VOCAL
Victims Of Crime Assistance League Inc NSW

Committee Secretary
Senate Legal and Constitutional Committees
PO Box 6100
Parliament House
Canberra ACT 2600
Australia
legcon.sen@aph.gov.au

Committee Secretary and others

Re: Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011
The Victims of Crime Assistance League Inc NSW (VOCAL) is both a charity and a non-government agency assisting people whose lives have been adversely affected by threat, violent crime and similar tragedies. Since 2006 we have seen a huge increase in the number of clients seeking help related to complicated Family Law children's matters that involve violence and child abuse. We are in the process of establishing 'VOCAL – Justice for children' to specifically address this category of clients.

VOCAL Inc accepts the ***Family Law Legislation Amendment (Family Violence and Other Measures)Bill 2011 (hereafter 'The Bill') is*** another important, but limited step towards actually creating safety for children and others being harmed by family violence.

While we support all the amendments proposed in The Bill, it has still not gone far enough to facilitate, let alone strongly advocate for all children's safety and right to live free from abuse and harm, or consider their actual needs, has no obligation to actually hear them even when they are mature enough to be heard, and no strategy to easily and quickly review decisions and Orders when such Orders are failing the child's best interest. There is no attitudinal move forward to actually address what the words 'In the best interests of the child' is meant to mean in practice, according to legislation.

VOCAL supports the proposed amendments that:

1. Take children's rights into account.
   But has concerns about how that will be interpreted by all the players, when Independent Children's Representatives already have no obligation to actually meet or talk to a child they are supposed to represent.
2. Give greater emphasis to protecting children from harm.
   But has concerns as to what level of proof will leap over the remnant thinking around the friendly parent provisions, which even if repealed, will have a habit of hanging on – like Parental Alienation Syndrome was 'officially 'discarded years ago, but lurks in the minds and actions of many working in the court and process.
3. Broaden the definitions of abuse and violence.
   But asks what will alter the 'let's move on – the violence was in the past' paradigm that forces a non-abusive, protective parent who has escaped the violence to have a positive relationship

with a perpetrator, by energetically ignoring current abusive/threatening/ controlling and dangerous behavior, and can be punished for not doing it well enough, while the court ignores the perpetrators own behavior and any responsibility for their own behavior?

4. Removes the disincentives for the disclosure of abuse and violence.
   But which makes no allowance for the parlous, uncoordinated state of child protection, criminal law investigations and prosecutions and overcrowded AVO dockets that hardly assist victims to present good evidence of abuse and violence, PARTICULARLY if the child is too young to participate in adversarial justice at the state level. Yet the courts frequently seem to simply disregard what is common knowledge as if the state systemic overloads and inefficiencies are to be borne by the victim/ litigator when they get into the family law system.

Nothing is said on the topic of rehabilitation. Children deserve to be protected from harm, **and helped to rehabilitate from harm** that has already happened to them.

However, rehabilitation is not a priority, rather a child that has been harmed is currently more likely to be prevented from counseling or other support services if the court decided it might harm the relationship with the perpetrator. Many protective mothers have been removed from their child altogether for raising concerns over the child's safety, especially in sexual abuse cases. Children are made to attend counseling to convince them abuse didn't happen, and why they must be happy about losing their mother and living with an abuser. The type of thinking that allows these issues is psychopathic.

How serious is serious harm? The definitions around 'serious harm' are unacceptable and out of step with current research that finds that any abuse and violence, and particularly, but not exclusively, sexual abuse by a parent, which often begins with grooming and progresses to intercourse, has huge potential be extremely damaging, whether or not the child is showing serious signs of damage at this stage. It is time this issue was addressed.

VOCAL asks - What is a protective parent to do if he child discloses sexual abuse? Where are the guidelines? What are the levels of evidence required? And what's a protective parent to do if the child continues to return from access visits complaining of fresh abuse?

From many of the cases we have observed, it seems there is a body of thinking in the Federal Magistrate's and family law arena that either natural fathers do not sexually abuse their own, or that how somehow incest is dysfunction rather than 'real abuse', or more popularly 'all mothers who claim abuse are liars, or mad and must be removed from the child'.

In fact, we understand on extremely good authority that when lecturing about the 2006 changes, Judge Tom Altobelli is reported to have described the Friendly parent provisions as 'this will help catch those lying mothers'.

We have never seen or heard the comment 'Why would **she** give such evidence if it were not true?' Yet substitute the word 'he' for 'she' and we have heard it, from courts, and observed it, frequently.

If the Government believes that at law, women are less reliably honest than men, perhaps it should openly say so?

Surely it ought to be a fundamental priority of the Family Law system to err on the side of caution and make protection from harm the sole primary consideration in determining the best interests of a child. As Maslow so wisely found, safety is the largest, most important base for human need. Without it humans cannot thrive.

Family Law is not just about children, the adults ought also expect their safety to be important. It was, when it was introduced, and remains factually wrong to regard 'Conflict' and 'Entrenched conflict' as the correct lens with which to view a marital break-up where there has been family violence. Using 'Conflict' tends to look at the sadness of the break-up process and the sharing/splitting of assets, rather than the behaviours that made it impossible to stay and which will probably ensure the victim gets less that their entitlement.

Leaving is no less a frightening, controlling, dangerous or open to coercion than the relationship at any other time, and doesn't deserve this downgraded, mutual word, 'conflict', as if it's mutual and not that bad. The courts seem to require evidence of a pattern of violence, yet it only takes one rape, one threat with a weapon, one violent outburst, to create a fear that may never fade. Basically, in 2005 at a forum in the Family Court in Sydney, I heard the admission 'The Family Court is not very good at Domestic Violence.' Viewing subsequent disputes over child safety as 'conflict' or 'entrenched conflict' may often in fact reflect one perpetrator using the law and access to the children to continue to dominate and control the partner who left them. It is not mutual conflict, and it is totally unreasonable to expect a parent with serious safety concerns for a child to happily facilitate the continuation of abuse and violence. Another psychopathic indicator lies behind such proposals.

'Blood Vows' One of my clients recently had her book published, and I am sending the Senate a copy by separate cover. I have also attached a short excerpt from the book that was published in the Australian Women's Weekly April 2011 which I hope the Committee will read. The author was a survivor of domestic violence who escaped, and writes about how, under our present laws, she would not have been able to leave the area and would have had to have shared parenting because of the lack of evidence for her.

Her ex, the well-loved local doctor, went on to murder his next wife and their child, something that has severely affected many of the survivors, including his children from the first marriage.

The author then worked in the Family Law and Federal Magistrates courts for more than 20 years. At the launch of the book, the current Minister for Women, The Hon Tanya Plybersek said 'this book should be read by every police officer, every judge and magistrate.

Certainly it should be read by the Senate Committee considering changes to the Family Law on the very topic on which she writes

VOCAL wishes to express our frustration that Domestic Violence, now termed Family Violence, has been on the political agenda for more than forty odd years and is still being defined. The actual word 'violence' is grabbed by those who see only any actual violence as being of any possible issue at all. Some of the groups who oppose the changes have been vociferous in the media with their objections to behaviours that seem perfectly normal to them, being included, but the victims are relieved.

Any victim of brainwashing , humiliation and terrorism (even if the terrorist lives with them and sometimes loves them) will tell you that the emotional abuse, degradation and humiliation, restriction

of rights, movements, freedoms and finances are often worse than 'actual violence' in terms of its destructive impact on them. Rather than be confused by why victims stay, the Committee really needs to grasp why perpetrators abuse. What the Committee also needs to grasp is that any attacks or abuse of the parent affects the children, just as directly as if they themselves were the direct victim. They often are, but live in fear that they will be next. Unfortunately separation and afterward is not sufficient reason for many perpetrators to change their behaviours.
Some submitters threaten more children will die, or that more men will suicide if the changes are wound back. We must not focus only on those terrible cases where a child dies now, but also on the damage and foreseeable impact on the children's futures – mentally, physically, educationally, and consider the high rates of youth suicide we are already seeing. We have several cases where the children are self-harming, some threatened suicide, because they are being forced to live with abusers, and the media has been full of the decisions showing some court decisions seem to be unreasonable – eg you can live with your sex-offender father, little girls, and you can lock the door. This must stop.

It is endlessly frustrating to make earnest submissions to various enquiries, to see excellent research recommendations ignored, and good amendments get watered down. Society, including the courts all must play their part in addressing the violence and holding perpetrators accountable.

Many further amendments to the Family Law system will be required before it is able to best protect vulnerable family members. In fact, the whole system really needs a colossal, wholesale review to see where the law and practice are not meshing, what resources are being wasted, what exploitation and possible corruption is occurring, what results in justice and safety for families and what does not. I note the Chief Justice has expressed concerns about the implementation of the changes from a resource perspective. I think this backs up my claim and can leave no one in any doubt that for an ordinary citizen to be able to make their way through such a system, is quite possibly unnecessarily expensive and complicated, and unlikely to get justice. It's just not right.

There is a wealth of material available to identify the types of people most likely to litigate vigorously in Family Law, and unfortunately abusive, violent, controlling, coercive, dominating, narcissistic people score highly here.

We offer comment in our attached submission for recommended further changes to Family Law legislation. We have no fault divorce. Now we want safety, clarity, transparency and value for money in Family Law. Of course transparency will never be achieved while the secrecy provisions of Section 121a remains to protect those involved.

Yours sincerely

Robyn Cotterell-Jones
Robyn Cotterell-Jones
Executive Director

phone:

1. Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011

1. PRIORITISING THE SAFETY OF CHILDREN
1.1 Convention on the Rights of the Child

Section 60B(4) of the Family Law Legislation Amendment (Family Violence and Other Measures) Bill ('the Bill') would include the International Convention on the Rights of the Child as an additional object and principle in children's matters under Part VII of the Family Law Act. The effect is that decision makers, including family courts, must take account of the Convention of the Rights of the Child when dealing with matters in relation to children.

VOCAL supports this inclusion.

1.2 Prioritising safety in the two primary considerations

Without safety, there can be no real belief in providing for the child's best interests. It is the Government's responsibility to keep us safe from harm**. It must be the priority , the primary consideration, mentioned first, a) so reverse the order.**

VOCAL suggests that: The word 'positive' ought to be inserted before the words 'meaningful relationship'. A relationship with the family rapist, basher or drug addict will definitely be meaningful, but hardly positive.

Section 60 CC (2A) proposes a change so that where there is an inconsistency between applying the two provisions, greater weight is to be given to consideration (b).
VOCAL has suggested reversing the order,
By reversing the order, a) would be the one given greater weight.
There must be very serious consideration of the new b) if a) applied.

So, logically, if children are deemed to be in need of protection from harm, then a proper investigation, with reviewable outcomes must be undertaken before access is organized. Prioritising children's welfare and safety might mean some delay in access for the parent where there are safety concerns, but ought to better protect children from foreseeable harm. According to Articles 9.4, 19.1 and 39 of the *Convention on the Rights of the Child t*he onus then is on the abusive parent to demonstrate that circumstances have changed and abuse will no longer occur, before any contact is allowed.

NB: What then needs to happen is a process of review where a case where Orders are not being followed to the child's best interests, can be addressed.

Example.
In one case one parent frequently breaches Orders over return dates, notification of changes, refuses agreed contact during access, behaves aggressively to the child. Federal police, DoCS, private counselor and lawyer have all identified & reported child abuse, and instructed the other parent to stop access.

However, nobody actually DOES anything. For the mother to stop access would be in breach of Orders, putting that parent at risk of contravention. The system needs to alter so that reasonable compliance and child safety issues can be addressed without needing to go back to court.

Example.
There also needs to be a confidentiality obligation where there has been past abuse and violence, so that a child can report what has occurred without fear that the offender will find out, bringing further abuse, violence and threat onto them for 'telling'. Currently children are being threatened for disclosing. So they are scared to disclose and assume no one cares. This is not in the child's best interest and destroys faith in adults and the system.

1.3 Strengthening Adviser Obligations
Section 60 D introduces new obligations on advisers to encourage parents to consider the child's best interest as the paramount consideration. They would also require parents to prioritise protecting the child from harm where family violence and abuse are concerns

VOCAL agrees adviser obligations should require them to prioritise the safety of children from violence and abuse. It is interesting to see the Chief Justice is reluctant to use community agencies, despite their expertise and experience. I also note that dedicated women's services are frequently regarded as biased and therefore of little value to the family courts and FM courts, because they do not have first hand knowledge of the alleged perpetrator. I note that in this way, evidence that ought to support a victim and her children will be discounted. Since the provision of services is usually Government funded, and often all a victim can access or afford, this is unfair and is unreasonable.

2. REDEFINING FAMILY VIOLENCE
Section 4AB of the Bill proposes a new definition of 'family violence', including an over arching statement that defines it as "Violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the family member) or causes the family member to be fearful", followed by a broadened list of the types of behaviour that constitute family violence. The proposed definition recognises that family violence can take the form of physical assault, harassment, emotional manipulation, financial abuse and threatening behaviour.

VOCAL is glad there are to be expanded and stronger definition of family violence,
including the over arching statement that encompasses coercion and control. However It doesn't quite capture the scenario where a pregnant woman is targeted for violence, the belly the site of attack, or where a young baby or child becomes the actual weapon of choice unless she leaves immediately and has evidence. The act, once done, will remain key to her understanding what the perpetrator is capable of. It is also extremely unusual for a woman to either recognize what she has just endured as 'violence' or to leave a relationship at the first issue.

Once a person has placed the child at risk as described, it doesn't take much at all to keep the adult victim 'under control', obedient. We are concerned that there is no special provision for the child-bearing and nurturing roles of mums. Interfering with that bond is a frequently found issue in Family Violence, but may not be seen to create 'fear', as much as despair and a sense of failing. It is common for victims to NOT recognize themselves as victims, when they are. It needs special mention. Then perhaps judges will stop ordering mothers to express milk on demand for tiny babies who have to spend time with the narcissistic abuser, and instead let them establish proper feeding routines which are so important to the baby's thriving.

We, on the other hand, have no fears that as the Men's righters have claimed, a few nasty words or the normal argy-bargy of relationship disagreements, will mean they lose their children. Every single one of my female clients would be grateful to share parenting with the father, provided it was safe for the child. Family Violence is hardly going to be found because someone felt coerced because they were nagged into mowing the lawn as one pundit claimed.

We are also concerned that any minimal act of aggression or self-defence, ever, from a victim can then be used to claim 'mutual conflict' as so often happens now – with the parties being just as bad as each other. That is not generally the way Family Violence operates.

VOCAL considers the removal of the 'reasonable fear' is likewise a positive change because what may be acceptable as reasonable to a person, professional, judge or magistrate as creating fear, on the evidence available , will not, and cannot incorporate all that frightens a victim. Much of it is not tangible, easily described. It is often the cumulative effect of many threats, actual violence, etc and issues, generally over time. A knowing of what someone is actually capable of, from experience, a knowing what they are really like when not 'on show', a knowing about their reliability and responsibility in practice, understanding the other's capacity for dishonesty, manipulation (let alone criminal contacts, behaviours or associates and other presenting issues, all feed into that intangible fear. And it is entirely foreseeable that some of the behaviours are still continuing and the children are suffering because of them.

We strongly support the inclusion in this Bill of an explicit statement that the definition of family violence is not limited to the behaviours listed. This recognises that family violence may take other forms and cannot be limited to specific examples. Assessors must look for a pattern of behavior, over time and not only, as the criminal legal system does, look only at one discrete specific criminal act in isolation, and then give rights to the accused that the victim does not get, like a lawyer.

3. IDENTIFYING ABUSE OF A CHILD

Section 4 (1) of the Bill proposes a new definition of 'abuse' in relation to a child for the purposes of the Act. It expands the existing definition to include the forms of abuse recognised in State and Territory laws such as physical abuse or non accidental physical injury, sexual abuse and exploitation, psychological abuse (including where this is caused by exposure to family violence) and neglect.

VOCAL supports expanding the existing definition to include the forms of abuse. This definition will enable the Family Court to be more consistent in cases of abuse and will also assist in facilitating better communication between the Family Court and State and Territory child welfare authorities, delivering better outcomes for children. We caution however that investigations of matters reported to state authorities often only infrequently result in investigations and findings, especially if a child is young or is considered 'not at risk' because they live with another family member to the alleged perpetrator. Resourcing difficulties MUST not be used as a reason to discount abuse disclosed, and then to punish the parent who passed on the disclosure.

VOCAL is concerned that examples of what constitutes "exposure to family violence" in s4AB(4) is limited narrowly to specific incidents or events of physical violence (or threats of physical violence) inflicted on a family member. This definition of exposure to family violence fails to recognise the broader impact on children just from living in a family environment where their

parent is the victim of family violence. Think about what it is like for the child who sees his parent bleeding and broken, or the states they may pass through as they try to heal. When that parent cannot protect themselves, the child, being at an egocentric stage of life, will see themselves as either the cause, or the protector, but worry about who is going to be protecting them if the victim has no power to stand between them and the tyrant? Where there is a family tyrant, or where that parent alternates between good and bad behavior towards a child or others in the house, perhaps related to substance abuse, or even where there is a high level of conflict between parents, the stress levels of all concerned must be expected to be significant. Stress is a predictor of all sorts of consequential mental health and societal issues. Imagine being a child, sitting in class, wondering whether mum will be alive when you get home?

We suggest that the definition of "exposure" to family violence include a specific reference to all the forms of family violence as defined in proposed ss.4AB(1) and (2).

VOCAL has noted many cases where the state authority has intervened to threaten to take children from a home unless the parent leaves the perpetrator. We say that the definition of 'exposure to abuse' be clarified to ensure that responsibility for this exposure lies with the perpetrator of the abuse and not that the victim of violence and abuse is considered responsible for not protecting children from exposure to this violence. All too often the perpetrator's part disappears, blaming the victim.

Victims of violence must not be held responsible for not being able to remove children from the violence. That is one of the many ways where the focus slips off the perpetrator onto the 'not good enough mother'.

4. REMOVING DISINCENTIVES TO DISCLOSING VIOLENCE

4.1 Disclosure of violence or abuse does not automatically make a parent 'unfriendly'

Section 60 CC (3) (c) of the Bill would remove the 'friendly parent' provisions of the Family Law Act, that require the court to consider the willingness and ability of the child's parents to facilitate a relationship with the other parent, and the extent to which they have done this. In contrast with the Exposure Draft, the Bill retains the provisions that require the court to consider each parent's participation in decision-making about the child, spending time with and communicating with the child, and maintaining of the child.

VOCAL absolutely supports the removal of this provision as it relates to family violence.

In several cases, a parent has been admonished and punished for not well-enough facilitating a relationship with their abuser, who is abusing a child. This is a disgraceful misuse of the intentions of this provision. The children do not want to go to be abused! They have voices, they have rights.

The abusive parent has to learn to behave in ways that facilitate a relationship with their child, the other parent should never be held accountable for failing to encourage a relationship that would be harmful to a child. The parent's first responsibility is to the child, not to make things easier for the offending parent.

When the court supports the offender, they are not putting the child's best interests first. They are encouraging the dominance and ongoing control of the perpetrator.

Lawyers have cautioned legitimate families affected by violence and abuse from reporting. Many lawyers have point-blank refused to complete the required Form 4, and several clients where violence was the reason for separation had never heard of it well into their court case.

Yet trying to lodge the required form after the case has begun is treated with the utmost suspicion against the validity of claims of violence and abuse. It's just 'Not form!'

The friendly parent provision has also been manipulated and misused by controlling abusers yet their behaviours have been seen by courts to have been 'friendly parenting' when it has been anything but.

We are concerned that these provisions could also be used against a mother in a case involving family violence, where the mother limits the other parent's participation to protect the child and the proposed provisions are used to bring in arguments about failure to facilitate a relationship, despite consideration of facilitation having been removed from the Act. There is no 'quick way' to resolve a presenting issue once orders have been made. She either contravenes, or sends the child against her, and the child's best interest, if safety is the primary concern.

4.2 Cost orders

Section 117AB of the Family Violence Bill would remove the mandatory cost order provision in section 117AB of the Family Law Act.

VOCAL supports the removal of the mandatory cost order provision in the Family Law Act and has seen it misused. Even when a later court process shows that the fined party was in fact the one telling the truth at the time they were fined and put on a Good behaviour Bond, there is no decision to overturn the earlier finding, or apply perjury charges.

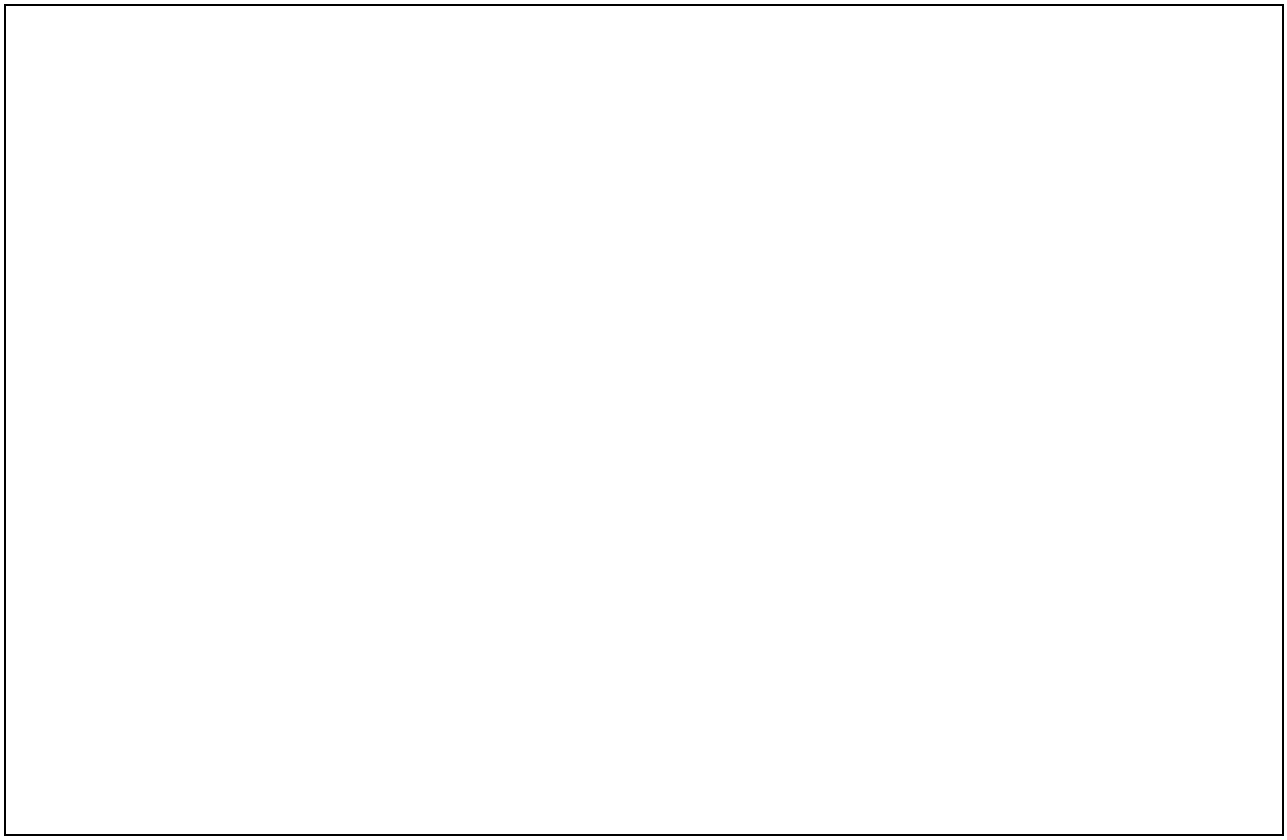
Example
In another case the wife had been granted Victims Compensation for spousal sexual assault. This is NOT an easy claim to successfully make. The judge decided that she didn't believe her evidence, called it False Allegation and fined her the exact same amount she had won in Victim's Compensation.

There are already sufficient provisions in the Family Law Act (s.117) to order costs.
In a climate where allegations of reporting family violence is discouraged and disbelieved, the media abounds with claims that false accusations are frequently made. Research shows that false allegations are no more likely in Family Law matters than in other cases. Rather, what victims eventually discover falls within the behaviours of family violence and abuse, the detractors do not agree with those definitions.

Example
Well yes, he did strangle /push/ force himself onto me ….etc and I was very frightened.
But he didn't actually hit me. I didn't realize that was what they meant by 'Domestic Violence'.

Note: It is common for church-based support to encourage the victim to stay with their abuser, and just 'love them more'.

VOCAL hasn't yet seen one case where a person has had a cost order against them for False Denials. Deliberately lying about something they have done. Why is that? Why is perjury unimportant?



4.3 Courts must ask about family violence and abuse
Section 69 ZQ proposes that courts which are dealing with applications for parenting orders should inquire about past or future risk or previous experience of the children concerned in relation to child abuse and family violence.

VOCAL supports this amendment, provided that clear structure is applied to the asking of the questions as many victims do not recognize violence for what it is while undergoing it, or until they learn what happened to them falls into the Family Violence category, and many practitioners appear to have little real understanding of the complexities or difficulties in explaining that arise, especially where trauma is still having an impact on memory and stress levels. Some victims do not know how to tell their story concisely, and may not be ready to disclose for many reasons – shame, thinking they'll be blamed, been threatened or warned not to, confused, traumatized, cultural reasons.

In any arena where an active role in drawing out family violence and abuse is to occur, screening and risk assessment procedures must be standardized, with room for one-off issues.

We have already seen many example of where 'professionals' by way of qualifications, seem to have little understanding of or empathy for those who are affected by family violence.

There needs to be an accountability process where, if an unfair or biased report is completed at any stage, there is a process of review. We'd go as far as to say all matters involving family violence with professional assessment should be video taped for preference, or audio taped. They are areas of great concern.

Too many clients report similar things – being reported as saying things they did not say, children's disclosures being excluded, or manipulated. Biased and pejorative reporting. Diagnosing and blaming mother as having mental illness, not recognizing the genuine trauma of abuse.

Personnel undertaking this role must have comprehensive training and experience in the areas of family violence and abuse. Risk should be assessed on the basis of these screenings as well as the disclosed experiences of the parties involved. Victims must not ne 'diagnosed' as a result of inadequate assessment that is out-of-line with diagnostic procedures under the DSM. And there needs to be a complaint mechanism that is effective, not only the right to cross-examine a report writer which disadvantages the victim-litigant.

5. BRINGING EVIDENCE OF VIOLENCE AND ABUSE TO COURT

5.1 Requiring parties to disclose family violence

Section 67ZBA of the Family Violence Bill would require parties to proceedings who allege family violence to file a Notice of Child Abuse or Family Violence with the court. Once reporting occurs, the court would be required to act promptly to ensure that the issues are dealt with expeditiously.

VOCAL supports this amendment. Not only do we say that the inclusion of the requirement that legal practitioners file a *Notice of Child Abuse or Family Violence* with the court when they are aware of Family Violence is important, we go on to say that such a form may be presented at any time. Currently, unless a person lodges the form early in the process, the tendency is to regard a later lodgment as suspicious.

Court staff need to be trained in Family Violence screening and risk assessment procedures, inform parties of the requirement to report, and even assist in writing and filing the notification, if required.

5.2 Requiring parties to disclose involvement of child welfare authorities

Sections 60CH and 60CI propose new provisions that would impose obligations on parties to advise the court of any care order under a child welfare law, and/or if the child is or has been the subject of a notification to or investigation by a child welfare authority.
The provisions would allow other people to tell the court that same information.

VOCAL agrees. The court needs to be advised of the history and present circumstances of a child welfare matter, and considered among 'best interests' decisions, but factors that may have been detrimental may have been resolved with the passage of time, or may be indicative behaviours and issues relevant now. Care must be taken to distinguish between the tendency to blame a protective person who is unable to separate the child from the perpetrator, rather than correctly focus on the perpetrator of that violence. Child welfare authorities must be required to cooperate with the Court by making available files and orders.

Children's representatives also need to be obligated to give information to the Family Court and where violence and/or child safety and wellbeing issues are raised, the matter needs to be referred to an

appropriate agency for investigation and risk assessment be undertaken. It is time child protection agencies worked with the courts as indicated in The C*onvention on the Rights of the Child*.

6. IMMUNITY FROM COSTS ORDERS FOR STATE AND TERRITORY CHILD WELFARE AUTHORITIES

Section 91B would amend section 117 of the Family Law Act to provide immunity from cost orders to child welfare authorities and officers of the State, Territory or Commonwealth who intervene to become a party to proceedings under the Family Law Act at the request of the court where the officers act in good faith in relation to the proceedings.

VOCAL endorses this amendment in the interests of better cooperation, and note having two separate and often different foci on child protection can work against the actual safety and protection of children. Inconsistency serves no one.

VOCAL's additional recommendations.

The community is confused about what shared parenting and equal responsibilities really means.

Where shared parenting is done cooperatively, while the children may feel like they have no real home (rather than two places where they spend time), provided their parents can be equitable and fair, respecting all concerned, the shared parenting model is effective to a high degree. It is extremely unlikely that a fixed, rigid plan will ever work long term in the best interests of the children, who, by their very nature live in a world of rapid change and competing interests. Each child will have competing needs and obligations from the others and sharing parents can accommodate, adjust and negotiate. If they can't, the child will suffer.

However, when one member of the broken family is the controlling, coercive type who uses violence, abuse or deprivation etc to foster their needs over all competing interests, they are more likely to engage in a parenting style that serves themselves, first and last. The needs and wishes of their children will only be met if it suits them. There is likely to be a high level of conflict generated by their inflexible attitudes, and they are less likely to follow court orders as to access and contact and see refusing to cooperate with the other parent as a way to continue exert power, via the children.

At VOCAL we frequently hear variants of this theme, including:

- children spending significant amounts of time with an abusive and/or neglectful parent;
- mothers losing primary care of their child and almost all access because they have believed a child's disclose of abuse, especially sexual abuse;

- Children being removed at the court on the recommendation of a Family Report Writer without due process
- Children with disabilities like Autism who require stable environments, and children of any age having to spend equal time with parents who live hundreds of kilometers apart and can't manage the disability.
- Disregard for attachment theory which identifies the potential life-long relationship issues for a child deprived of the opportunity to attach to a primary carer.
- Disrespect for the mother's role, which is unique and different from a father's role, especially in the early years.

These issues are all arising from decisions of the courts.

7. Equal Shared Parental Responsibility

In determining this provision, it appears that little care is actually taken to define what responsible parenting means. While one parent sees nothing wrong with feeding a child junk food as a main diet, sees sunburn as a natural consequence of being Australian, and doesn't bother with seat belts for a child in a speeding, unregistered car, or being, or being with an unlicenced driver who drinks and drugs a lot, and the other parent doesn't, the courts make it very difficult to bring safety certainty into the child's life, which is required before 'best interests' can be properly identified. In assessing whether a parent is qualified and capable of raising the child, where they are entitled to be given equal right to have input into important issues, where Family Violence has also been a feature, perhaps issues relating to actual, past parenting involvement might be a useful guide to deciding 'the best interests for children'.

The presumption of equal shared parental responsibility is meant to be rebuttable in situations of family violence but the court seems reluctant to apply this presumption in the assuming that under direction, both parties can negotiate and decide in the best interest of the child. As in the case above, once shared parenting is applied, it seems actual behavior of one party often fails to be sufficient to get change, or call to heel, an aberrant parent. The best interests of the child is impossible.

This must never be interpreted as 'well, unless both agree, the child just has to put up with what stands'.

VOCAL recommends that the presumption of **equal** shared parental responsibility provisions be removed from the *Family Law Act*. Perhaps Responsible Parenting needs to be the basis of any change and an intermediary step, short of court be used to determine issues of concern where no agreement can be reached after shared parenting orders have been made. Outcome of this mediation step would be either agreement, or back to court because shared parenting cannot work unless both parents want it to.

8. Equal Time or Substantial and Significant Time

Also an area of confusion and expectation, this provision is frequently used to assess time spent, with anything less than 'equal time' been seen as 'losing'.

This is definitely, in many cases, related to minimizing, or maximizing, Child Support payments, rather than a genuine and committed desire to share parenting. We have several cases where once the mother agreed to waive Child Support, or return the money to the father, litigation ended where previously the case had been one of entrenched conflict.

VOCAL again suggests the word 'equal' be removed and provisions around equal time and substantial and significant time be repealed.

We say each child's needs and circumstances must be taken into account, rather than the Solomon-type decision, which all too often places he child's well-being and real best interests in jeopardy.

9 . Shared Care

VOCAL deplores the practice of ignoring every child's need for certainty, consistency, stability, the long-term importance of having continuing friendships, their special characteristics, skills and interests, or even their disability that seems to frequently be lost in the tussle for equal shared care in courts.

Family separation is a fraught time for children with many disruptions. Changing schools or moving house may be unavoidable. However, in court outcomes where there has been family violence, there is often little attempt to reflect or reconcile the established levels of responsibility or practical child care patterns for each child before determining cases. Where the children's needs and wishes are important to each parent, shared parenting can work. All too often though, decisions are made to placate the perpetrating parent, believing their 'gunna' promises and manipulations, often then placing children who have witnessed family violence or been directly affected by it, into the inescapable care, irrespective of safety considerations, with a parent who may be dangerous mentally, physically, sexually etc.

The courts and their processes are also not so good at picking sociopaths, psychopaths or narcissists and frequently fall for their charming, lying poison and place children in jeopardy.

Sadly, research has shown that ping-pong children find it workable and the best solution in only a minority of children, and those have very specific, favourable, conditions. (McIntosh et al, 2010, pp.12-13] and stability is even more crucial for very young children.

Living between two houses has been shown to be generally less stable and more upsetting for many children and at best is often short lived. We at VOCAL are concerned that the 'right' to spend equal time with both parents often disregards the child's clear benefits of having a primary residence and continuity of care. Article 9.1 of the *Convention on the Rights of the Child* supports this child's right to a stable and permanent residence where possible.

VOCAL recommends the safety of children become the primary consideration, that the best interest of children will set out the child's need to have a primary home, and aptitude and responsibility the parents. Where there has been coercive controlling violence, training must ensure that assessors and decision makers factor in the likelihood of the parents being able to safely and productively negotiate for the child's best interest, without endangering themselves. The children's right to have a continuing relationship with both parents is to be encouraged, if it is safe, but does not need to equate to 'equal or substantial time' where there are health, development, psychological or safety risks.

10.Risk assessment

VOCAL is concerned that there is no provision for the implementation of a well-resourced, comprehensive risk assessment strategy and points out that changes to the law will not work without the resources to manage them. Any strategy must not work independently of State governments and agencies as that is extremely problematic for victims caught in Family Law violence issues when there are significant inconsistencies between state and federal processes.

11. Current training on family violence and child abuse

VOCAL seeks mandated, comprehensive and regular update training from competent trainers for judicial officers, family consultants, family dispute resolution practitioners, Family Report Writers, all advisors in the family law system (including lawyers) and all staff on the complex dynamics of family violence, including the techniques and strategies of batterers using the court process to continue to control and coerce after the relationship is ended.

It is clear to VOCAL that many people involved in family matters remain uncommitted to recognizing and/or ending violence, especially against women and children in our communities and engage in practices and decision making that aid perpetrators of family violence. Qualifications in any profession does not, of itself, ensure knowledge is up-to-date, or that decision making is unbiased.

If structures cannot be put in place to assure quality, transparency, accuracy, absence of bias and due diligence, then complaints about any of these aspects must, at the very least, indicate a training and or attitude adjustment is required. Perhaps a reassessment of a person's capabilities might lead to some persons being regarded as unsuitable for working in the Family Law area. But we have no such holistic view or strategy exists and identifiable, toxic rot sits in many different pockets.

12. Views and wishes of Children

It is very common for children of even the worst parents to want to have a relationship with each parent. They do not want to be unfair, or to disappoint or anger their parent, even if living with one of the parents is the far better choice for themselves.

VOCAL suggests that a viable modern society must listen, with educated ears, to the voices of its children, particularly in Family Law matters where the whole of their lives are directly affected, and particularly where safety concerns have been raised. By 'educated' we mean educated to work from,

and in, child-focused, age appropriate ways, without bias to any ideology – be it shared parenting, religious or cultural or other community lobby group.

Children in wider society are encouraged to know their rights and to speak, yet children in family law matters are essentially excluded from being able to speak for themselves about matters of concern. In a recent DoCS case, Docs decided a ten, and an eight year old were each old enough to say where they wanted to live – to remain in care or to return to their mother.
Why must kids caught under Family Law be refused the same right, sometimes even aged 16?

The exclusion of children from difficult family violence matters frequently also has the direct effect of removing the only other witnesses to behavior by a family violence perpetrator, behavior that often endangers and affects the child and its right to be safe.

Sometimes a child will run away from home. If the child runs to the other parent, that parent can find themselves caught in the dilemma of protecting the child from harm and providing refuge, but then being open to police action and a fresh application to the Family Court where they will be seen to have facilitated the running away. If courts were to consider safety as a primary concern, they would hear the child and consider whether changes need to be made to parenting orders.

VOCAL suggests there also needs to be clear age by which children can choose the parent they wish to live with and time spent with the other. The Government must look at the rates of homelessness for youth affected by family violence. This is supported by Articles 9.2 and 12 of the *Convention on the Rights of the Child*.

We hope the Senate takes this opportunity very seriously and is not swayed by the submissions of others who predict an increase in deaths of children, threaten more violence as inevitable, that it teases out the deliberate misuse of statistics, and balances the dire predictions should single mothers be left with their children with the known impact on children who are abused by angry, addicted or otherwise unsafe parents.