

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

Dear Committee Members,

I am writing regarding the the call for submissions to the proposed The Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011.

I am a separated father who has partial care of his children,

I am still so incensed by the treatment of myself and that of other separated fathers I have come to know, that I cannot simply stand-by and have any improvements to the family law system, however small, be torn away by those who have financial or other self interests at heart. It is too late for any law changes to affect my situation, but there are many, many children who will not have the benefit of balanced parenting, from both their mother and their father, if the proposed bill is passed. In the long run, such travisties of justice harm us all.

I believe that the best overall outcome for children of separated parents is a shared parenting model, where both parents have substantially equal time with each parent and therefore learn to deal with both genders and benefit from the qualities and attributes that both genders can bestow upon them. It is the balance of viewpoints, ideas and parenting techniques/skills that provide children with the best outcomes. Furthermore, it is the predictability of the courts, to award good parents fairness of custodial rights, which will reduce the number of child homicides which seem very much linked to the anxiety of the unknown. Good parents, doing terrible things, seems to stem from love of their children and the unpredictable nature of court outcomes. Good, law abiding, loving parents should not be subject to such uncertainty.

I ask the committee to consider the above, but most importantly the facts. And the facts clearly indicate that the 2006 family law amendments have had a POSITIVE, rather than negative effect on the safety of children of separated parents. In fact, the statistics indicate that the safest outcome for children is to be in a home with their natural father, and yet only 17% of fathers seeking equal time or more within the Family Law Court achieve such an outcome.

I ask the committee to disregard the shrill from those who would have us believe all

fathers are bad, and that children are only killed, hurt or injured by men. This is simply not the case.

I also ask that the committee consider the absolute vast majority of children who will have far better lives when they are given the opportunity to know and love both of their parents. Amendments to the Family Law Legislation which reduce the occurrence of shared care, harm many, many more children than are ever harmed or killed by their parents or others. What is clear is that fathers who kill their children receive far more media attention than do mothers who kill their children. Both cases are equally abhorrent, and yet overwhelmingly mother's groups will disregard those cases where a mother murders a child.

I am sure that the committee members are quite aware of the Darcey Freeman case which has received widespread publicity and which has provided much ammunition for those who favour the proposed amendments. How many of the committee members are aware of the Dean Shillingworth case? The only real difference is that in this case a mother killed a child, rather than a father. Both are abhorrent.

The Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011 has been drafted on the basis that the proposed amendments will reduce child homicides. The reverse is actually the case. Statistics show that the 2006 Family Law Reforms helped save the lives of many children. The threatened rollback is likely to increase child homicides to pre-2006 levels which negates the purpose of the proposed Family Law Reforms.

Warwick Marsh, founder of Dads4Kids said, *”Over the last few years a well orchestrated campaign has been mounted to make the claim that children are more at risk from violent fathers and that there has been an increase in child homicides at the hands of biological fathers.*

The horrific death of Darcey Freeman at the hands of her father on the Westgate Bridge gave added impetus to that claim. This prompted a number of parliamentarians to consider that perhaps the shared parental responsibility changes in 2006 had taken a step too far.

Unfortunately those parliamentarians and the general public were unaware of another tragedy on the Westgate Bridge that occurred less than twelve months prior to Darcey’s death. Mother, Gabriella Garcia, caused the horrific death of her 22 month old son Oliver by jumping off the Westgate Bridge with her son strapped to her chest, having made the claim she was afraid the Family Court might give custody of her son to the father. The tragic irony is that the father had made no applications to the court and had no intention of seeking custody. However this tragedy did not make headlines and the only recriminations were to criticise the authorities for not “jump proofing” the bridge. Sadly, both of these cases had involvement with the Family Law Court.

Bettina Arndt was right when she said, “No gender has a monopoly on vice.” Both mothers and fathers are responsible for terrible tragedies involving their children. Whilst many have suffered grief because of these tragedies involving the death of innocent children, this is not cause for ill-considered and hasty change to a family law reform process that has actually reduced child homicides.”

Warwick Marsh continued, *“It is often presumed that fathers are the main offenders in child homicide cases. However this is not the case. According to Men’s Health Australia, the Australian Institute of Criminology (AIC) showed in its 2006-2007 annual report there were eleven homicides involving a mother and eleven homicides involving a male family member. However, when the ‘male family member’ category was broken down, five perpetrators were biological fathers and five were de-facto partners of the mother who lived with the child.*

A study in the Medical Journal of Australia found similar results. They stated that fatal child abuse was the most common cause of death and the offender was most commonly the child’s mother or her de-facto partner.

It might be noted that child homicide has reduced by almost 50% since the introduction

of the much fairer 2006 reforms according to NSW figures. The NSW Child Death Team Annual Reports stated:

- *In 2005, twelve children aged between 0-17 died by fatal assault*
- *In 2007, nine children aged between 0-17 died by fatal assault. 2007 had the lowest child mortality rate observed over 1996-2007. This is the year directly after the reforms were instigated.*
- *In 2009, seven children aged between 0-17 died in six incidents.*

These results indicate the 2006 reforms reduced the lethal danger to children. It is our belief that child homicides could well go back to their pre 2006 levels with the new proposed reforms. This would be an appalling outcome for our children.”

Furthermore, it has been observed that biological parents (generally the mother) were predominantly responsible for the killing of children. These are national figures taken from the Law Reform Commission of Western Australia – Review of the Law of Homicide: Final Report 2007

A significant number of homicide victims are children. During the period from 1989–1999 children accounted for nine per cent of homicide victims.

It has been observed that biological parents (generally the mother) were predominantly responsible for the killing of children.

The Victorian Law Reform Commission (VLRC) has also noted that the greatest risk of homicide for children is when they are under the age of one. In 2005–2006 there were 35 homicide cases in Australia where the victim was a child. Of these, about 30 per cent of the victims were infants under the age of one year. Over 90 per cent of child homicides were committed by a family member and about 37 per cent of child homicides involved the mother killing her child. Only two children (out of 35) were killed by a stranger.^b In relation to similar figures in 2003–2004, the NHMP observed that the number of children killed by a stranger ‘is relatively small despite public fears that children are most in danger of being abducted and murdered’.

Overwhelmingly, I am concerned that legislation is being introduced to cover a very small number of cases, which have tragic outcomes. Those cases where tragic outcomes occur are never likely to be addressed, it is simply not possible to predict which parent is likely to act in such a manner. Legislation should enable the majority of cases, those of good, law abiding parents to proceed with certainty, with predictability, quickly and cost effectively. A rebuttable presumption of shared care provides for this.

Where violence, from either gender, is evidenced in a prima-facie case, then due process should apply to protect children from violence and danger.

Yours most sincerely,

Reluctant separated father