitute family violence even if the behaviour would not constitute a criminal offence.

6 Meaning of *economic abuse*

(a)in a way that denies the second person the economic or financial autonomy the second person would have had but for that behaviour; or

(b)by withholding or threatening to withhold the financial support

- preventing a person from seeking or keeping employment;
- coercing a person to claim social security payments;
- coercing a person to sign a power of attorney that would enable the person's finances to be managed by another person;
- coercing a person to sign a contract for the purchase of goods or services;
- coercing a person to sign a contract for the provision of finance, a loan or credit;

•coercing a person to sign a contract of guarantee;

•coercing a person to sign any legal document for the establishment or operation of a business.

7 Meaning of *emotional or psychological abuse*

For the purposes of this Act, ***emotional or psychological abuse*** means behaviour by a person towards another person that torments, intimidates, harasses or is offensive to the other person.

Examples—

•repeated derogatory taunts, including racial taunts;

•threatening to disclose a person's sexual orientation to the person's friends or family against the person's wishes;

•threatening to withhold a person's medication;

•preventing a person from making or keeping connections with the person's family, friends or culture, including cultural or spiritual ceremonies or practices, or preventing the person from expressing the person's cultural identity;

•threatening to commit suicide or self-harm with the intention of tormenting or intimidating a family member, or threatening the death or injury of another person.

Unfortunately, additional powers have been granted to the police whereby they can issue 'safety notices' ordering a person out of their home even though their name is on the title, purely with the approval of their sergeant. The respondent can be detained for 6 hours and a further 10 on application by fax or phone. The Officer can order the respondent to not return to their home. The order remains in force until a court hearing can be arranged, supposedly within 72 hours, plus allowances for public holidays. The first mention does not provide an opportunity for the respondent to present any evidence or arguments against the imposition of an ouster order. Certainly seems to be a case where the punishment imposed by an ouster order symbolises a penalty for a guilty person, regardless of their innocence or not. If we are prepared to toss away any notion of *innocent until proven guilty* we may as well abandon the prospect of retaining a fair judicial process.

A respondent will not be allowed to cross examine the complainant – too bad if they cannot afford a lawyer, (Legal Aid almost never supports a defendant to a domestic violence application); a child over 14 can apply for an order against his/her parents; the Act allows for others close to the accused to become co-accused; one no longer needs to 'consent' to an order just don't actively oppose one for an order to be issued; just having children in the house when an argument between the parents occurs can result in a domestic violence order to protect the children.

Despite Family Court orders providing contact, under this domestic violence Act orders can be suspended. Imagine spending anywhere between $10,000 and $140,000 to gain orders to see one's children, only to find it prevented when the other parent claims new

circumstances have arisen and applies for a domestic violence order or a renewal of an expired order.

The following section 176 contained in the FVPA 2008 refers to the abovementioned situation:

176 Relationship with Family Court orders

A family violence intervention order operates subject to any declaration made under section 68Q of the Family Law Act by a court having jurisdiction under Part VII of that Act.

Note

Section 68Q of the Family Law Act provides that a court exercising jurisdiction under that Act may make a declaration that an order or injunction under that Act is inconsistent with a family violence intervention order. To the extent of the inconsistency, the family violence intervention order is invalid. See also section 68R of the Family Law Act which provides that a court exercising jurisdiction under this Act may revive, vary, discharge or suspend certain Family Law Act orders.

NSW, Tasmania and Western Australia also allow police and courts to issue orders restraining a person accused of domestic violence without given them the opportunity of a court hearing, raising the 'suggesting that making an order before a person had been tried "may readily be seen as a denial of justice"'[32]. In Tasmania many complaints have been heard, even from the legal profession about the ability granted under their Act to profile the accused and imprison them until a court hearing can be arranged.

Unfortunately, the AGS review of domestic violence laws does not consider the new Victorian legislation, (p.69).

Much more can be said on the misuse of domestic violence laws and the State governments' encroachment on civil liberties without reasonable cause.

A recent letter sent to the Attorney General explains the conflict caused between domestic violence programs clearly providing services for women only and the requirements of the United Nations International Covenant on Civil and Political Rights as follows:

The proposed spending of $38.5 million, as enunciated in the media release of 29 April, is essentially designed to make a protection (ie. freedom from violence) through government policy and service delivery dependent on the victim's gender. In my opinion, this is a crude violation of one of the most fundamental and cherished principles of international human rights law. Articles 2,

[32] AGS,2009 Domestic violence laws in Australia, p.31)

4 and 26 of the International Covenant on Civil and Political Rights (ICCPR), to which Australia became a party in 1980, and which in turn reflect the rights set out in Articles 2, 7, and 16 (1) of the Universal Declaration of Human Rights, are quite explicit and uncompromising in this matter and prohibit discrimination based on sex. Article 26 of the ICCPR, in particular, guarantees "to all persons equal and effective protection against discrimination on any ground such as, *inter alia*, sex".

Further, the policy also explicitly violates Article 23 (4) of the ICCPR requiring Australia to "take appropriate steps to ensure equality of rights and responsibilities of spouses … during marriage and at its dissolution". The shared parenting laws, besides conferring the right of children to the benefit of a meaningful relationship with both parents, also go some way towards implementing equal rights at the dissolution of marriage since property and parenting are essentially the only areas where this provision could have any possible application.

In the context of a domestic violence policy that makes protection - through advocacy and service delivery – contingent on the victim's gender, this would mean that a woman suffering domestic violence or spousal abuse during marriage would have access to an extensive range of government service delivery to afford her protection, but a husband who suffered the same violence or abuse in marriage would be precluded due solely to his gender. This clearly violates Article 23 (4) of the ICCPR as it produces complete inequality and power imbalance during marriage given that domestic violence is probably the most egregious and abhorrent crime that a person can possibly suffer as a result of entering into marriage.

One could even argue that the government's policy on domestic violence amounts to incitement to discrimination in violation of Article 7 of the Universal Declaration of Human Rights.
Roger Smith, Canberra

Suffice it to say this Agency is extremely concerned that the new Victorian legislation has deemed it appropriate to refer to men as being the majority perpetrators of domestic violence, which will encourage some to regard the FVPAct 2008 as purely for the use of women. What response will a man, who has been deemed to be in the minority as a victim, receive from a court operating under legislation giving clear indications to accept women are in the majority, when it comes to being a victim of domestic violence? Does this mean, when in doubt about the truth of competing claims made by both parties, a magistrate may be tempted to defer to the doctrine prescribed in the preamble and find on the balance of probabilities that the woman is more likely than the man to be the victim?

The Women's Legal Service Victoria has already claimed ownership of the Act by using a masculine adjective on three separate occasions in the document they prepared entitled - Comparison Table Navigating the new Family Violence Protection Act 2008[33]. See below:

Conditions (s80 and s81)
Court may include **ANY CONDITIONS** that appear necessary or desirable in the circumstances - s81
- Allow the respondent to collect **his** things in presence of police or other specified person

Conditions - Personal property (s86-88)
The court MAY include conditions relating to the use of personal property including – s81(2)(c) and s86 ….
- Allow the respondent to collect **his** personal property in presence of police or other specified person – s86

Rehearings (s122)
If the respondent was not personally served with the application AND it was not brought to **his** attention under an order for substituted service the respondent may apply for a rehearing at the Magistrates' Court. An application for a rehearing does not stay the operation of the order.

False Allegations:

117AB Costs where false allegation or statement made

(1) This section applies if:

(a) proceedings under this Act are brought before a court; and

(b) the court is satisfied that a party to the proceedings knowingly made a false allegation or statement in the proceedings.

(2) The court must order that party to pay some or all of the costs of another party, or other parties, to the proceedings.

[33] Comparison Table Navigating the new Family Violence Protection Act 2008
This document was developed by Women's Legal Service Victoria for a training program for the Magistrates' Court of Victoria delivered in October 2008

http://www.justice.vic.gov.au/wps/wcm/connect/DOJ+Internet/resources/file/ebd51940033357b/FamilyViolenceAct_comparisson_table.pdf

Section 117AB provides for a cost order to be made against a party found to have knowingly made a false allegation or statement. Women's groups are lobbying intensely to have this section removed.

A search of cases listed on austlii.edu.au under 'false allegations' provides access to six decisions given as a result of an appeal heard in the Full Court of the Family Court of Australia. Despite there being some mention of 'false allegations' having been made, none resulted in a costs order issued under 117AB.

In one case where costs were claimed under s117AB- Carpenter and Lunn [2208] FacCAFC 128, both parties were awarded a costs order pursuant to the *Federal Proceedings (Costs) Act 1981*

A further search for 'false allegations' in the Family Court of Australia produced 109 cases. Of those, 91 cases were dated later than July 2006. Only 13 of those cases responded to the search query s117AB.

The first case listed does provide some small portion of relief under s117AB for the husband based on the finding the wife did make false allegations. He was awarded only 25% of his trial costs. His overall costs had reached at least $43,000. The wife was ordered to pay $3,195 with 9 months to pay.

Sharma & Sharma (No. 2) [2007] FamCA 425 (2 March 2007)

24. The wife emphasises that the husband initiated these proceedings. She says the proceedings were unnecessary and the issues which concerned the husband were capable of exploration and resolution more cheaply in the domestic violence proceedings. This submission side steps that the apprehended violence proceedings sought, at order 13, to prohibit contact between the husband and the children. I accept the husband's submission that in order to preserve his relationship with the children, he required this Court's intervention and consideration in a wider sense, of the impact upon him and the children of the wife's actions. Mr Jurd pointed out that following upon completion of the 2004 parenting proceedings, it is apparent the husband kept a detailed diary concerning matters involving the wife and his contact with the children. To a considerable degree, this demonstrates the husband prepared for another round of litigation. I accept he did. It seems likely however, that he prepared to defend further allegations from the wife rather than initiate proceedings against her. The wife forced his hand when she took her complaints and allegations to police and others. This finding weighs in favour of the husband's costs application.
25. The next issue requiring consideration is whether the husband's costs ought to be ordered on an indemnity basis. In *Kohan &Kohan* (1993) FLC 92-340 the Full Court held that an indemnity costs orders is a very great departure from the normal standard. Their Honours cited with approval Sheppard J in *Colgate Palmolive Co &Anor v Coussins Pty Ltd* (1993) 46 FCR 225. Sheppard J lists examples of circumstances which have resulted in indemnity cost awards. Relevantly, these include: *"Making of allegations of fraud knowing them to be false"* and *"the making of allegations which ought never to have been made"*. Concerning indemnity costs, His Honour held:

"The question must always be whether the particular facts and circumstances of the case in question warrant the making of an order for payment of costs other than on a party and party basis".

26. In the family law context, however, as the Full Court said in *Kohan*:

"Even in cases where there has been dishonest concealment of assets or income …. No more than party and party costs have been awarded".

27. Arguing against indemnity costs, Mr Jurd highlighted that the commencement of the *Family Law Amendment (Shared Parental Responsibility) Act 2006* changed the applicable law and that it was reasonable, having regard to Dr Q's report, for the wife to resist the husband's primary and alternate applications. Particularly when one considers the children's desire to continue living with their mother and that she has been their primary carer all their lives. I do not accept Mr Austin's submission that at least from release of Dr Q's report the wife's position was untenable. Although Dr Q's report and evidence seriously damaged the wife's allegations, neither party, nor their legal advisers, could have confidently predicted the outcome of these proceedings.

28. Thus, notwithstanding that other courts have determined that *"the making of allegations which ought never have been made"* warrant an indemnity costs order, having regard to the totality of circumstances in this case, I am not persuaded an indemnity costs order is appropriate.

29. Calculated in accordance with the *Family Law Rules*, since 14 December 2004 the husband incurred costs in the vicinity of $43,000. Concerning the hearing, other than 25 September 2006, counsel appeared uninstructed. The trial costs are $12,780. Concerning affidavit preparation, I have no difficulty accepting Mr Jurd's analysis concerning the prolix and to a considerable extent, irrelevant nature of evidence included in the husband's affidavit. A considerable portion of his affidavit appeared to be nothing more than the husband's computerised diary presented in affidavit structure. Taking this, the husband's failure before Justice Waddy and the other findings I have made into account, I am satisfied that the proper and just costs order is that the wife pay 25 per centum of the husband's final hearing costs. This means she must pay him $3,195.

30. Having regard to the wife's financial circumstances, she will have a longer than usual period within which to pay the husband. A period of nine months strikes an appropriate balance between the husband receiving his payment and the wife having a proper period within which to save the amount due. If payment is not made at nine months, interest calculated in accordance with the *Family Law Rules* will accrue.

31. For these reasons I make the orders identified at the beginning of this judgment.

Charles & Charles [2007] FamCA 276 (30 March 2007)

In the case of Mrs Charles she sought a costs order under s117AB against Mr Charles whom she claimed made false allegations about domestic violence. The judge preferred the wife's evidence in some parts, but made no finding "that the statements made by the husband were done so knowingly". (para 32)

25. Use of the word "knowingly" in civil proceedings has long been a feature of the common law. It was recently examined in the arguments about the tort of deceit in *Magill v Magill*[2]. Gummow, Kirby and Crennan JJ looked at the very old decision of *Derry v Peek*[3] quoting Lord Herschell explaining:

First, in order to sustain an action of deceit, there must be proof of fraud, and nothing short of that will suffice. Secondly, fraud is proved when it is shewn that a false representation has been made (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false. Although I have treated the second and third as distinct cases, I think the third is but an instance of the second, for one who makes a statement under such circumstances can have no real belief in the truth of what he states. To prevent a false statement being fraudulent, there must, I think, always be an honest belief in its truth. And this probably covers the whole ground, for one who knowingly alleges that which is false, has obviously no such honest belief. Thirdly, if fraud be proved, the motive of the person guilty of it is immaterial. It matters not that there was no intention to cheat or injure the person to whom the statement was made.

26. "Knowingly" is unequivocal. There can be no room for misunderstanding or doubt; objectively, the person making the statement cannot believe the statement to be true.

27. Gummow, Kirby and Crennan JJ looked at the modern tort of deceit and said that there had to be a number of elements proved. Their Honours distinguished representations made with the knowledge that they were false from those which were made recklessly or carelessly. In a situation where **s 117AB** has a mandatory cost sanction where a person knowingly makes a false statement or allegation, it is important to distinguish between one which is knowingly

made as a false statement and one which is recklessly made. The test is therefore a stringent one.
28. The explanatory memoranda in relation to this provision says:
Item 41 inserts a new provision **s 117AB** after s 117 which is the section that deals with costs. The new provision provides that a court must order a party to pay some or all of the costs of another party, or other parties to the proceedings, where the court is satisfied that that party has knowingly made a false allegation in the proceedings. This provision implements recommendation 10 of the LACA report. It attempts to address concerns that have been expressed, in particular that allegations of family violence and abuse can easily be made and may be taken into account in family law proceedings. The provision is broader than family violence or abuse allegations and would apply to any false statement knowingly made.
29. In a second reading speech on 2 March 2006, the Commonwealth Attorney-General made the observation:
In cases where proceedings are the result of a party's disregard of court orders or of false allegations of violence, the government thinks it only just that costs orders should be able to be made where appropriate against the party responsible.
30. Later, the Attorney-General said on the same day:
The Bill seeks to address concerns about false allegations and false denials by the inclusion of the new cost provision that applies where a person has knowingly made false allegations or a false statement and this clearly also covers false denials. This provision implements a committee recommendation. It is appropriate, given the high test that must be satisfied, a person must knowingly make the false statement. In such circumstances criminal penalties could also be applied.
31. Having regard to the comment that it is a "high" test that must be satisfied and the potential for criminal penalties to be applied, a court must be very careful in making a judgment in an application for costs subsequent to the determination of proceedings that the person who made the false statement did it knowingly. In my case, I do not think that I can go outside the findings that I made in my judgment and draw any other conclusion than that which I set out in my reasons for judgment. In each case, I have found on the balance of probabilities that I preferred the wife's version of events. Those matters related to issues of domestic violence. I am conscious of the fact that **s 117AB** is far wider than the domestic violence question but in this case, I have not made any finding other than on the balance of probabilities about all those matters.
32. Accordingly, for the purposes of **s 117AB**, I am not prepared to find that the statements made by the husband were done so knowingly.

Klumper & Klumper (Costs - parenting) [2008] FamCA 360 (7 May 2008)

In this case the Mr Klumper had a cost order made against him under s117AB because the Judge found he had lied about the mother's capacity to parent the child because of her alcohol and drug usage which she had conceded. Mr Klumper apparently changed the orders he was seeking to 'shared care' (week about) which contributed to the Judge's conclusion that his previous application was ingenuous. Mr Klumper was ordered to pay $170,000 to the wife for the cost of all the parenting proceedings and the balance of the costs owing to the ICL of $16,859.

I have already referred to the fact that it is not my intention to punish the husband by an order for costs but rather compensate the wife for the fact that she had to proceed on the way the husband was conducting his case. In his submissions, Senior Counsel for the wife referred to *Latoudis v Casey* [1990] HCA 59; (1990) 170 CLR 534 and *Ohn v Walton* (1995) 36 NSWLR 77. I have taken those cases into consideration.
66. Not only is the general question of costs a discretionary one but so is the quantum. In my view, the husband's conduct of these proceedings extended the hearing and the legal preparation work extensively. Whilst the determination of that extent is arbitrary, I am confident in saying that over half of the wife's costs were incurred as a result of the husband's conduct of the case. Accordingly, of the $283,000, I propose to order that the husband make a contribution of approximately 60% of the wife's estimated costs and I round that out to $170,000. In my view that is a just amount given the circumstances of the case and the particular instances identified under the s 117(2A) factors.

Costs of the Independent Children's Lawyer

67. The wife seeks that the outstanding proportion of the Independent Children's Lawyers costs payable by her should be paid in full by the husband. As I understand the position of the Independent Children's Lawyer, the total costs were $31,864.53. It has always been the agreement of the parties that they would pay the costs of the Independent

Children's Lawyer. The question has always been in what proportion those costs should be shared. Each party has apparently paid some payments and the total amount now sought from them is $24,059.05.

68. Section 117(3) gives the court the power to order the costs of the Independent Children's Lawyer be paid by the parties in such proportion as it considers just.

69. In this case, given the conduct of the husband already referred to above, in raising issues which were ultimately unsuccessful and pursuing the lines of argument concerning the wife's capacity to parent, all of which required the Independent Children's Lawyer to spent extensive and unnecessary time and effort on the case, it is just that the husband pay a much greater amount of the costs than the wife.

70. In the exercise of my discretion, I propose to order that the husband pay approximately 70% of the unpaid costs of the Independent Children's Lawyer. Because a percentage order may give rise to uncertainty and argument, I propose to fix the amount payable by the wife at $7,200 and for the husband to pay what is otherwise the balance.

I certify that the preceding seventy (70) paragraphs are a true copy of the reasons for judgment of the Honourable Justice Cronin

Clivery & Conway (Security for Costs) [2007] FamCA 1436 (11 December 2007)

This case is about an application from Ms Clivery seeking a security of costs order from the father to the amount of $15,000 for a pending appeal lodged by Mr Conway.
A costs order of $7500 under s117AB had already been made against Ms Clivery with the amount to be offset against a debt owed by Mr Conway to Mrs Clivery. Mr Conway has appealed the decision and Mrs Clivery has made this application to impose a security of costs order from the father totaling $15,000. Her application was dismissed

☐ The father's Notice of Appeal, filed in June 2007, relates to an order for costs made by Waddy J on 26 March 2007, following a 10-day trial in 2005. The trial dealt with matters concerning the welfare of the parties' daughter, [Alexandra].

☐ Waddy J determined that [Alexandra] should move from the mother's home to live with the father. It appears the principal reason for so ordering was his Honour's finding that the mother had physically abused [Alexandra], notwithstanding her strong and repeated denial of ever having done so.

☐ The father's application for costs was heard in Canberra on 26 March 2007, at which time the father was represented by his solicitor and the mother was represented by counsel. Both parties filed affidavits prior to the hearing, but the father elected not to rely upon his. The father, who lives in Queensland, did not attend the hearing. The mother was in attendance and was cross-examined. Her counsel also tendered (without objection) a variety of documents relevant to the father's financial position.

☐ In support of his application for costs, the father relied upon the provisions of **s 117AB** of the *Family Law Act* 1975 ("the Act"). This section, which was inserted in the legislation after the trial had been completed, provides as follows:

Claringbold & James (Costs) [2008] FamCA 57 (8 February 2008)

The judge found the wife lied, made a costs order but took into consideration the financial circumstances of both parties in deciding the amount the wife should contribute a reduced amount.

(1) That the husband pay and be solely responsible for the witness' expenses of Senior Constable EA to attend court and give evidence on 26 July 2007 and, if the independent children's lawyer has already paid those expenses, the husband reimburse the independent children's lawyer for same within
14 days.

(2) That the wife make a contribution to the costs of the husband as follows:-

- (a) 50% of the costs of the trial which was conducted on 16 to 30 July inclusive and on 2 August 2007;
- (b) 20% of the husband's costs of these proceedings (including reserved costs but not including the trial costs) initiated by the wife by her application filed in the Federal Magistrates Court on 2 November 2005;
- (c) the costs of the husband's application for costs.

Section 117AB(2)

34. This provision, extracted above, provides that a court must order a party to pay some or all of the costs of another party to the proceedings where the court is satisfied that that party made a false allegation or statement in the proceedings, was inserted into the current legislation by the *Family Law Amendment (Shared Parental Responsibility) Act 2006* which came into operation on 1 July 2006. The section itself has the effect of focusing the mind on the costs implications of allegations of family violence and abuse which can be easily made but, when false, are still difficult and costly to refute.
35. I am satisfied to the required standard, which is on a balance of probabilities, that the wife knowingly made false statements about her relationship with Mr S and the domestic violence within that relationship. However, I have already taken the time and costs implications of those false statements and false denials into account in my consideration of s 117(2A)(c) above.
I give weight to the fact that the wife maintained her denial of certain events which were ultimately proved to the court to have occurred pretty much as the husband alleged and that she otherwise lied expressly or by omission and
I have done so in my consideration of the conduct of the parties to the proceedings as well as pursuant to my obligation under **s 117AB**.

Is a costs order justified?

36. I am satisfied that the circumstances of this case justify the wife making a significant and meaningful contribution to the husband's legal costs.
37. I find that the wife's conduct is the most significant of all the factors relevant to this case. I estimate that not less than one half of the trial time can be attributed to adducing evidence which demonstrated that evidence given or statements made by the wife were false. My assessment of the financial circumstances of the parties leads me to conclude that the husband is struggling financially but that a costs order could deprive the wife of the balance of her entitlement to the estate of her late father.
38. Taking all of the relevant factors into account, I am satisfied that the wife should pay one half of the costs of the 10 days of hearing but only 20% of the husband's other costs of the proceedings.

Unfortunately, this Agency does not have time to analyse the total number of published cases from all family courts, but it would seem s117AB is providing a suitable response where it is found false allegations of wrongdoing or denial of wrongdoing are made. Some women are successful and some men, which suggests the section is working to provide for compensation when a person has incurred expenses either defending themselves or seeking the truth about the abuse committed by the other party. As it should do. Perhaps what is needed is a widespread distribution of information that if one tells lies in the Family Courts one may find oneself paying the costs of the other person in part or fully as well as reinvigorating the provision for charging a person with perjury. It is well understood there is a distinct reluctance to charge a parent for the lies he/she might tell, but we doubt the reluctance would be as intense if the father should find himself so charged.

We would urge the Inquiry to support s117AB and not be pressured into removing this section as a result of complaints from women, who suggest they are prevented from making a complaint of child abuse because they are scared that they may have to pay

costs. This is arrant nonsense! As we have said previously we doubt any caring parent would be deterred by the threat of a costs order, from making appropriate complaints to the authorities if they genuinely thought their children were at risk of harm.

Neither do their accusations that the Court gives contact to fathers who present as a serious danger to children stand up to scrutiny. The accusations tend to show how little understanding there is of the Courts' reaction to such claims of abuse. They do not order contact if positive proof of the risk is tendered and are more likely to decide, when the proof offered is not quite as convincing, but leaves room for 'lingering doubt', to restrict contact by ordering supervised visits, if at all. In a reverse situation where a father makes accusations against a mother, we cannot be so confident in our claim, for as we have explained there is a decided reluctance to acknowledge that a mother may present as a serious risk to the children.

Legal Aid:

Legal Aid is a another issue we raised with the Attorney General Rob McClelland and he expressed some surprise when we detailed the reasons often used to deny a father Legal Aid for a family court, or domestic violence hearing.

Legal Aid funding is distributed to women in the ratio of $2 for every $1 granted to meņ.

The reasons used to deny aid to men are:

- The matter does not have any merit (in other words Legal Aid does not think you are going to be successful).
- The cost doesn't warrant the outcome (in other words the LA does not think the case is worth pursuing).
- There is a *conflict of interest* ("we are already funding the other party").

In the first two mentioned items it would appear Legal Aid feels confident in making decisions that would normally be reserved for when a judge hands down a finding after hearing all the evidence. We suggest this is not an acceptable approach in deciding who should be funded.

The last item is incomprehensible as Legal Aid is normally in the position of allocating clients and cases to solicitors who are totally independent of each other, apart from their registration on the Legal Aid Panel.

The money supplied to Legal Aid under solicitors' trust fund guidance or directly from the Commonwealth Government for federal matters should not be subjected to decisions that place Legal Aid as the final arbiter in some cases, especially when the party is incapable of representing themselves in court. There would appear to be no problem with one solicitor who is paid by Legal Aid representing one parent and the other solicitor also paid by Legal Aid representing the other parent, when they come from separate and independent legal firms. The *conflict of interest* could be said to be purely based on monetary factors. The government has placed its trust in Legal Aid to distribute the monies fairly on the basis of need and a review of available finances. This does not seem to be happening. We can see no difficultly arising if both parties, who are not able to afford independent legal representation, are funded by Legal Aid.

If the Attorney General wishes to ensure a fair distribution of Commonwealth funds he would need to encourage the States to remove from their legislation the section that gives Legal Aid the permission to regard themselves as acting as a solicitor. In the *Legal Aid Queensland Act 199, s73 Legal Aid taken to be law firm etc;* in the *Victorian Legal Aid Act, s16(2)* and in the New South Wales *Legal Aid Commission Act 1979 No 78 s25 Solicitor Client* relationship would need to be amended. Other States, no doubt have similar clauses that would need to be altered.

Even pro bono services are denied to those accused of domestic violence or needing assistance with child support matters, as can be seen from this list taken from the NSW Law society. Is it because they are regarded as guilty already or not worth bothering about?

Legal Advice
http://www.lawsociety.com.au/community/findingalawyer/probono/index.htm

Guidelines

Types of matters covered by the Scheme	*Types of matters NOT covered by the Scheme*
Administrative law	Business and commercial law matters
Animal law	Child maintenance matters
Apprehended Violence Order (AVO) applications	Defamation matters

Business law for non-profit organisations
Child care and protection
Criminal law
Debit and credit matters
Discrimination law
Employment/industrial law
Family law (limited to contact and residence issues)
Immigration law
Tenancy matters
Wills and Estates
Defended Apprended Violence Orders (AVOs)
Dispute about legal costs
Family law property disputes
Local government and planning disputes
Medical negligence claims
Motor vehicle accidents/traffic matters
Neighbourhood disputes
Personal injury claims
Professional negligence claims
Property and conveyancing matters
Victim's compensation claims
Workers compensation claims

We do understand there are limited resources available, but some litigants are so disadvantaged by their incapacity to properly represent themselves when the other party has full representation, we doubt the court is able to make a decision that affords natural justice to the unrepresented litigant and their children.

Conclusion and Recommendations:

Our submission is concerned there is a concerted effort to roll-back shared parenting, using the claims made by women's advocates that the court is placing children at risk of harm by allowing allegedly dangerous fathers to have contact with their children. We have attempted to show that fathers are the least likely to harm their children; mothers are, sadly, in the majority for neglect, physical abuse and murder of children, followed by their boyfriends, defactos/step fathers.

Domestic violence statistics provided by Victoria, Queensland and New South Wales show the gap between orders issued to men who are victims and women is closing rapidly; NSW according to figures more than 3 years old showed 30% of men as victims; Victoria 31.34% and Queensland show 40% of orders issued are to protect men. How much higher does this need to go until the Government, the authorities and the courts acknowledge these facts and stop regarding women as the only victims?

Over the years one of the recurring complaints we have heard from fathers is that no-one will listen when they try to tell the authorities that their children are at risk or being abused/neglected their mother's household.

- Our first recommendation to protect children from the fall out of family dysfunction is to encourage the State and Federal authorities to take fathers' complaints of abuse of their children seriously.

- Both men and women must be recognized as victims of domestic violence and adequate services must be provided to attend to their needs. Also those of their children.

- Put into place measures to circumvent the need to participate in family dispute resolution, when contact is being deliberately denied, for no apparent reason other than the parent's choice. The need to have a certificate from an FDR counsellor before going to court for contact can mean children do not see one parent for 6 to 12 months, because of delays in the FDR process itself and the time needed to secure a court hearing.

- False allegations are insidious and every measure must be made by the court to uncover lies and false accusations or denials. This Agency finds it difficult to comprehend we have a system in place that considers a judicial officer is able to determine the truth of a matter after reading several pages of affidavits and allowing on average only two hours to do so, as well as listening to each party's arguments. Rarely does the judge have time to question the parties in an interim hearing, which seems incongruous when most judges pride themselves on their ability to judge if they are being told the truth or not. The interim hearing should be regarded as being of greater importance, as the decisions made at interim tend to set the future arrangements for the family.

- Protecting children when residency is changed: We have noted some cases of murder and murder/suicides have occurred immediately before the time the court has set for handover to the other parent. We would suggest on the day the court gives a decision to change residency, the children should be brought into the court, cared for by the counselling service and go home directly with the parent who is now going to have residency of the children. Alternatively, once a decision is handed down, a court officer/social worker should accompany the parent, who is to hand over the children to the other parent, to collect those children as soon as the decision is given.

- Ongoing counselling and support for the parent who has lost residency of the children. When a parent loses residency of their child[ren] they need counselling, perhaps psychiatric treatment to come to terms with the loss and to understand what in their behavior caused

the Court to make the decision it did. Counselling is also required if there is any prospect of reunification with the parent. Supervised contact should be ordered for a period of time until the court and the other parent is convinced the child[ren] will be safe with the parent in unsupervised contact.

In a case we are familiar with[34], that was described by retired Justice Lindenmayer as one of the worst cases of alienation he had seen, it was not until after a long court hearing, an even longer wait for a decision from the court (15 months) and an appeal, that the 10 year old child was removed from the mother. Counselling was suggested, but the mother refused. She was not allowed to see the child for 12 months, the only contact was by a weekly telephone call. Even during these calls she would try to entice the child to not eat and kept referring to the father as 'he' or 'him' never using his name. After 12 months the mother was allowed contact every 2nd Saturday, gradually increasing to every 2nd weekend and for the last 4 years the child has been in week about care of each parent. However, the mother still tried to alienate the child up to 15 years of age. Fortunately the child was then old enough not to be influenced by the mother's tactics. The father is grateful Justice Lindenmayer understood the child needed to be removed from the mother's influence for the child to have an opportunity to be raised in atmosphere that was not filled with hatred for the father. The child has developed well and is confident and secure about the future.

- Maintain and strengthen the concept of shared parental responsibility and shared or substantial parenting time. It has taken 24 years to create a situation where more than one million children do not spend much time with their father, if at all.
  The new provisions are certainly having an affect with an increase in shared care and father only residency[35]. Three years of operation under the new regime is not enough time to gauge the success or otherwise of the increase in father contact with their children. But the signs are hopeful and the reports from fathers who have shared care are positive. Many tell us their relationship with the other parent has improved dramatically as each parent now has the support of the other in raising their child[ren]. A recent *Insight*[36] program interviewed young people from separated families. It should be compulsory viewing for anyone doubting the value of fathers in their children's lives. Those children, who were now living predominantly with their father or in shared care had greater self esteem and self-confidence. They certainly presented as young people who were content with their life,

[34] Unreported VR6845 of 1996
[35] Child Support Agency Facts and Figures, 2005-06 and 2007-08
[36] Insight, 2009, *Kids on Divorce*, SBS Television 14/04/09 [accessed online http://news.sbs.com.au/insight/episode/index/id/61

confident in the knowledge their future was secure and they would have the full support of their father and in some cases their mother.

We see the effects of fatherlessness, as our young people join gangs in search of the structure they have lost at home and to satisfy their need to "belong". Increasing levels of violence, drunkenness, drug usage, bullying, cyber bullying, raunchy behavior and lack of respect for themselves and others from an early age in both boys and girls, points to a problem escalating out of control. But we cannot say we were not warned. As David Thomas conducted research for his book NOT GUILTY: The Case in Defence of Men[37], he came across experts from a wide range of fields, who made "similar points about the importance of paternity as a formative influence" (p.216).

Thomas quotes from Professor Seymour Fischer's book, Body Consciousness (1973) [38]who discussed "the idea that violence in young men is a way of re-establishing a long-threatened or repressed sense of masculinity".

An explanation from Seymour followed:

"Cross-cultural studies …[have shown that] boys who have been relatively close to their mothers and distant from their fathers and who, therefore have had a limited opportunity to learn directly about the 'feel' of being masculine, have a strong tendency during adolescence to engage in hostile, predatory behavior as a way of announcing that they are, indeed, of the male species. It is well-known, too, that male delinquency comes with an unusual frequency from broken homes in which there is no visible father and where almost all of the primary socialization experiences have been with women."

Teaching boys to be "non confrontational" is applauded by Thomas, but "educationalists who seek to cut down on sex –attacks and crimes of assault by attempting to undermine the very idea of masculinity or to feminize young boys will find their policies have precisely the opposite effect. Well-balanced men, who are secure and confident in their masculinity are far less likely to harm women than men who are insecure or resentful" (p.217).

Women's groups seek to limit fathers' contact with their children for a variety of reasons; some to maximize the child support paid; others to satisfy their own psychological need to seek total control over their children to validate their belief in themselves that they are

[37] Thomas, D., 1993 Not Guilty: The Case in Defence of Men, Morrow, New York, USA
[38] Fischer, S., 1973, *Body Consciousness: You are what your feel*, Englewood Cliffs N.J. Prentice Hall cited by Thomas, D (35 above)

capable of parenting the child on their own[39]; or needing total control of the children as this gives them absolute control over the father as they become the gatekeeper of their children's interaction with the other parent; or due to their belief they 'own' their children which could be said to be encouraged by the social policies operating in Australia. But in doing so they are "promoting the very social conditions"[40] which will necessitate the continuation for the next generation at least, of rape crisis centres, security bolts, domestic violence prevention programs and self-defence courses.

Thomas does not ignore, neither does this Agency, the problem of fathers who are abusive. They in his opinion are as bad as a father, who has chosen to be absent. For many fathers however, they are given no choice about their involvement with their children. Once the mother decides he is not needed, she has all the 'tools' at her disposal to expel a father from his child's life.

We might ask the question how do we expect fathers to react to being excluded in this way. Distress, absolute devastation and sometimes anger, to have their children taken from them, for no apparent reason, other than the mother has decided she prefers a single life or has met someone she considers more attractive to her needs. We wonder how mothers would react if they were eliminated from their children's lives at the same rate or in the same manner. Politicians would be quick to respond to the outcry We do not live in a perfect world free from *'psychosis or parental abuse'*[41] from either men or women, but fortunately we can still say most parents are good parents, striving to provide for their children in the best way they can.

Family law legislation should not be drafted to impose conditions on reasonable parents that would normally be imposed on parents who have failed to properly care for their children.

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[39] Williams F.S. MD, 1990, Preventing Parentectomy following divorce, Keynote Address, Fifth Annual Conference, National Council for Children's Rights, Washington DC,

[40] Morgan, P, 1883 Feminist Attempts to Sack Father – A Case of Unfair Dismissal, UK Social Affairs Unit cited by Thomas D., 1993, Not Guilty: The Case in Defence of Men, William Morrow and Company, USA

[41] Thomas D, 1993, Not Guilty: The Case in Defence of Men, William Morrow and Company, USA

Hopefully this inquiry will result in recognizing the points we have made and if any changes are to be made they will not be counterproductive to encouraging equal time and input of both parents in their children's lives.

Melanie Phillips, a noted UK social commentator said, "Men are terrified of being thought prejudiced against women, not least because of an old-fashioned sense of chivalry. They look at the absence of women among captains of industry or Members of Parliament; they look at the football hooligan and the burglar from hell and they think it must be true that women are their victims. But life's a lot more complicated; and the result of such brow-beating into false stereotypes is that everyone ultimately becomes a loser".
"The Rape of Justice", Melanie Phillips, The Spectator June 10, 2000.

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