

Committee Secretary
Senate Legal and Constitutional Committees
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Secretary,

Enclosed is a Submission to the Senate Inquiry into the Family Law Legislation Amendment (Family Violence and other measures) Bill 2011. The submission provides our analysis of the proposed reforms within the act and the impact we believe it will have on the community. We have also provided recommendations that we believe will further assist in achieving the legislation's stated goal to provide better protection for children and families at risk of violence and abuse.

Our submission agrees with the proposed amendments that specifically aim to combat domestic violence.

We believe that the broadening of the definitions of 'abuse' and 'family violence' within the Act will better encapsulate those who suffer psychologically as well as physically from domestic violence.

The review of what is commonly referred to as the 'friendly parent provision' will discourage the non-disclosure of domestic violence in the courts. It has been identified as a practice currently occurring due to a parents fear that they will be classified as 'unfriendly' in regards to promoting shared custody and that this will disadvantage them in legal proceedings.

As an institution that provides assistance to the victims of domestic violence within our community, we have been able to provide first-hand accounts of the effects the Family Law Act as it presently stands.

These accounts are provided in conjunction with research and statistics that support our position of agreement with reforms that provide further protection to the victims of domestic violence.

Sincerely,

Nick McDermott, On behalf of,

Port Stephens Domestic Violence Committee.

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**VICTIMS OF DOMESTIC VIOLENCE: SHORT
AND LONG TERM PROTECTION**

Prepared By Nicholas McDermott on behalf of:

The Port Stephens Domestic Violence Committee

VICTIMS OF DOMESTIC VIOLENCE: SHORT AND LONG TERM PROTECTION

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FOR PRIVACY REASONS, THE NAMES OF INDIVIDUALS HAVE BEEN WITHHELD
FROM FIRST-HAND EXPERIENCES LISTED.

1.0 INTRODUCTION

The Port Stephens Domestic Violence Committee works to combat abuse and family violence within the region. Under the auspice of the Port Stephens Family Support Service, we provide care and support for these victims, overwhelmingly women and children, who are presently involved in court issues, Domestic Violence and homelessness due to the necessity to flee an unsafe home. The committee aims to continue and expand on this support to those in the community as well as expanding on this support through new measures such as our current drive for a safe house that would provide shelter for parents and kids in desperate need of it.

We strongly support the proposed amendments to the Family Act 1975 in the Family Violence Bill with its stated aim, ‘to provide better protection for children and families at risk of violence and abuse’ (McClelland 2010). The current structure of the family courts, as our first-hand experience and statistics demonstrate, does not adequately achieve this. The present narrow definitions of ‘abuse’ and ‘family violence’ restrict the ability of victims of domestic assault to legally defend themselves. Paragraph 60CC (3)(c) of the Act, which is commonly referred to as the ‘friendly parent provision’, creates an environment that encourages deceit and the non-disclosure of important information to the courts. It is an environment of intimidation that we witness. It discourages victims of domestic violence from voicing their experiences to the courts. We believe that shared parenting responsibilities should be promoted where safe and suitable, with studies showing that, ‘growing up with two parents is better for children’ (Berlin 2004). The priority, however, must be to ensure the

safety of the children and family members suffering domestic violence. They must be able to disclose acts of 'abuse' and 'family violence' and their protection must also be catered for should they be forced to flee the family home for these reasons.

BACKGROUND

The 2006 reforms to the Family Law Act, The Family Law Amendment (Shared Parental Responsibility) Act, were the result of grievances brought before the Howard Government by groups representing separated fathers. The groups stated that, 'divorced fathers were picking up the bills for parenthood yet being estranged from their children' (SMH 2010). The reforms attempted to reach a 'middle ground' between the wishes of fathers groups to have greater equality in parental orders, and women's and feminist groups who feared negative repercussions would result from this. The results have thus far been mixed. A study by the Australian Institute of Family Studies found that shared care had risen; now making up 16% of all custody arrangements (Needham 2011).

The statistics, however, also showed the presence of serious domestic violence issues. In spite of the rise in shared care custodial arrangements:

- Only 7% of children had equal time with each parent (Needham 2011).
- A third spent of children spend no time with their father (Needham 2011).
- 16-20% of parents had safety concerns for their children due to contact with the other parent (Kaspiew et al. 2009).

Distinct lines have been taken in regards to the amendment of the Family Law Act. Two predominant opinions are being voiced. The lobby groups of fathers are aggrieved that they are denied equal access to their children. Sue Price, of the Men's Rights Agency, stated that their goal in Family Law is 'a guarantee that men would have frequent contact with their children after divorce' (Overington 2005). Women's and feminist's groups argue that they will be forced to disrupt a child's regular routine at home to face abusive fathers and hand their children over to them. Elspeth McInnes of the National Council of Single Mothers and their Children said, 'the law goes much too far in the other direction. Gone is the idea that children will have one home, one carer, one school and friends.Instead of a home, they will get a timetable, basically' (Overington 2005).

The statistics demonstrate that, while the desired outcome of an increased role of parenting from both parents is being achieved, the safety risks to the child and other family members still need to be addressed.

2.0 VICTIMS OF DOMESTICE VIOLENCE: SHORT AND LONG TERM PROTECTION

2.1 BROADENED DEFINITIONS OF ‘ABUSE’ AND ‘FAMILY VIOLENCE’

The Port Stephens Domestic Violence Committee welcomes and supports the broadening of the definitions of ‘abuse’ and ‘family violence’. Our first-hand experience with victims of abuse leads us to the same conclusions as those reached in the reviews conducted by the Australian Institute of Family Studies (AIFS) and the Family Law Council. One of the recommendations advocated by the Family Law Council review is the widening of the term ‘family violence’ in the Family Law Act ‘to include threatening behaviour’ (Family Law Council 2009).

We also strongly support the reforms of Paragraph 60CC (3)(c), the ‘friendly parent provision’. The mentioned reports support the findings that the provision requires partners to appear ‘friendly’ towards their partner in regards to shared custody arrangements. The findings conclude that this requirement often encourages the non-disclosure of serious acts of domestic violence in order to not appear ‘unfriendly’ in the court. A status that will greatly damage an individuals position in legal proceedings.

In explaining our support for these amendments, the following case demonstrates the present shortcomings of the Acts narrow definitions regarding family violence.

A member of the Port Stephens Family Support Service was helping a young mother and her three kids. The oldest was under five. The husband had been arrested, convicted and incarcerated for assault.

Until his arrest, the woman said she 'was always afraid'. The home was an environment of fear and intimidation. Fear had completely overtaken her. She was terrified for her wellbeing as well as that of her kids. Upon his release, however, she took her children and left the family home, terrified of the threat this man posed to her family's safety. The man was enraged and began searching for her. He contacted her and threatened her. The woman said he told her he was, 'going to kill her.' Despite these threats, the woman was told that the police were unable to intervene. Our member who had been assisting this woman was woken at 3am several days later to banging and screaming at her front door. The woman and her three children were waiting there. In their desperation, they had tracked down the member to her home, pleading for help.

It is our role to provide help to the victims of domestic violence. Their lives are affected by the amendments that are presently being discussed. Our court support system, that provides support to victims of domestic violence while they are going through the courts, frequently sees victims too terrified of the ramifications of speaking out against their partners to do so.

At present, Domestic Violence homicide is the most predictable and preventable of

homicides. In 87% of cases homicide could be prevented (Green 2009).

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2.2 PROVIDING ASSISTANCE TO VICTIMS OF ‘ABUSE’ AND ‘FAMILY VIOLENCE’

Families who suffer abuse and family violence need to be able to voice these occurrences before a court of law. They also need a framework to be able to support them in the event that they are forced to leave an abusive parent or partner. There are 7483 families in Australia who are homeless (ABS 2008). The largest single cause of homelessness in Australia is women and children fleeing domestic or family violence (Woodbridge & Oberin 2009). In continuing with the express goals of this Committee, ‘to provide better protection for children and families at risk of violence and abuse’ (McClelland 2010), it is our recommendation that the committee support facilities that provide shelter and protection for these victims of domestic violence.

The Port Stephens Domestic Violence Committee believes that a proposed ‘safe house’, would be a successful and significant contribution to guaranteeing the health and wellbeing of these victims. A safe house would give our committee and others the ability to provide victims of domestic violence with shelter that is:

- Anonymous from abusive partners
- Safe, suitable shelter for a family

Abused Family members not only fear their abuser, they fear the ramifications of voicing their abuse. A safe house means that a victim of domestic violence is assured of protection

after speaking up. At present approximately 2 in 3 children are turned away from homeless assistance services (Oberin, Palmer, Kirkwood 2005). Despite the removal of legal reasons

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for non-disclosure of abuse that these amendments hope to achieve, the need for a bed for their kids will still discourage speaking out. The Following comments come from workers at the Port Stephens Family Support Service:

I can remember one woman with three children, the children's father had kicked down her door, assaulted her, destroyed the children's toys, furniture, lots of stuff, in view of the children. He was incarcerated for the night but his family members, who had a history of violence towards her, were still out in the community. She wanted refuge placement but as the nearest refuge with vacancies was in Sydney (over 2 hours away), and she wanted her children to continue going to school, she had to spend the night in the house. While we were able to arrange to have the door repaired, this was a terrifying experience for her and her children, particularly given the extreme violence that occurred earlier in the day.

One lady has not been able to get into a refuge, she has been couch surfing with her baby and school aged child for months now. She told me the other day she doesn't see any option but to go back to her [violent] partner. She says it's too hard on her children being in a crowded house, without her things and the oldest not being near her school or friends. The three of

them sleep together on the friend's lounge room floor, meaning they can't get properly to sleep until the rest of the house goes to bed.

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CONCLUSION

The Port Stephens Domestic Violence Committee supports the aims of the Family Law Legislation Amendment (Family Violence and other measures) Bill 2011 and its stated aim, to provide better protection for children and families at risk of violence and abuse' (McClelland 2010). The broadening of the Acts definition of 'abuse' and 'family violence' will ensure that family members who suffer domestic violence on a psychological level, as well as those who are forced to live in an environment where domestic violence occurs, are given adequate legal protection.

The reform of paragraph 60CC (3)(c) of the Act, the 'friendly parent provision', will allow for the victims of domestic violence to voice their ordeals for due consideration. It allows for this without the negative ramifications identified by the Government reports, 'Evaluation of the 2006 Family Law Reforms' by the Australian Institute of Family Studies and, 'Improving Responses to Family Violence in the Family Law system: an advice on the intersection of family violence and family law issues' by the Family Law Council. They identified that 'nondisclosure' was often chosen by partners who had either experienced or witnessed abuse to avoid being labelled an 'unfriendly' parent. This labelling often results in the courts looking unfavourably on a parent.

We recommend that the committee give consideration to providing a safe environment for the victims of domestic violence to utilise after voicing instances of abuse. The fear of further domestic violence is a major contributor to non-disclosure of domestic assault. Abused family

members, particularly parents, will often not sacrifice a home for themselves and their children, even at the price of suffering domestic violence. The ability to provide a safe house

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would be a significant contribution to those who are forced to endure it. The knowledge that safety and shelter can be offered would be as significant in combating the nondisclosure of domestic violence as the listed reforms.

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II

DOCUMENTS:

Evaluation of the 2006 family law reforms finds mixed results

Media release - 28 January 2010

The most comprehensive evaluation of Australia's family law system - drawing on the experience of 28,000 Australians - has found that overall the recent reforms are working well for the majority of children and their parents.

"There's more use of family relationship services, a decline in court filings and some evidence of a shift away from people going straight to court to resolve post-separation relationship difficulties," said Australian Institute of Family Studies Director Professor Alan Hayes.

However the Institute, which conducted the evaluation of the 2006 family law changes, found significant concerns about the reforms' impact on families and children who are exposed to abuse and violence.

The three year long evaluation is the largest examination of the family law and service system yet undertaken, and shines a light on how families and children fare through the system when families break-up.

"More than a million Australian children currently live in separated

families," Professor Hayes said.

"The way in which separated couples resolve parenting arrangements, make decisions about their children and conduct their relationships all have significant and lasting impacts on their children's lives for better or worse depending on how well they manage post-separation parenting.

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"The message out of this evaluation is clear - ongoing conflict between separated parents leads to worse outcomes for children."

Professor Hayes said that overall, the reform goal of getting separated parents to work things out for themselves is being achieved, with most separated parents resolving their parenting arrangements within one year and without the use of the legal system.

"This is evidenced in a reduction in child-related parenting matters reaching court, with a fall in applications for court orders and a greater proportion of parents reporting they were able to resolve their issues themselves, supported by the new family relationship services," he said.

However for a substantial proportion of separated parents, there is evidence of significant family dysfunction: violence issues, safety concerns, mental health and substance misuse.

And for children whose parents have concerns about the safety of their child or themselves from ongoing contact with the other parent, shared care-time arrangements exacerbate the negative impacts on children.

"The evaluation provides clear evidence that while there have been some positive developments, the family law system has some way to go in effectively responding to family violence and child abuse, mental health and substance misuse.

"Where there were safety concerns reported by parents, these were linked to poorer outcomes for their children in all types of care relationships, but for those in shared care time, it was even worse. This

is a small but extremely significant minority.

"All professionals should exercise great care in considering shared care where violence and safety concerns for the child exists," Professor Hayes said.

There is a need for professionals right across the system to have greater levels of access to finely tuned assessment and screening mechanisms by highly trained and experienced professionals.

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And important information about child safety and family violence needs to be more effectively shared between professionals including those in family relationship services, lawyers and the courts.

"But it's worth remembering that while the evaluation found that for an important minority equal care time was a serious concern, for children where there's no violence or abuse, equal care time was found to work well."

The evaluation found evidence that many parents misunderstand the changes to the family law system, believing that equal shared parental responsibility (shared decision making and financial support) allows for equal shared care - or 50/50 time. This can make it more difficult for parents, relationship services professionals, lawyers and the courts to get parents to focus on the best interests of the child.

"This misunderstanding is due in part to the way the notion of shared parental responsibility is expressed in the legislation. It has led to disillusionment among some fathers who find that it doesn't automatically mean 50/50 care time. And indeed, the law was never intended to provide for shared care time in cases where there are safety concerns.

"Lawyers in particular have indicated that the 2006 reforms have promoted a focus on parents' rights rather than children's needs and that the family law system doesn't do enough to support arrangements that are suitable for a child's particular level of development.

"The evaluation has highlighted the complex and varied issues faced by

separating parents and their children and the diverse range of services required in order to ensure the best possible outcomes for children. While there are many perspectives within the family law system, and conflicting needs, it's important to maintain the primacy of focussing on the best interests of children," he said.

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Key findings from the evaluation include:

71 per cent of fathers and 73 per cent of mothers say they've sorted out their care arrangements

39 per cent of parents who used family dispute resolution reported reaching an agreement

78 per cent of Family Relationship Centre staff and 86 per cent of family dispute resolution staff say that family dispute resolution is inappropriate due to family violence for up to a quarter of parents they see

16 per cent of children are in shared care-time arrangements (i.e., where 35-65 per cent of time is spent with both parents)

More fathers than mothers propose equal time arrangements when going to court - 10 per cent of mothers and 27 per cent of fathers

A majority of separated parents were in friendly or cooperative relationships (just over 60 per cent)

Just under one fifth of separated parents reported their relationship to be full of conflict or fearful, with mothers twice as likely as fathers to report a fearful relationship

Around one in five parents reported safety concerns with ongoing contact with the child's other parent

26 per cent of mothers and 17 per cent of fathers reported their partner had physically hurt them before or during separation.

