



Victims Of Crime Assistance League Inc NSW

Committee Secretary Senate Legal and Constitutional Affairs Legislation Committee
Parliament House, CANBERRA ACT 2600

Dear Madam,,

Inquiry into the Family Law Amendment (Financial Agreements and Other Measures) Bill 2015

I understand you may still accept my submission. Thank you. It attempts to inform and answer the questions. Having had the advantage of reading the other submissions and noting the assertions of the 'men as victims' submitters, I note that women who attend my service (victims) routinely found it very difficult to leave men, even when they had been physically beaten, and note they rarely leave good, kind men who respect them, and they don't generally or easily break up a family.

My main issue is:

Financial abuse, although a key driver of Domestic Violence, (DV), is least researched, frequently redefined, poorly understood or managed by society's systems. New, often ignorant, lone victims, seeking help from experts, having been forced to leave a dangerous, violent relationship, expecting a fair go, are frequently betrayed by failure to comprehend and respond to Financial matters in that support or to understand the importance of it.

'If it was the goal, then it becomes the glue one cannot escape.'

'I deserve to benefit in this relationship. I demand and ensure the majority of any proceeds, I will manage/control all financial decisions and dealings, not you. I will steal from you. I am boss. I want to make sure you can't leave, or if you do, I will keep you stuck, to ruin you as punishment for leaving me, irrespective of my criminal and unacceptable behaviour.'

I suggest that abuse of financial trust and financial abuse, in all its variations it is the most crucial issue to respond to systemically, and without it, we will fail to make inroads.

What's the problem?

People frequently cohabit / live de facto or marry, entwining financial affairs. Fiscal responsibility, managing money, strategic exiting from contracts, deals – financial competence and intelligence are not school subjects. (They should be). Understanding money, financial intelligence is then, often a product of family experience – and that's not universal.

So many people marry for 'love' – for the promises made, for the picture painted. Trust is high, and the assumption is 'we'll work it all out as we go along, but we're on the same page'. A 52% divorce rate suggests failure as do high rates of litigation.

Unfortunately for the innocent/ignorant, it's a false assumption that both parties, were ever really 'on the same page'. One may well have different financial intentions and goals. The very basis of DV is often 'entitlement' – where I'm entitled to more than you are. (And I'll be devious and you'll never know.)

This is the point where BFA's are first made.



Why it matters:

Financial sufficiency and affluence are respected, common goals of 1st world countries. Success is frequently measured in dollars.

Domestic Violence almost always involves entitlement – where one party expects and takes more than what was agreed, reasonable or what they deserve.

Abuse and control is a tool employed to facilitate entitlement and silence or punish dissent.

Financial matters are:

- frequently the reason a union commences,
- responsible for keeping people enmeshed
- useful and potent threat factors in abuse matters ('If you leave you'll get nothing!')
- difficult to separate and allocate to rightful beneficiaries,
- reliant on good record-keeping, yet for marital harmony, where trust is supposed to be a feature, are often not kept, especially over time.
- not taught in schools
- frequently concealed by dissimulation, fraud, agreed allocated tasks (where one party has lost the right to be involved in financial matters, to the other (coercion or conning)
- not arranged so that if one party wants 'out', financial resources to obtain expertise to extricate oneself from a financial/personal /business/family relationship is generally not planned or even possible in dangerous circumstances that often occur around DV, especially if the state is forcing an unplanned escape.
- notoriously difficult to negotiate with an abuser.

And this is the point where ending BFA's will probably benefit the perpetrator, if the other has no access to financial resources.

Getting your just entitlements:

Many victims of DV had assets and real estate prior to the relationship, with ongoing investment or participation / interest in family businesses, but cannot access money for professional help. Ongoing abuse of victims by financial and legal means is deliberate and meant to prevent and minimise access to their own resources, a fact largely overlooked by authorities. This is evidenced by increasing numbers of self-represented litigants, or victims who simply cannot get quality help to fight for their entitlements, who are then reduced to poverty. As promised by the perpetrator.

Note that Family fraud is **not** routinely investigated by police.

A victim without financial resources cannot obtain sufficiently engaged, competitive legal assistance, or decent legal aid in property matters. We have seen lawyers using the precise behaviours of entitlement, threat, financial manipulation and coercion their client experienced in DV.

For these brief reasons the termination of BFA's must be carefully examined by competent, financial experts who **are alert to and have expertise** in Domestic Violence financial abuse.

Who we are:

VOCAL, The Victims of Crime Assistance League Inc NSW, is a charity established in 1989 as a self-help support to family victims after homicide, by 1998 added functioning as a funded Non-Government Organisation via Attorney General's Department NSW within the Victims Services portfolio, then later introduced the Family and Child Safety Unit with philanthropic funding since 2010. We serve men, women, children and communities affected by all types of serious crime types, and the many challenges and uncoordinated societal systems they meet. We observe that many victims, services and agencies have a poor grasp of trauma-informed care, or real understanding about the role, function and limitations for crime victims before the law.

While open to all, predominantly the users of the Family and Child Safety Unit are predominantly women trying to escape DV, who can't get help to protect their children – **and women being blamed for being victims**. Men with child protection issues simply do not report the same types of issues. This then IS also a gender issue.

VOCAL is undeniably victim-focused, yet note the poor treatment and outcomes for un-resourced accused in many cases.

What is a victim to VOCAL:

'Victim' describes a person who has been harmed by criminal or negligent acts by another, irrespective of whether a successful prosecution has occurred.

'The law of diminishing returns':

We observe:

- That many crimes committed are neither reported to police, or if they are, are not responded to at all.
- That all of what was done to the victim only supply the basis for possible charges, limited to what can be proven, not what happened.
- Many cases are poorly investigated, improperly charged and poorly prosecuted.
- That Plea Bargains (or Charge Negotiations) are frequently preferred due to overcrowded court lists. (A conviction for something means the system was successful – however poorly it serves the victim.)
- That one victim against several offenders generally means no prosecution.
- That assessing the victim's capacity to give evidence by police – eg prior mental health issue – may identify character flaws, so charges may not occur.
- That children who've been sexually assaulted (especially in family) are not believed, that proof is too hard to get, that kids don't make good witnesses. Cases don't proceed. That a protective parent may be targeted if they persist in seeking safety.
- Crimes against young children are particularly difficult to successfully prosecute in the adult-adversarial system – so logically one must conclude THAT system fails many children requiring protection and safety and results in poor evidence, if any, of risk for those children's health and futures because of its failure.
- That cases that don't proceed, or 'Not Guilty' are wrongly presumed to assume that meant 'innocent'. It does not.

Each of these diminutions (and there are plenty more) serve to challenge the victim's lived experience. Yet **NONE** will routinely be taken into consideration by

Family Court (for example) when determining access, custody or financial entitlements. Rather, the victim is disbelieved, has no evidence and risks being punished, called 'alienating' and risks having her children removed. Even when cases are proven against a felon, the Family Court frequently minimises impacts on the victim and children.

Gaps:

We report significant gaps, silos and poor understanding of the lived reality or needs, and inaccurate assumptions of what victimised people and professionals assume 'will be there':

- If process gap or deficit is ignored, or an expert's opinion becomes the 'official version' it outweighs the victim's story. Blame for expert errors accumulates and routinely falls on the victim.
- State responses tend to be procedure-based, not needs-based, thus any negative flow-on effects at the federal level are not responded to. A DV victim may have an Apprehended Violence Order – the ONLY response offered by police – even when assaults have occurred – and child witnesses are excluded irrespective of what they saw, felt, heard or experienced, even excluding them from inclusion on the order.
- Police routinely will not breach AVO's if they can flick it away saying 'That's a Family Court matter, they frequently do not turn up to callouts for DV, do not follow thru on breaches, because it's one person's word against another, so the victim must lose – so why bother with all that paperwork?
- Even when an assault charge in DV occurs, the charges **generally minimise** what happened to the victim in the event. Charges of Common Assault are preferred over more serious charges, because those need investigating, common assault doesn't.
- Previous events (no matter how extreme or how many) **are excluded** from the Crown case, but the accused can rewrite history with impunity and no chance of effective cross-examination, during the defence case. All these and much more feed a system where courts don't believe victims' accounts, and women are seen to be lying, or vindictive, or hysterical, and DV is routinely disbelieved.
- It's not justice and it is not fair

No rights:

Many politicians and bureaucrats have had no actual experience of criminal law from the victim's perspective. They believe victim's rights are central, but they are not. A victim has no right to legal representation at the state level, unless a 'duty solicitor', in some courts, met that day without proper preparation. They are not a party to proceedings.

The prosecutor - either police or DPP, does not represent the victim, has no role to meet, hear the history, prepare or protect, and has no duty of care to the victim. The victim is at best 'just a witness' to this crime, with no access to what other evidence there may be in the case. Just a witness, if required.

On the other hand, the rights of an accused are very broad and fiercely protected (if they can afford it). For example, the accused must have access to all evidence, before the case, has the right to silence and can introduce 'unsubstantiated and completely un-testable allegations and claims against the victim. Yet outcomes from state courts are relied upon in Family Law matters as if the fight was fair.

Unfair, financial outcomes will follow – so if the Family Court say mum’s evidence about DV doesn’t count because the police didn’t do anything, and the child’s complaint about sexual abuse didn’t reach ‘risk of substantial harm’ then the victim, must be removed from the children, and dangerous dad gets the kids. I have many cases like this. The Federal AG’s office seem disinclined to investigate, and states have no authority in federal matters.

Consequences in family law:

Federal court practices accept state outcomes as if they are fair.

The arguments are too ‘LEGAL’ INSTEAD OF LOGICAL, REAL and practical for all parties.

There are many issues demanding serious review, if Australia’s response to DV is to be effective. Eg the costly and time wasting behaviours and practices, applying consistent community safety standards, Court management and perjury, being trauma-informed, a review process that is open and fair, a judicial review process to examine complaints about judicial officers, an open process that makes family court consultants and report writers answerable to their own professional standards bodies, review of the secrecy provisions of section 121 to permit accountability, a schedule of fees, common English etc

Cases would be far better for courts throughput, costs would be reduced, Legal Aid more properly applied, delays would be reduced and the children would respect the law. There would be less mental illness, self-harm, suicide, anti-social behaviour, and less next-generation DV from ‘monkey see-monkey do – currently they see where the power (reinforced by courts) really lies, and it isn’t with children’s safety or their protective parent.

Even simultaneously, in the real world, the Royal Commission into abuse by Institutions fervently rejects requests to including the Family Court, while exposing such terrible damage done to children when systems didn’t respect them in the past. Where there is little evidence that the 2012 changes expanding DV definitions in Family law matters have had positive effect on real victims (in fact now if a woman yells back, or pushes away someone who is spitting in her face, she’s being seen as just as bad).

It is hard to get anyone to accept responsibility for systemic change across state-federal boundaries, the legal system is very adept at protecting itself, siloes are resistant to change.

Our view of DV:

VOCAL’s understands Domestic Violence to affect any extended family member, but for this submission, will focus on the victim, the perpetrator and the children. Unlike the issues that seem to annoy other submitters – eg ‘Men’s Violence against women’, or ‘Violence against women’, we speak of victims, perpetrators (alleged and proven) and the children who may be direct victims, be damaged, threatened, abused, violated, tormented, used as pawns, alienated, manipulated and then, be cruelly denied a safe, loving parent for trying to keep them safe. By court Order. Our clients tend to be intelligent, articulate and child focused, yet are not believed, generally because the system has not produced the level of evidence required to support them, or they never reported violence, for many reasons. We’ve seen it with our own eyes, repeatedly.

The ‘in the best interest of children’ test, as Judge Pascoe, says, frequently places children in danger, not safety. Entitled to ‘a meaningful relationship’ ought **not** be

one of terror, and we, the people have a duty to protect children. They don't have security at court to protect the court from those dangerous mothers! Do they?

From birth – where prevention is already too late:

Many children and their mothers, have already been harmed by violence at the point of impregnation / sexual assault of their mother, abuse and violence during the pregnancy, and the child, at birth and afterwards may already have trauma-altered brain impacts and life experience. Yet, 'the child would forget' (serious issues age 3) has been assumed by a number of judges. Violence during pregnancy is known to be high, and violence shortly after is also high. Women are more vulnerable, easier to control. And father has rights.

Surely we, society, can err on the side of caution, knowing a well-healed child will be more likely to be successful? They can negotiate a relationship with the violent parent, if and when they are ready.

Or, keep doing what we do now – make them visit/live with the perpetrator and remove or control the protective parent. Destroy that child's psyche. As the children tell us.

Personality disorder:

Another topic we don't teach schoolchildren (or grown-ups, even well-educated ones) is the clever masking of personality defects hidden behind a charming façade. The charm-mask slips later, once a relationship has begun. Where personality disorder meets Domestic Violence, it's a whole lot more complicated for the victim to escape safely, with any of their entitlements. Charm. The mask of the Narcissist.

We identify how issues like malignant narcissistic traits (where the person's disregard for other family members' feelings, needs, rights, dreams, opinions, choices, beliefs and interests become targets for aggression, things to be stomped on, denied, cheated, beaten out of them because their belief system says they are entitled, right, invincible.) Ignorant victims, AND societal responses, including the law seem oblivious and unresponsive to the mask of pathology. The pathological appears extremely competent and practiced in the art of charm, confidence, denial and 'Who? Me? They are never guilty and lie very convincingly. They seem so 'nice' that observers are frequently 'conned'. Like a master-actor with many roles and scripts-for-all-seasons. Who believes the traumatised victim in the face of such a performance?

The victims of pathological tyrants become uncertain, brainwashed, manipulated, blamed and experience 'Gaslighting' to such an extent they feel like they are going mad. An old version of a related saying identifies these types as 'Street Angel – Home Devil'. Another description of the effects of pathological abuse is 'crazy-making behaviour'

Perpetrators like these – actors with no empathy or concern for others, including their own children (who must suffer because THEY took their entitlement to total attention and adoration from them), enjoy conning an empath, a person with a lot of care for others, kindness and other desirable qualities. (No point in trying to con another conperson!)

The narcissist is an empty vessel, requiring narcissistic supply. Who better to supply endless love, affection, support and care than an empath? Preferably one with resources, home, income and status, or else a gentle person, with undeveloped self-

esteem who is believing, trusting and is taken in by a hard luck story? Preferably someone who hasn't a really large support network.

Perpetrators are master manipulators, so loving at first, then so controlling, - at first possibly slowly, almost always escalating to become extremely damaging and manipulative. When challenged, when they feel their mask of 'normal' is slipping, or when their 'target dares to have other interests (like have children), the narcissist will escalate for dominance, for their entitlement to supply. We observe that courts routinely applaud narcissists and punish their victims.

Other variants in 'Cluster B' personality types include anti-social personality disorder, Immature Personality Disorder, Sociopathy, Psychopathy. These are HARD WIRED / unchangeable defects that exploit those with empathy, kindness, trust, decency. Your Cluster B's are the world's conmen – dictators, mercenaries, partners, bosses, parents. They are generally not mentally sick, or mentally compromised but they do cause illness in others.

BFA's

Conned from the beginning?

Common inadequacy for financial dealings is found at all social levels in society.

Binding Financial Agreements require proper forensic analysis to ensure that fair play is the outcome. We see cases, most days, where the unrepresented victim is bullied and beaten into giving up their financial rights, input and futures, to the perpetrators and their skilled legal teams.

It is our view that the whole issue of financial abuse can be encapsulated by awareness that without money for expert advice, the victims lose. The person who has (illegally) accessed all the money and property wins, and the financial experts and lawyers are well-paid.

Nothing will stop DV unless financial abuse and its consequences, and the procedures that engage in it for profit, are exposed, investigated and stopped. Who benefits?

Orders:

Orders ought to be consistent between state and federal courts, therefore the 21 day criteria can be dropped.

General observations:

I have read over other submissions, which repeatedly demonstrate (in my view) a paucity of understanding or interest in the challenges faced by people in DV.

About 50% of DV (mens violence against women' is thought to be reported. Reasons being:

Don't recognise DV; Too scared; Remote location - No services; Nowhere to go. No money. Etc, etc, etc.

- In the past year, 8 politicians met some victims at VOCAL. All had wrong assumptions about the victims position, at court, or later. They wrongly assumed 'all that help out there'. They said they could not have ever begun to comprehend the particular challenges victims would meet, or the flow-on effects in Family Law when hearing, understanding or representing their constituents when voting on related bills.

- The Family Court frequently denies, trivialises or dismisses claims of suffering DV and makes no allowance for the dismal and unrepresented position and absence of rights for the victim.
- **Do you know that in NSW if police attend a DV incident where children are present the matter is reported to FACS, and the mother may be ordered to leave immediately or the children will be removed because she's failed to protect them? And when she does leave, there is no risk, so no investigation, so there's no point expecting quality data from FACS?**
- Do you know that child protection is based on assumed risk of **substantial harm**, and less than 20% of high risk cases receive intervention? So relying on child protection for evidence in Family Law matters is probably negligent?
- Do you know that proceeding with a prosecution in a child sexual assault case, particularly incest of a young child is near impossible? Or that yet the Family Court rely on Briganshaw, a 1938 standard as case law? **1938!!!**
- Where are the stats, in the 'One in three' figure of male-on-male DV? 1 in 3 of what?
- Is a woman who slaps a man while trying to escape him forcing himself on her, or spitting in her face included in these stats?
- Violence is violence but Family Law processes now equate a woman as 'just as bad' if she answers back, argues or raises her voice, irrespective of the circumstances or provocation.
- Why do people object to Rosie Batty addressing a particular point or topic, or indeed conflate the various types of violence as if some types have more relevance than others? Men can and do get assistance in DV, and a lot of 'all the assumed help for women victims' isn't real, present or relevant either! Women have better resources in this one area because of years of lobbying and because they are financially entrapped more often than men, more likely to be killed for leaving. (I do not excuse any type of violence)
- Andresen says, in part "The same data sources are cited by the main domestic violence organisations but they deliberately minimise any data relating to male victims." Since their topic is more likely **men's violence against women**, they would not be talking about violence against men at all?
- The accusations of feminism's 'insidious influence of all aspects, giving the following example:

'The one time this body published this data was in 1996 and showed 968 male perpetrators to 1138 women. Since then FoI requests have produced data only from Western Australia,

namely state Department for Child Protection figures that showed the number of mothers

responsible for "substantiated maltreatment" between 2007 and 2008 rose from 312 to 427.

In the same period the number of fathers reported for child abuse dropped from 165 to 155.

Easy to see why bureaucrats would be nervous of figures like that.'

This is someone who wishes to demonise women as abusers of children and accuse the feminist army of deception. Not someone who understands DV, or the failings of the system I have minimally described.

Parenting Orders – section 68T - need to be consistent between state and Federal courts in order to ensure Orders don't conflict and thereby create safety risks,

confusion for police, and may provide some temporary certainty for children and others. A 21 day time frame may not fit the availability of court or the capacity of the victim to manage competing Orders and processes, as they try to comprehend a wholly new legal environment, often without financial resources.

As described earlier, both courts are guilty of not understanding or applying accuracy or taking into account the 'law of diminishing returns for victims of DV' who ask for the system's protection.

I hope what I have written is useful, is read and understood. What isn't believed, is happening.

Regards

Robyn Cotterell- Jones OAM

Chief Executive Officer

1st February, 2016