29/04/2011
Committee Secretary, Senate Legal and Constitutional Committees
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Dear Committee Secretary

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

We write to express our support for the changes to the *Family Law Act* proposed in the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011. We made a submission in response to the call by the Attorney-General's Department and reproduce below some of our concerns made in that submission. However, we believe that the proposed changes do not go far enough and we recommend that further changes be made to the Bill to support stronger measures protecting the safety of children and parents who have endured family violence.

We write as the parents of a daughter affected by family violence and accordingly have witnessed the working of the Family Court system at close range. We understand that the Family Courts do not have the powers, expertise, nor resources to investigate family violence issues including the inherent abuse of children and cannot order State agencies to do so. This is why it is so important that the laws reflect clear thinking on the total unacceptability of family violence in its broadest terms and administer equality under the law with just outcomes. Our specific comments are these:

1. Prioritising the safety of children is inarguable. Examples of harming of children by an estranged parent regularly haunt our media and are the stuff of family nightmares. However, the legal interpretation of 'harming' of children, as of adults, tends to be biased by the measure of physical assault. It is welcome to see that the proposed changes include psychological harm. Moreover, we believe that the Act should protect the safety of the primary carer as this increases children's safety.

2. Changing the meaning of 'family violence' and 'abuse' to better capture harmful behaviour and to include elements of coercion and control is essential. The stark contrast between the narrow definition of *family violence* in the existing Act and the definition of *domestic violence* used in the various state government acts and related consumer literature is disturbing. Consistency between all government and non-government organization interfaces with the public is crucial. If the expectations of the courts and the public differ, then trust in the system is eroded.

3. Surely the intent of the Bill is to preclude "causing" the effects of abuse. Therefore, it is proper in the proposed Bill to define abuse in terms of "exposing the child to serious psychological harm…". The Act should be clear that exposure to family violence is itself a form of family violence and that it applies to behaviour by the person perpetrating violence.

4. While the intent is clear, the specific wording of *3 Subsection 4(1) (definition of family violence)* "(e) controls, dominates, deceives or coerces the second person unreasonably,…" is problematic. The literature indicates that wielding of power and control by one party over another frequently underlies family violence, although the perpetrating party may deny its occurrence and/or its interpretation by the other party. That which is done "unreasonably" to an assaulted party may have seemed to have been done quite "reasonably" by a perpetrating party. Subjective interpretation of "unreasonably" by court officers thus becomes critical, and therefore unpredictable.

5. Regarding *Paragraph 4(1AB)(c)—Definition of exposed—New provision.* "(a) overhears threats of death or personal injury…towards another member of the child's family…", we do not believe that this is sufficient. The domestic violence literature very clearly indicates that (sometimes subtle) threats

of menace also are prominent and very real in abusive relationships and these, too, may have very serious consequences for the child. Thus, we believe that "threats of menace" should be included.

6. Regarding courts and the obligations of lawyers in ensuring courts have better access to evidence of family violence and abuse, etc., from personal observations we see several issues.

(i) *Subsection 60CC* impinges upon our concerns where court officers may order a "meaningful relationship" of a parent with a child when little-or-no such relationship previously existed, and/or its nature formed part of the issues underlying the marriage relationship breakdown in the first place. We believe that it is a primary consideration for the court to consider the level of responsibility involved before parental separation.

(ii) Particularly where a party elects to self-represent, we can foresee that there is the potential to misunderstand the law and/or misrepresent that party's position. Distortions or untruths presented by parties in hearings can remain untested until/unless a trial eventually takes place. This has implications for interim orders and/or the continuance of domestic violence, both of which impact upon the well-being of children and carer parents. Surely there is the need for veracity of evidence to be rigorously tested early on in proceedings. Early findings of invalid (unintentional or intentional) evidence and/or misunderstanding of the law may thereby convince a party to reconsider their position.

(iii) It is essential that issues about the *'(un)friendly parent' principle* are addressed, and the Act amended accordingly. The effects of this principle are the subject of much legal advice and community gossip, leading to many unjust outcomes.

(iv) Increased reliance on reported family violence *(new section 67ZBA)* is an overdue amendment. This, too, has many 'knock-on' effects. The dominant effect is how a partner leaves an abusive partner, but remains inextricably bound to that partner through the children until they become of adult age. The proposed Bill does not seem to have addressed this critical issue.

7. The proposed Bill does not address cases of *'parental flight/kidnapping'* resulting from family violence. In 2010, in a well-publicized case, the media appallingly bestowed celebrity status on the "rescuing" father and criminalised the "kidnapping" mother. The results did not make sense as the underlying issues clearly were complex. It is understood that 'parental flight' is unlawful, etc., but it is surely necessary to examine and address the reasons behind parental flight rather than simply administering the legal consequences.

8. Overall, as parent/grandparent observers with a daughter undergoing a Family Court matter , we have been dismayed at the slowness of progress, the lack of continuity between hearings (before many court officers), and the lack of accountability required of our son-in-law over his claims and allegations presented to court officers. Some of this is due, no doubt, to under-resourcing of the courts, and we accept that this is not part of the present review. Nonetheless, it is a serious issue that also merits urgent attention.

(i) We have been heartened to see that various reviews and recommendations appearing over the past several years have addressed many of the problems with the 2006 Shared Parenting Laws. We see the proposed Bill as a timely improvement on the well-intentioned but problematic 2006 changes to the Act, but remain concerned about some additional issues, most notably, where there is entrenched conflict or abuse and violence.

(ii) The Act should protect the safety of the primary carer as this also increases children's safety. The example of our own daughter has given us greater insight into the Family Court system. She experienced family violence and finally chose to take her young child and leave her abusive husband, at which time she also felt the urge to flee to protect her child, but instead decided to enter the family

dispute process. He walked away from mediation, taking her to court,

. He continues to perpetrate ongoing post-separation issues of

as well as causing great distress to their child (and you might gather, our daughter's life, and our lives, as well). Our son-in-law essentially didn't have 'a meaningful relationship' with his daughter before separation but she now has to have 'a meaningful relationship' with her father, and he can continue his abusive relationship with our daughter because of it. Despite professional advice to do so, our daughter is unable to protect herself and her daughter from his abuse.

(iii) Our experience has shown us that there should be no presumptions in family law – every family should be treated as unique. This means that there should be no presumption of equal shared parental responsibility and the courts should not be required to start from any particular care arrangement.

Based on our own experiences and the evidence presented in numerous research reports over the last few years, we strongly recommend you consider the amendments suggested in our letter and support the expeditious passage the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011.

Thank you for considering our comments