

Family Law Legislation Amendment (Family Violence) Bill 2011
Submission to Senate Committee on Legal and Constitutional
Affairs

Thank you for the opportunity to put forth a submission to the Senate for it's consideration in applying amendments to the Family Law Act (1975).

Although this was a happy outcome for my child and myself, It was a bitter sweet feeling. This was because, although I'm a working professional that could afford the luxury of such a skilled Lawyer, many other Victims cannot. I can empathise strongly with these Victims, as nothing makes you feel more vulnerable then knowing that your children are at risk of harm due to their violent Parent. I have a Degree and have keen interest in researching areas that I am passionate about. My experience in my own 'case' has made me feel incredibly humble and has lead me to want to help other Women who are vulnerable just like I was once upon a time. In an effort to better understand the Family Law System, I have since become involved in providing assistance to other Victims going through the Family Law System, and as a self-described 'keen observer' of various topics that are included in Family Law, I am please to find that these amendments have been put forth for your consideration. Granted, I think that they could go further, but I find these amendments form a great start. I believe this to be so, as these parents who I have provided moral support to, and the recent heartbreaking events involving the death of 4 year old Darcey Freeman and reading the Victim's Impact Statement of her Mother, Peta Barnes and recalling the tragic events of the deaths of the Farquharson Boys (aged 10, 7 and 2) and the Dalton Boys (aged 17 months and 12 weeks) and my own experiences, says to me that the system needs to change to protect society's most vulnerable.

The Victims of Family Violence need to feel the full support of their Government. More importantly, Victims need to feel that their Legal System is there in full support to protect them, and their children. They need to be able to speak freely and without restraint of the situations in which they have fled. Deaths of Children and vulnerable Parents are some of the most unpalatable of our civilized society and if we are to prevent these, then we need to change the Family Law Act and implement these recommended Amendments encompassed in the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011 proposed by the Government.

I have read many debates by various groups. These include those by the Shared Parenting Council of Australia, the Family Law Reform Association, Dads on the Air, Australian Family Association, Fairness in Child Support and the Non-Custodial Parents Party (Equal Parenting). I'm saddened to see rebuttals of these amendments based on blatant, ill-informed scare mongering. Sadly, their insulting responses and recommendations if heeded would result in the nonsensical maintenance of a system that has seen many Parents reluctantly hand over their children to their abusive co-parents under the Court's Order in the hope that it will satisfy the requirement to have a 'meaningful involvement'. The aforementioned Groups bring forth concerns that the changing of the amendments will bring a scourge of false allegations of violence by the removal of the 'reasonableness' factor. This is based on the ill-conceived assumption that allegations of abuse often result in one Parent gaining a more favourable position when it comes to Child Custody dispute cases. They insinuate that Parents who make allegations of Violence are indeed guilty of Child Abuse themselves under the scientifically debunked clinical diagnosis of 'Parental Alienation Syndrome'. The Australian Law Reform Commission (2010) has stated in its Family Violence – A National Legal Response that

“...there is no clear evidence to support the claim that false allegations of family violence are routinely made to gain an advantage in family law matters”. Furthermore, in a study conducted by the Australian Human Rights Commission found that “There is no doubt that Family Court proceedings often are accompanied by allegations of domestic violence and the use of protection orders. However, this may reflect the fact that domestic violence often escalates when couples separate. Australian data demonstrate that women are as likely to experience violence by previous partners as by current partners and that it is the time around and after separation which is most dangerous for women”. As Flood, M (2010) states, “Research has found that most allegations of family violence, including child abuse, made in the context of family law proceedings are made in good faith and with support for the claims”.

This only shows that these particular groups and their associates have no real understanding of the insidiousness nature of Family Violence. From my own personal experience, I know that many others and I felt a great sense of shame and self-blame and therefore, were less likely to raise allegations of Violence. This was compounded by Lawyers and other personnel involved in Family Law advising strongly of the presence of Costs Orders (Section 117AB) and the application of this should the allegations be lacking in hard evidence. For victims similar to myself, it is therefore logical that Section 117AB be repelled, as per the AIFS recommendations in its evaluation of the 2006 reforms. It has become clear that the presence of these Costs Orders have unfortunately led to the formation of a disincentive in raising allegations of Violence without substantial evidence for fear of being penalised financially with an Order for Costs.

I strongly support the safety and wellbeing of a child being paramount in any Family Law case over and above any meaningful involvement with either parent. I believe that the priority needs to be set to keep children safe above all else. I believe that as per the changes to Subsection 4(1) (definition of abuse) that Family Violence definitions should be uniform across the Country. I believe the extension of the subsection 4AB (Definition of Family Violence), better facilitates the insidious nature of Domestic Violence and therefore provides an open Family Law system whereby the Victim can voice concerns of Child Safety within the Family unit. As the Senate would be aware through the AIFS study, and from what I have previously stated from my own experience, the burden of being able to provide substantial evidence is simply too difficult for some Victims to provide and more importantly, to provide safely. I was disappointed to see that the threat of suicide was removed under the definition of Family Violence

. In the Definition of Family Violence, I would also like to see the inclusion of unborn children to pregnant mothers, as statistics from the Australian Bureau of Statistics (2005) suggest that of all Women who experience Domestic Violence, 42% of them are pregnant at the time of abuse and 20% of victims will experience Domestic Violence for the first time.

Despite the fact that the design of Family Relationship Centers was to minimize litigation between separating parents, the Attorney-General of the Australian Government (2004) stated that “the centers will encourage fathers to maintain a substantial role in their children’s lives immediately following a relationship breakdown” . Whereas this maybe in the ‘best interests of the child’ in cases that do not involve Family Violence, in cases that involve serious conflict and violence (or other issues that impede one’s ability to be a responsible parent), the best interests of the child needs closer examination where the latter is a real issue. The Government need to be of the understanding that if Separating Families seek assistance from Mediation and Legal services when it comes to Children’s issues, it is likely that there are significant reasons to do so, some of which may involve ensuring the safety and well being of the child/ren. I know from my own personal experience, the Mediator that I had at the _____ in _____ was doing her utmost to facilitate a relationship between my Daughter and her Father despite my very real fears _____

_____ . I realize that in cases such as mine, I could have easily sought an exemption from Family Dispute Resolution, however in an effort to come to an agreement via Consent rather than litigation, I decided that utilizing _____

_____ would see my daughter achieve a set of Orders that would see her realize her full potential unhindered, rather than be burdened with issues surrounding Violence and/or my ex’s _____. I personally am a big believer in out of court settlements when it comes to Children’s issue which is why I wholeheartedly support and am looking forward to the outcome of the Government’s pilot Co-Ordinated Family Dispute Resolution Service (CFDR). Given the wonderful work done by Women’s Legal Services, I’m sure that this will be really successful and will keep separating couples out of court and most of all, provide protection for Children and their Victim-Parent that will ultimately uphold their best interests.

As a Parent and a self confessed ‘keen observer’ of Family Law, I have read many recommendations, from various stakeholders, to repel the presumption of Shared Parental Responsibility. This is something that I would fully support as I believe that this presumption has led to the assumption that the rights of the parents outweigh the rights of the child. I believe that due to the presumption of Shared Parental Responsibility, many parents feel a pressure to agree to Orders for the care of their children which may not be in the best interests of the child, nor facilitate a safe arrangement as to how the child/ren will be cared for. All children and their families are unique and therefore, I believe that Parental Responsibility and its allocation should be assessed on a child-by-child basis and therefore, no assumption be applied prior to a hearing.

Conclusion

My Daughter is an intelligent, delightful, bright, happy child who _____ . Much to my delight, she is also quite a strong little character _____ . Words cannot express how much I love her and the extent to which I would fight to keep her safe from any harm, no less, harm from her Father who has put us through so much hell.

She doesn't have a care in the world and my favourite time of day is when I put her to sleep every night and we read books in my bed and I know we're safe and I no longer fear what I'm coming home to every night like when we were living with my ex-partner. I come home from work every day and she's there waiting for me at the door with a hug and a kiss and tales from her day. I no longer fear for her safety when I'm not with her as I know she is safe with her retired Grandparents who adore her as much as I do. I very much look forward to my life with her, and creating a well-educated, independent and compassionate young Woman who will create an indelible legacy of her own by contributing meaningfully to her community and world. I will endeavor to give her every opportunity to shine as her devoted Mother. What I wish for is that all Children like my daughter have the same opportunity to grow up this way and that children fulfill their peak potential with the assistance of their Parents who can protect them and themselves from harm and abuse at the hands of their other Parent with the support of this very important piece of legislation.

I would sincerely like to thank the Gillard Government (in particular the Attorney General Robert McClelland) in forming these well thought out Amendments and I can appreciate the delicate manner in which it has been handled in regard to combating such a contentious issue that strikes at the very heart of all well-meaning Parents. If implemented, I know that Children throughout Australia will be much better off under these new Amendments, rather than under the current legislation. There are many heartbreaking stories that haven't been openly disclosed in mainstream news due to various protection laws, but no less have dire consequences for the Children involved. I hope that some great things come out of this piece of legislation and that many Victims of Violence can feel safer and hopefully, summons the courage to leave violent relationships knowing that the Laws of this land will protect them and their precious children.

Thank you.

The Australian Law Reform Commission (2010); Family Violence – A National Legal Response. (ALRC Report 114/18).
[http://www.alrc.gov.au/publications/18.%20Evidence%20of%20Family%20Violence/difficulties-giving-evidence#_ftn18]
Australian Human Rights Commission (2006); Submission to the Senate Legal and Constitutional Committee's Inquiry into the Provisions of the Family Law Amendment (Shared Parental Responsibility) Bill 2005 (2006)
<www.hreoc.gov.au/legal/submissions/shared_parental_responsibility.html>
M Flood (2010); Fact Sheet #2: The Myth of Women's False Accusations of Domestic Violence and Rape and Misuse of Protection Orders XY Online
<www.xyonline.net/content/fact-sheet-2-myth-women's-false-accusations-domestic-violence-and-misuse-protection-orders>
Australian Bureau of Statistics (2005); Personal Safety, Australia, 2005;
[[http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4906.02005%20\(Reissue\)?OpenDocument](http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4906.02005%20(Reissue)?OpenDocument)]

Australian Government (2004); A NEW APPROACH TO THE FAMILY LAW SYSTEM; []