

## **SUBMISSION: LONE FATHER'S ASSOCIATION AUSTRALIA INCORPORATED**

The Lone Fathers Association of Australia (LFAA) commend the House of Representatives for their Parliamentary inquiry into a better family law system to support and protect those affected by family violence.

The Lone Fathers Association supports happy, healthy relationships between children and their parents and supports shared care where this is safe for the child.

The Courts must protect children and family members from all forms of harm resulting from family violence and abuse. According to the Australian Attorney Generals this is why the Australian Government has amended the Family Law Act to:

1. Prioritise the safety of children in parenting matters by giving greater weight to the protection from harm when determining what is in a child's best interests.
2. Change the definition of 'family violence' and 'abuse' to reflect a contemporary understanding of what family violence and abuse is by clearly setting out what behaviour is unacceptable, including physical and emotional abuse and the exposure of children to family violence.
3. Better target what a court can consider in relation to family violence orders as part of considering a child's best interests.
4. Strengthen adviser's obligations by requiring family consultants, family counsellors, family dispute resolution practitioners and legal practitioners to prioritise the safety of children.
5. Ensure the courts have better access to evidence of family violence and abuse by improving reporting requirements.
6. Make it easier for state and territory child protection authorities to participate in family law proceedings.

### **OBLIGATIONS OF THE COURTS**

We make the following Comments in respect to the "*Family Violence Best Practice Principles*."

We commend the Family Court and the Federal Circuit Court for prioritising the protection of families, and particularly children of families involved in family law proceedings, from the effects of family violence. We acknowledge that the victims of family violence are often

traumatised and are vulnerable witnesses. This must always be an important and crucial consideration of judges, court staff, legal professionals and all litigants.

The “Family Violence Best Practice Principles claims to “provides practical guidance to courts, lawyers, family report writers and other service providers, litigants and other interested persons in cases where issues of family violence or child abuse arise. The case management process in disputes involving children is given prominence particularly in consideration of safety of children.

We totally support the principle that the safety of the child is paramount in the context of “the best interest of the child “and the child having a relationship with both parents. . Parenting arrangements must continue to be made in a way that promotes a child’s right to have a meaningful relationship with both parents where this is safe.

The Courts must ensure that all persons attending courts exercising family law jurisdiction are safe. The Lone Fathers Association of Australia have received information from both male and female litigants that they have received abuse in Court which has resulted in psychological harm. Under its own principles once this abuse commences the Court must act however the priority has to be to ensure that the opportunity for the abusive behaviours are stamped out altogether. Individually tailored safety plans are appropriate but not obviously used and must be better brought to the attention of all stakeholders.

We point out to the committee that the “best Practice Principles are a voluntary source of assistance to judicial officers and legal practitioners and are not a fetter to a court’s discretion (*Cameron & Walker* (2010) FLC 93-445). These Best Practice Principles are not a substitute for evidence in individual cases.”

We expressed our concerns on 30 June 2011 in our submission in respect of the *Family Law Legislation Amendment (Family Violence) Bill 2011* and the *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011*.

The LFAA express concerns about the reporting of Family Violence and that either no evidence or minimal evidence is sought to support allegations or that the burden of proof is based on probability.

The shared parenting reforms are effected by the allegations which immediately fall into the category of concerns

The Family Violence Act does indeed impact outcomes for separating families where there are no family violence or child abuse concerns in cases other than mischievous allegations by a party. For those cases where there is no risk of violence or abuse and it is in the child's best interests, the courts do not apply the presumption of equal shared parental responsibility and consider equal time or, as the case requires, substantial and significant time. The finding of the Family Law Court or the Federal Circuit Court is either not made or if it is made is made on the basis of balance of probabilities.

The family court has the ability to award costs where a party knowingly makes false statements but rarely uses this broad power. Although it remains a criminal offence to knowingly make a false statement during court proceedings the Courts rarely punish litigants.

Family courts must access better information on which to assess risk to families and children and ensure that there is a significant deterrent to those who would make false allegations

## **JURISDICTIONS AND STAKEHOLDERS**

### **JURISDICTIONS**

1. High Court
2. Family Court
3. Federal Circuit Court
4. Various State and Territory Courts ( Criminal and Civil)
5. Various State and Territory Children's Court
6. Various State and Territory Tribunals
7. Various states -child protection services

### **STAKEHOLDERS**

1. Litigants
2. Children

Courts exercising jurisdiction under the various State and Territory Acts in respect to Family Violence are not prominent in their representations in Family Law Jurisdictions. Ensuring the safety of a child is central to all determinations of what is in a child's best interests. Organisations such as Child Protection Services should be more prominent in advice and as witnesses.

## **PARENTING DISPUTES**

The LFAA firstly congratulate the majority of parents who are able to separate without the necessity for litigation and are able to successfully draw up their own terms of agreement and parenting plans.

LFAA is committed to supporting those parents who wish to arrive at a mutually acceptable settlement of children matters. The principle of “self-help” must be supported with appropriate and timely support services. The current services are often stretched beyond reasonableness and not equipped with the skills or knowledge to put agreements together.

The current services are mostly not professionally trained to assess the allegations of family/child abuse.

## **PARENTING DISPUTES: WHEN FAMILY VIOLENCE OR ABUSE IS ALLEGED**

We agree that the Courts exercising jurisdiction under the Family Law Act and others should address issues of family violence and abuse. The “Best Practice Principles” are applicable in all cases involving family violence or child abuse in proceedings before courts exercising jurisdiction under the Family Law Act and include not only the decision makers but legal practitioners and individuals involved in these cases.

“The Best Practice Principles recognise:

1. the harmful effects of family violence and abuse on victims
2. the place accorded to the issue of family violence in the Family Law Act and
3. the principles guiding the Magellan case management system for the disposition of cases involving allegations of sexual abuse or serious physical abuse of children.”

The judiciary of the Family Law Court and the Federal Circuit Court claim they possess extensive discretionary powers in regard to the cross-examination of vulnerable witnesses by alleged perpetrators of family violence.

Never the less the burden of proof of Family Violence having taken place should be the responsibility of the accuser.

## **FAMILY VIOLENCE**

We expressed our concerns on 30 June 2011 in our submission in respect of the *Family Law Legislation Amendment (Family Violence) Bill 2011* and the *Family the Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011*.

In Previous submissions we posited the view that the Bill was Gender biased discriminative and lead to someone being found guilty on accusation. The Act fails to meet the principles of Human Rights and civil liberty and is perhaps also unconstitutional.

## **THE BURDEN OF PROOF OF FAMILY VIOLENCE: BEYOND REASONABLE DOUBT**

We believe that in respect to all allegations of family violence that before a finding is made it is critical that the evidence is tested beyond reasonable doubt and not on the test of probability.

Many criminal cases, following allegations of family violence of assault are made, are dismissed after trial in a criminal Court jurisdiction .However in the same case the assumption of family violence continues in the hearing of the family matter in the Family Court or Federal Circuit Jurisdiction.

The Lone Fathers Association of Australia proposes that allegations of domestic violence involving an assault should be a criminal matter and require a proof beyond reasonable doubt.

**Please receive attached previous submission in respect of *the Family Law Legislation Amendment ( Family Violence ) Bill 2011***

**Barry Williams**

**National President**

**Lone Fathers Association of Australia Incorporated**

## **Family Law Legislation Amendment (Family Violence) Bill 2011**

### **Senate Committee on Legal and Constitutional Affairs**

Dear Senators

The Lone Fathers Association Inc and Parents Without Partners Australia Inc are the two largest and longest lone parent organisations in Australia, with a combined operating time of 82 years. Both organisations have a membership of both male and females. For instance, the Lone Fathers Association has a membership of 67% men and 33% women, and Parents Without Partners Australia's membership is 60% women and 40% men. Since the commencement of both these organisations some 2,000,000 people - men, women, and children- have been involved with our services.

Both organisations have grave fears of what the Family Violence Bill 2011 contains and false claims that it will make things much fairer and safer for parents and children in family disputes.

The LFAA and PWP along with other loosely affiliated organisations believe that the Bill has the potential to escalate the number of broken families in Australia and place a great burden on the taxpayer from persons demanding the lone parent pension and other Centrelink payments which will drain the public purse.

The Bill and its widening of the definition of family violence will give both mums and dads a very easy escape route to opt out of marriage or a relationship. One parent will only have to disagree with the other over children's issues, or finances, etc. and one will then be able to use that as "controlling behaviour" or "emotional abuse" to report it as family violence, the police will come in, and the other parent will be asked to leave.

The Bill will also cause a lot more litigation at a terrible cost to both parents and their children, where only the legal profession and the courts, its counsellors, and others with a vested interest will benefit from the misery the Bill imposes.

One must question the wisdom of the Attorney General in cutting part of the funding of the Family Relationship Centres to give it to the Family Court's counsellors, a system that has proved over the years to be very one-sided and biased, whereas the Family Relationship Centres and their mediation have been a great success and helped many men and women..

The Lone Fathers Association Australia and Parents Without Partners Australia and other affiliated groups urge you to not pass this Bill until these areas of concern are thoroughly addressed. I would welcome the opportunity to speak to our submission during the Senate hearing.

Thank you

Yours sincerely

B C Williams BEM JP CMC

30 June 2011