



Committee Secretary  
Senate Legal and Constitutional Committees  
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14 April 2011

Dear Committee Secretary

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

We are writing to express our support for the changes to the *Family Law Act* proposed in the draft Family Law Amendment (Family Violence and Other Measures) Bill 2010.

Northern Rivers Community Legal Centre ("NRCLC") was established in 1996. NRCLC provides the following services and projects:

- Generalist Legal Service
- Women's Legal Service (includes Court Support Service)
- Family Law Family Relationship/Community Legal Centre Pilot Project
- Aboriginal Legal Access
- Tweed Valley Outreach Legal Service
- Tenants Advice & Advocacy Service
- Women's Domestic Violence Court Advocacy Service

These services and projects provide NRCLC with extensive experience in:

- assisting victims of violence including family violence
- dealing with the impact on victims of violence
- advocating on behalf of victims of violence
- engaging in law reform processes in relation to family violence

Given NRCLC's experience in family violence matters listed above NRCLC strongly supports the Federal Government's moves to provide better protections within the family law system for people who have experienced family violence and believe that the proposed amendments are

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essential to place safety and protection of children and family members at the forefront of the *Family Law Act*.

### **Key changes NRCLC supports**

In particular, NRCLC strongly supports:

- Broadening the definition of 'family violence' to include a wider range of behaviour and removing the objective test of "reasonableness" so that family violence can be properly considered whenever the victim actually fears for their safety.

In our experience the current narrow definition of family violence means that victims of family violence are not afforded the appropriate protection from future family violence or consideration of the trauma, stress, loss of self esteem and psychological injury inflicted on them by perpetrators who use the variety of coercive, controlling, and manipulative behaviours that constitute family violence. The result currently is that orders made or agreements reached enable the perpetrator to continue to inflict family violence as their conduct is not appropriately recognised and addressed.

NRCLC has a number of clients who have left relationships because of coercive and controlling family violence. Most often the conduct of the perpetrator has not been reported to appropriate authorities because of the victim's fears of the consequences to them if the perpetrator found out about the victim's attempts to get assistance. Further victims are often isolated by the conduct of the perpetrator so that they do not have the practical means or resources to be able to contact or engage with support agencies. It is only after escaping the family violence situation that they are able to seek the appropriate assistance and support.

The consequence for our clients of the impact of the narrow definition of family violence is that they continue to be victimised as the perpetrators impose upon the victim the same coercive and controlling behaviour that occurred during the relationship in relation to the implementation of the orders or parenting plans. The perpetrator unilaterally alters arrangements to suit themselves and re-impose their dominance over the victim by this means.

In relation to a number of clients counsellors and family dispute resolution practitioners report that the victims are so traumatised by the ongoing controlling behaviour that the clients have anxiety attacks even contemplating attempting to address differences between the parties. The proposed broader definition of family violence will allow the perpetrator's conduct to be identified and accounted for in making appropriate orders that will focus on the protection of victims of the conduct from future subjection and exposure to family violence.

Finally we submit that the deletion from the definition of family violence of "involves the first person threatening to commit suicide or self-harm, with the intention of tormenting or intimidating the second person" be reconsidered. It is our experience that these threats are

frequently used to control the second person and this ongoing threat is a significant factor in these victims remaining in family violence relationships. From our experience it is one of the most frequent threats that perpetrators use to control their victims.

- Children's Rights

NRCLC strongly supports a greater emphasis on taking children's rights into account. From our experience many parents negotiate in terms of protecting their perceived 'rights' or accommodating the 'rights' of the other parent despite concerns about the impact on the children of the other party's 'rights' being invoked.

NRCLC submits that the proposed increased emphasis on children's rights gives the Convention on the Rights of the Child greater visibility in Australia, leading to a richer and more nuanced notion of children's rights and interests. A further benefit may result in practical mechanisms to hear the voices of children, and increasing the number of appointments of independent children's lawyers.

- Best Interest Considerations

NRCLC submits there should be no division of the considerations into primary and additional considerations, only one list of factors for consideration, where

- the safety of children is listed as the first consideration and given priority;
- that the meaningful relationship is listed as one of the many factors;

The courts should weigh up all of the factors in the list depending on the circumstances of each individual case. We are particularly concerned about the continuing confusion over what is in the 'best interests of the child', when there is a primary consideration still being given to children having a meaningful relationship with both parents. In cases of family violence, it must be clear that the safety of children is given the highest priority.

- Removing the friendly parent provision

NRCLC supports the repeal of s60CC (3) (c) but does not support the repeal of the whole of subsection (4). We submit that there is merit in the current references to participating in decisions, spending time with the child, and paying child support. Repealing this subsection could suggest that these things are no longer as important as they were. At the least, removing them means that they will no longer be drawn to the attention of litigants and courts as considerations and obligations that are important.

It is our experience that these indicia of parental responsibility are important factors in differentiating between parents with whom the children spend time who embrace their duties and responsibilities and those who do not but are attempting to use the complexities of the competing factors to assert their "rights" rather than fulfilling their obligations.

- Repealing section 117AB about costs orders relating to false allegations or denials of violence

This section seems to have operated as a disincentive to disclosing family violence, and does not appear to have had any beneficial effect. NRCLC submits that the ordinary power to make costs orders is adequate to deal with false allegations of family violence as well as false denials of family violence.

### **Further changes that are needed**

NRCLC believes there are a number of changes not addressed in the Bill that need to be implemented immediately. We urge you to consider amendments to:

- The safety and protection of children should be prioritised above all else. This priority should not be subject to proving an inconsistency with other considerations.
- The presumption of equal shared parental responsibility (“ESPR”).

NRCLC submits there should be no presumption of ESPR. The protection of children and the full consideration of the facts and circumstances of each case should be the focus. 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.

While the presumption is meant to be rebutted by family violence the issue is that family violence in some cases may not be given its due weight to negate the presumption, especially at an interim stage. NRCLC’s alternative proposal is that if the ESPR presumption remains, it should not apply at an interim stage if the matters in dispute cannot be properly determined. Our experience is that the determination of an issue at an interim stage results in the interim decision becoming final. This disadvantages family violence victims who negotiate consent orders.

If the court is not properly resourced to have risk assessments and other risk screening measures from the outset, and it cannot properly determine allegations of family violence and/or abuse, there should not be a presumption. The presumption has increased the possibility of placing families and children at significant risk of harm, especially as orders made at an interim stage can last for up to 2 years.


As matters are not able to be dealt with fully at an interim stage, there should be no presumption about shared responsibility for decision-making and reference should only be made to the best interests of child and the circumstances of each case.

- The presumption of equal time and substantial and significant time  
NRCLC submits that the provisions in relation to equal time and substantial and significant time be repealed. The judiciary, advisors and family dispute resolution practitioners should only need to consider what arrangements are best for children based on an assessment of the best interests’ factors in the circumstances of individual cases.

**Conclusion**

Based on the experience of Northern Rivers Community Legal Centre and the evidence-based research commissioned by the Government over the past couple of years we strongly recommend you support the changes suggested in this letter. We submit that you support the expeditious passage of the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011.

Yours sincerely,

  
RICHARD HUGHES  
Acting Principal Solicitor