Sole Parents' UNION

Committee Secretary
Standing Committee on Legal and Constitutional Affairs
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Family Law Legislation Amendment
(Family Violence and other measures) Bill 2011

Sole Parents' Union welcomes the opportunity to respond to the *Family Law Legislation Amendment (Family Violence and other measures) Bill 2011* (the Bill). We are however dismayed at the continuing deferral of this matter, and any changes to the *Family Law Act 1975 (Cth)* (Family Law Act) which will improve safety for women and children and put children's best interests back at the centre of family law matters.

This submission should be read in conjunction with our previous submissions on this matter (attached).

We would reiterate that Sole Parents' Union fully supports the concept of shared parental responsibility. We strongly believe that both parents have a continuing responsibility to support their children in the best way they can. The specific form that care takes, however, should be decided by parents. The Family Law Act should not prioritise any one form of parenting arrangement over another.

On the contrary, the best interests of the child should always be the paramount consideration in deciding children's matters. This would preclude a preference for any one type of care over another, as each family and each circumstance in the court is individual and must be considered as such. There should be NO presumptions in family law.

Regrettably, the Family Law Act does not ensure that children's best interests are paramount. Repeated evaluations have shown that women and children are put at risk by ongoing reforms which shift emphasis from children's best interests towards parental rights (see Reg Graycar, Helen Rhoades & Margaret Harrison, *The Family Law Reform Act: The First Three Years*, Final Report, The University of Sydney and the Family Court of

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Australia, (December 2000); Professor Richard Chisholm *Family Courts Violence Review* (2009); Australian Institute of Family Studies *Evaluation of the 2006 family law reforms* (2009); Australian and NSW Law Reform Commissions Report 114 *Family Violence – A National Legal Response* (2010); Dr Lesley Laing, Faculty of Education and Social Work, University of Sydney *No way to live: Women's experiences of negotiating the family law system in the context of domestic violence* (2010), inter alia).

Sole Parents' Union supports the proposals in the Bill as an initial step to improving children's and women's safety, particularly:

- Broadening the definition of family violence
- Including children's exposure to violence and abuse in the definition
- Removing the objective test of "reasonableness"
- Including reference to the International Convention on the Rights of the Child
- Removing the "friendly parent" provision
- Repealing Section 117AB
- Removing the provision for the Family Court to consider only final or contested family violence orders,
- Requirement for the court to consider family violence orders that apply to the child or a member of the child's family

Evidence shows that there is no truth to the rumour that women always or often make-up allegations of violence in order to obtain an advantage in court. On the contrary, this widespread but false belief results in women not making allegations even where there are serious concerns about their own or their children's safety. (See Michael Flood "*Fathers' Rights" and the Defense of Paternal Authority in Australia* published in *Violence Against Women* Sage Publishing (2010)

> "My solicitor told me not to say that he was violent because then I'd sound as if I was just trying to stop him having access. Now my kids scream every time they have to go with their father, and they're starting to hate me for it because I can't protect them."

Sole Parents' Union remains concerned about Section 60CC(2) and its implications in practice.

The primary considerations are:

(a) The benefit to the child of having a meaningful relationship with both of the child's parents; and

(b) The need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence

These two considerations are inconsistent with each other. Even preferencing (b) over (a) is not sufficient to make children's best interests paramount.

There is no definition of what constitutes a "meaningful" relationship, and therefore any relationship is considered advantageous. A child's right to a relationship with both parents is often confused with the parent's right to a relationship with the child. Therefore

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the child's "right" in effect becomes their responsibility. They do not have a right to refuse.

The wording of the Family Law Act reinforces parents' rights over that of children through emphasis on provisions such as *"a child is to spend time with a person"*. The requirement should be reversed, with orders that a parent or other person is to spend time with the child, and giving the child the right to refuse contact.

> "After years of fighting for it, my son finally got awarded victim's compensation for the violence by [ex-partner]. But that doesn't make up for the years he had to put up with it, or that nobody believed us about what was happening for years."

In addition, psychological harm is extremely difficult to prove, and the abuse must be endured for years before this can be shown. Preventing the exposure would be a much better option, yet the Family Court still awards custody or access to violent parents on the grounds they haven't been directly violent towards the child/ren.

Recommendations:
Amend Section 60CC(2) to read *The primary consideration is the best interests of the child.*
Remove Section 60D(1)(b) and all other similar sections

Sole Parents' Union would recommend the removal of any reference to 'parenting time', equal or substantial time with children, or any method of care as a preferred option. The focus on time ignores all other options for quality parenting after separation, and assumes that when the child is not in the parent's direct care they are not still a parent.

The emphasis on time creates difficulties for those parents who live hundreds of kilometres apart. More importantly – it creates difficulties for the children who are forced to spend many hours travelling and cannot maintain their social support networks, sports or other activities, and whose school work often suffers.

It can also result in increased 'trade-offs' being made by mothers who are threatened with custody cases if they don't 'play ball' on property settlements or access arrangements, even where violence has not been a factor in the relationship.

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> "I agreed to everything he wanted because if I didn't he said he'd go for custody and that he'd get it because that's what the Court said. He didn't even want the kids, he just didn't want to lose any of "his" money."

Recommendation: Remove Section 61DA and all references to equal or substantial time; and to any parenting option as the preferred model.

In consultations, Sole Parents' Union has heard many stories of women's experiences of family violence and the difficulties in escaping the violence. This is particularly true for women in rural and regional areas where maintaining tight family and community networks means that they are continually exposed to the perpetrator, or where they can be prevented from moving closer to family networks because of distances involved.

Sole Parents' Union is pleased at the number of enquiries which have the objective of amending commonwealth laws to improve safety for women and children. However changes to other laws will not succeed until such time as the problem is fixed at its source – the Family Law Act.

Sole Parents' Union would welcome the opportunity to discuss the issues raised in this submission in person, or take advantage of any other consultation opportunity available.

Yours faithfully,

Kathleen Swinbourne
Chair

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