Mr Howard Beale,

Committee Secretary,
Senate Legal and Constitutional Committees,
PO Box 6100, Parliament House,
CANBERRA. ACT 2600.

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Dear Committee Secretary

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

Thank you for the opportunity to express my opposition to the changes to the *Family Law Act* proposed in the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011.

I have grave concern that the public and policy makers are being misled in regards to pervasive family violence to implement reforms which will not likely redress the alleged problems of protecting children. More disturbingly, by destabilising families with incentives to separate and by inflaming and protracting that separation process with false allegations for advantage in custody litigation, the proposed amendments will likely contribute to and exacerbate problems of family violence and child abuse they purportedly address.

I hope that this experience might allow me to provide some insights into the mechanics of the Family Violence amendments, that is, how they actually work. We might then understand how shared parental responsibility will inevitably be rebutted and thereby meaningful relationships with Fathers removed in the vast majority of cases.

One must question this roll back by stealth of the “shared parenting” amendments.

- There is not one case of substantiated child abuse in a Court mandated Shared Parenting arrangement in Australia, whereas over 80% of all familial child abuse occur in single-mother, sole-custody house-holds. Clearly, the best protection for children is to be cared for by two loving and fit parents unless there is compelling evidence rather than allegations otherwise. This is just commonsense.

- It is common ground that most damage to children occurs during the custody battle itself. In countries implementing the presumption of equal shared care litigated divorce rates drop by 50% in 3 years. How can one argue that reducing litigated divorce is not in the best interests of children?

- Nevertheless, in Australia when the litigated divorce rate dropped 22% after the shared parental responsibility amendments were introduced in 2006 the Family Law industry argued children were at risk because Mothers were afraid to make allegations.

- One needs only to read any Family Court judgement post 2006 on Austlii to discover how preposterous this “loss of income” claim is. Yet here we are with a bill that guarantees more litigation, more profit and more lobbying power for a $10bn/year divorce industry on the pretext of protecting children – from their own parents.

There are massive hidden economic and social costs in this reform. Reducing these costs must be a legitimate concern of government, policymakers, and legislators.

- A study by Institute for American Values found divorce and single parent childrearing cost taxpayers at least $112 billion each year or more than $1 trillion over the last decade. This estimate includes the costs to federal, state, and local government of the justice (19.3) & health (27.9) systems, unemployment benefits & welfare programs (16.3), housing assistance (7.3), child welfare (12.0), education assist (6.9) and foregone tax revenues (22.3) at all level of government. In my professional opinion proportionate scaling may be applied.

- Family breakdown and single parent homes is more closely linked to all our major social ills – poverty, violent crime, substance abuse, child abuse, suicide, depression, underachievement and more – than to any other factor. From this inevitably follows cost increases in welfare, law enforcement, healthcare and education.

- The insidious nature of this reform is that by encouraging litigation to remove the Father all these costs will increase while at same time destroying the basic economic unit of modern society, the **two parent working** family, which generates the wealth to meet those costs and not just today but in future generations. I point out that welfare is now the 5th largest item in the Australian GDP.

- Child support/enforcement is presented as a way to recover welfare costs by forcing "deadbeat dads" to support children they "abandon." In reality, it has become a lucrative incentive for divorce, effectively bribing mothers to separate with the promise of a tax-free windfall and ongoing benefits subsidized by taxpayers. Far from

saving money, child support enforcement *loses money* and – far more serious – subsidizes divorces and fatherless children that generate additional welfare costs.

There is no evidence to support the proposed family violence reforms.

- The Australian Law Reform Commission notes the biased terms of reference underlying the Chisholm Report.

- Further, on the issue the former family court judge was supposed to address – that is incidents of family violence since the 2006 amendments – his findings conflict with those of the independent Australian Institute of Family Studies (AIFS), a far more comprehensive study involving 22,000 cases over three years.

- The AIFS also finds that the shared parental responsibility amendments of 2006 have had little effect on the number of court ordered shared parenting arrangements.

- This is substantiated by statistics from the Family Court itself which continues to find 85% of Australian Fathers unfit to share in parenting of their own children.

- The insanity of the Darcy Freeman tragedy cannot be prevented by law. Indeed it is likely that the law precipitated the destruction of her father's mind, the stress of family court likened to trench warfare. Attempting to overprotect children by further legislation which will prolong and inflame litigation will likely create more harm than benefit. The needs of the many must overweigh the needs of the few.

Abuse of AVO's

- The proposed redefining of family violence to be, in effect, anything the accuser says it is will lead to a frenzy of AVO litigation in the already overburdened and underfunded state courts. The administration of justice will inevitably be overwhelmed and degraded at what cost?

- Further there is no conclusive evidence that AVO's actually reduce family violence but they are routinely used for custody pre-emptive strikes to legally seize the Father's home, assets and children to secure his future income and to effectively silence any objections. In virtually all cases a Father's contact with his children can be criminalised in a 3 minute hearing, without notice, without evidence or even his knowledge. The Family Violence bill endorses this cheapening of the language whereby the stuff of lovers' quarrels becomes grounds for arrest.

In summary, if there is an epidemic of family violence, which is rhetorically intermingled as child abuse by advocates, it is not the result of the shared parental responsibility amendments parenting of 2006. These have had such little effect that the proposed family violence amendments of 2011 cannot be justified.

The only shining light from these reviews is the 22% reduction in family court applications which seems to be based on the expectation that the court will order shared parenting. This must be encouraged not extinguished.

The problems of protecting children in family separation can be solved in the existing family law Act but not through its existing implementation. The proposed amendments may be cause the very problem they claim to be addressing. To break this circle, I offer the following suggestions*:*

1. *That the issue of equal time shared parenting be referred to public referendum.*

2. *That maximum practical parenting time with both parents must be implemented in the interim in all cases of family dissolution unless there is evidence that children have been harmed.*

3. *The Family Law Legislation must adhere to the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR) to provide protection from discrimination, and gender profiling while ensuring parental rights and the rights of the child are protected and the judiciary made accountable.*

4. *Statutory protection for parental rights to ensure that law enforcement programs are not commandeered to create unaccountable police actions against innocent parents, depriving them of their children without due process of law.*

By protecting the meaningful relationships between parents and their children during separation to reduce conflict and maximize the involvement of two fit and living parents after separation, we will be addressing the roots of family violence, including child abuse, in the vast majority of cases.

I would like now to examine some specific issues of the proposed amendments.

1. Schedule 1. Item 3, subsection 4(1) - The definition of "family violence"

The redefinition of family violence is so wide and so vague that everyone is simultaneously a victim and abuser. One only has to make the allegation for it to be proven. The removal of the moderating statutory condition that fear must be "reasonable" blurs the distinction between violent crime and ordinary disagreement. This is an invitation for children to be placed in the unsafe care of the mentally ill and/or vindictive abusers.

If family violence is such a major problem, one would expect a paper trail of evidence in police, medical, DHS, child welfare records. An allegation without this evidence should not be sufficient to rebut the presumption of shared parental responsibility.

In my view the new sections 60K and 69ZW of the Act introduced in the 2006 amendments already provide the necessary balance between the need to protect the child from harm while protecting the child's meaningful relationships from false or exaggerated allegations.

These sections require the Court to take prompt action in relation to allegations of child abuse or family violence and provide a process to ensure that the relevant information is made available to the court so that it can make appropriate orders and the necessary steps can be taken to ensure appropriate protections are in place.

In conclusion we must reject this cheapening of the language whereby the stuff of lovers' quarrels becomes grounds for arrest. I suggest that if every parent were to lose their children for losing their temper sometime in the past all the children in Australia would be parentless. The parent's dysfunctional relationship is now over. No fault. Unless there is evidence that the children have been harmed then it must be presumed that having the maximum practicable time with both parents is in their interests at least in the interim. It makes sense that by implementing equal time to take away what parents are fighting about must reduce child harming conflict.

2. Schedule 1 Items 18, 19 & 20 "Section 60CC(3)(c) – The willingness and ability of each of the child's parents to facilitate, and encourage, a close and continuing relationship between the child and the other parent"

I am sorry but I find the repeal of this crucial provision discouraging the emotional abuse of children in their most vulnerable time during the destruction of their family absolutely appalling. It simply asks judges to turn a blind eye to harm of parental alienation and reward the more hostile parent with sole custody or more time.

How is this in any child's best interests to approve conflict as a legitimate strategy? How is forcing a child's parents to fight to the death at trial protecting them from family violence? How is it protecting children to allow them to be subjected to the psychological damage of parental alienation? This can only harm children and cause more public outrage and loss of confidence in the family court and our elected representatives as demonstrated in http://www.heraldsun.com.au/news/national/fury-at-ruling-in-custody-battle/story-e6frf7l6-1225817724269).

The inevitable result of removing this constraining statutory condition restraining false allegations is a government funded self-perpetuating family violence industry that will continue to expand until we have the courage stand up and unequivocally demand that it stop. If the left government is unwilling then refer the matter to referendum where over 80% of the public support equal shared parenting.

3. Schedule 1. Item 43, Section 117AB. - No penalties for false allegations

Regrettably a common legal strategy in Family Law proceedings is to raise spurious allegations of violence or abuse or unfit parenting. The proposed changes mean that there will be no penalties available for the court to discourage fabricated allegations of violence or abuse. It is absurd that this will be the only Australian Court unable to penalise those who deliberately lie in proceedings. The proposed changes encourage the use of hearsay and uncorroborated allegations by both parents and officers of government departments. This invites the party with residence of the child to abuse process to prolong and escalate the costs of litigation for the purpose of forcing financial submission. The Court must have power to remedy to this. The creditability of the Family Court will be damaged if it cannot provide justice in cases where it finds knowingly false allegations have been made.

I point out that the average cost to a party in a Family Court case exceeds $30K. It is not uncommon for costs to exceed $100K. Ordinary people cannot afford to fight such legal battles for contact with their children. In the alternative Father's are forced to self-represent. These now account for 35% of cases. One needs only to peruse Austlii to see the

results of the slaughter – no contact with the Father. It cannot be in the best interests of children to be snatched and held to ransom by Family lawyers.

Last year Family Lawyers ripped $5bn from the pockets of Australian families. It seems they want this Parliament to approve a pay rise and immunity from costs.

How do the family violence amendments actually work?

The application of the presumption of shared parental responsibility forces the judge to follow a clearly defined legislative pathway *[Goode v Goode 2006]* into s65DAA to consider first and then rebut equal time, then significant and substantial time, and so on to determine the maximum practical parenting time "in the best interests of the child" according to s60CC(3). This is usually 3, 5 or 7 nights per fortnight.

If the presumption is rebutted, e.g. by evidence of family violence, then this pathway is bypassed. The child's right to meaningful relationships is forfeited to protecting the child/mother. It becomes the judge's discretion to give the Father any parenting time or have that time supervised.

What the proposed reform does is expand the meaning of family violence to such an all encompassing extent that everyone is a victim and abuser simultaneously. The evidence threshold required to rebut the presumption is reduced to simply making an allegation of family violence, which is strongly encouraged - all consequences being repealed. In short the Father is presumed guilty until proven innocent, which becomes irrelevant by the time it gets to trial by the status quo established.

The majority of family court cases will be redirected out of the (3-7 night) shared parental responsibility pathway. The meaningful relationship is not protected. The system reverts back to the dark ages of judicial inquisition and maternal sole custody – 0,1,2 nights per

fortnight

Thus the reform does not overtly repeal the shared parental responsibility amendments. However it so severely undermines the application of the presumption that shared care is highly unlikely unless the Mother agrees – in which case they would not be in family court.

Conclusion

I urge the Federal Government to abandon the proposed changes to the Family Law Act. They are a prescription for a massive increase in women making false allegations of family violence simply to secure the upper hand in court, since you don't have to prove and there are no consequences for false allegations. This inevitably leads to a welfare system putting monumental strain on the country's finances and another generation of children growing up without a father with the social and economical backlash that that creates.

This crisis of family separation and fatherless children will continue to expand until we learn to ignore hysterical people whom the government pays to cry wolf.

In conclusion consider this insight -

> *"Wasn't McCarthyism rejected over 50 years ago?*
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> *Maybe the AG wants to usher in a new era of McCarthyism, called McClellanism.*
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> *From Wikipedia: McClellanism is the practice of making accusations of subversion, abuse or violence, exclusively by males against females or children, without proper regard to evidence.*
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> *The term has its origins in the period in Australia known as the McClelland Assault, lasting roughly from the late 2007s to 2011, and characterized by a hysteria of irrational fears and disconnected allegations culminating in the belief that fathers groups were conspiring to get shared care of their children in the event of divorce, for the explicit purposes of child abuse and sexual gratification.*
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> *During this era, thousands of Australian fathers were blacklisted from seeing their children, on the chief advise of the Director of the FBV (Federal Bureau of Vilification), J. Edgar Chisholm, who himself had a curious and not properly understood aversion to all things male."*

Yours faithfully,

Engineer