

*Mummy and Daddy taught me to share,  
now it's their turn to share  
their time with me!*

Equal parenting time works for children when parents are fair with each other.  
**Children need both parents.**  
Contact: 07 3805 5611 [www.mensrights.com.au](http://www.mensrights.com.au)

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I never thought my Mum would ever hurt me!*

**More children are killed/abused by their mother than by their biological father**  
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*It's amazing what my wife can do with a frying pan.*

**Up to 40% of domestic violence victims are men.  
Why do Australian Governments' ignore them?**  
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A response to  
the Government's  
introduction of the

## Family Law Amendment (Family Violence) Bill

Under protest due to lack of  
consultation with all  
stakeholders.

Serious signs of  
bias against men/fathers

Limited time to respond over  
Christmas period

Men's Rights Agency  
January 2011



Family Law | Pre Mediation Advice | Child Support  
Domestic Violence | False Allegations | Discrimination

P.O. Box 28, Waterford, Q 4133 Australia  
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Community  
Service Awards  
2001, 2002,  
2003, 2005,  
2006 & 2007

January, 2011  
Extension of time given  
due to storm, hail and flood damage,  
and telephone and power malfunctions:  
Telephone call to ascertain extension made 17/1/2011

[caitlin.roy@ag.gov.au](mailto:caitlin.roy@ag.gov.au)

By Fax: 02 6141 3248

Attorney General  
Robert McClelland

Sir,

We are responding to your suggested amendments to the family law act under extreme protest. In fact, we would prefer to boycott the whole process because our community well understands the uselessness of responding to government inquiries, when there is a strong suspicion the government has already predetermined the outcome. However, we are placed in the position of having to respond or be accused of failing to do so when the limited opportunity was provided.

**While there is a need to protect women and children from abuse there is also a need to recognise men and children need protection from women who are abusive and violent.**

**There is also a need to recognise the 2006 changes were initiated because too many children were being denied an opportunity to develop a relationship with their father.**

The proposed amendments detailed in the Family Law Amendment (Family Violence) Bill are in response to complaints from minority, but vocal groups<sup>1</sup>, who claim to represent the interests of single/separated mothers and their children in alleging the Family/ Federal

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<sup>1</sup> National Council to Reduce Violence against Women and their Children, Sole Parents Union, National Council of Single Mothers and their Children, Safer Family Law for Children and the National Council for Children Post Separation.

Magistrates Courts are giving violent fathers contact to their children and that mothers have been or are being further subjected to domestic violence.

There is a growing awareness, particularly among fair-minded Australians that much of the hyperbole surrounding claims of rampant domestic violence and child abuse is overstated and the problem exists only in a small segment of the community, but the 'radical position' taken by those opposing the introduction of the 2006 family law amendments claim "this is the lot of most women and children, particularly in the aftermath of separation and divorce."<sup>2</sup>

Barrister, mediator and author Michael Green rejected "the radical position" and believes "feminism has done a disservice to women. It has sought to portray them as poor, suffering creatures that need protection from men and from paternalistic institutions. They are unable to speak confidently for themselves, to make their own choices, and are easily led into negotiations where their will and interests are overborne. Such thinking is a grave insult to the majority of women."<sup>3</sup>

British sociologist Dr Catherine Hakim had previously suggested that "we must stop presenting women as 'victims', or as "an undifferentiated mass of mindless zombies whose every move is determined by other actors and social forces...Women are responsible adults, who make real choices and are the authors and agents of their own lives."<sup>4</sup>

A well orchestrated campaign has been used to make the claim children are at risk from violent fathers and their mothers are subjected to domestic violence. The sad death of Darcy Freeman, allegedly at the hands of her father, gave added focus to the claim and scared a number of politicians that perhaps the shared parental responsibility changes in 2006 had taken a step too far. But most politicians are unaware that less than twelve months prior Gabriella Garcia jumped off the same Westgate Bridge with her 22 month old son strapped to her chest, having made the claim she was afraid the Family Court might give custody of her son to the father. The tragic irony is that the father had made no applications to the court and had no intention of seeking custody. This tragedy did not

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<sup>2</sup> Green M., February 2005 Submission to the Senate Inquiry into the provisions of the Family Law Amendment (Shared Parental Responsibility) Bill 2005; also published 3 February 2006, On Line Opinion <http://www.onlineopinion.com.au/view.asp?article=4126>

<sup>3</sup> Green M., February 2005 Submission to the Senate Inquiry into the provisions of the Family Law Amendment (Shared Parental Responsibility) Bill 2005; also published 3 February 2006, On Line Opinion <http://www.onlineopinion.com.au/view.asp?article=4126>

<sup>4</sup> Hakim C., "Five Feminist Myths about women's employment" British Journal of Sociology 46(3): 429-455

make headlines and the only recriminations were to criticise the authorities for not “jump-proofing” the bridge.

Thirty years of propaganda about domestic violence has influenced the publication of accurate statistics so ...

- Some politicians and the public are unaware of the level of violence, sometimes resulting in death, perpetrated against children by their mothers or mother’s boyfriends<sup>5</sup>
- Some politicians and the public are unaware or chose to ignore the numbers of men/fathers who are victims of abuse/violence perpetrated by their wife/partner or perpetrated by another relative or friend at her behest.<sup>6</sup>
- Some research conducted by academics is tainted by the denial women can be just as abusive and violent as men<sup>7</sup> to their [ex]/partners and more so to their children. The questions to uncover such abuse often remain unasked and unanswered and there is an overwhelming suggestion that children are assumed to be safe with their mother. Sadly this is not always the case.
- Statistical evidence gathered by family protection services in each state is uncoordinated (using different terminology to define victims, relationships and identity of perpetrators)<sup>8</sup> and is rarely released in its entirety. West Australian Department of Child Protection has proven to be the exception<sup>9</sup>.

The Attorney General has directly commissioned several inquiries, some that encourage responses from people who consider themselves to be victims of violence or abuse. Self advocacy research of this nature provides a distorted view of the extent and incidence of domestic violence and abuse. The authors themselves acknowledge more women responded than men, but conveniently excused this by saying it was “...expected, given the focus on family violence and the greater incident of women as victims of domestic

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<sup>5</sup> Australian Institute of Criminology, 2006-07 National Homicide Monitoring Program 2006-07 Annual Report, <http://www.aic.gov.au/publications/current%20series/mr/1-20/01.aspx>

Mouzos J., 2000, *Homicidal Encounters* 10 year homicide study, wrote “*Biological parents, usually the mother, were responsible for a majority of child killings in Australia. Very rarely are children killed by a stranger*”.

<sup>6</sup> One in Three Campaign, [Accessed on line <http://www.oneinthree.com.au/faqs/>]

<sup>7</sup> Ibid

<sup>8</sup> Bromfield L. & Horsfall B., June 2010, *Child abuse and neglect statistics*, National Child Protection Clearinghouse, Australian Institute of Family Studies ISSN 1448-9112 [Accessed Online <http://www.aifs.gov.au/nch/pubs/sheets/rs1/rs1.pdf>]

<sup>9</sup> 2006, Nature of Maltreatment Relationship to Child of Persons Believed Responsible for Substantiated Maltreatment 2005-06, WA Dept. of Child Protection 2005 -06, accessed via FOI 17.12.07

violence” (p.2).<sup>10</sup> The research quotes 85% of women and 56% of men reported domestic violence or child abuse during their former partnership, giving the impression domestic abuse is considerably higher than the ABS<sup>11</sup> or even Women’s Safety Survey<sup>12</sup> figures, confirming for us that the research has attracted, perhaps quite deliberately, responses from people who regard themselves as victims.

The over-exaggeration of statistics runs the risk of serious questioning and challenge within the community and a further problem occurs where needed funds are diverted away from genuine victims.

Quite why the Attorney General would commission the ALRC to “*conduct an Inquiry together with the New South Wales Law Reform Commission (NSWLRC) into particular questions in relation to family violence that had arisen from the March 2009 report, Time for Action, produced by the National Council to Reduce Violence against Women and their Children (the National Council)*”<sup>13</sup> remains unclear, particularly when according to commentary contained in the Summary and Recommendation of the Parliamentary Inquiry into the ALRC 1994, it is stated that:

28. The independence and objectivity of the Commission is founded in part in its statutory nature, and in part in the independent management and operations of the Commission. There is no power for the Attorney-General to be involved in the formulation of reports and recommendations. Nor is there a power for the Attorney-General to direct the Commission in connection with the performance of its functions or exercise of its powers.

Clearly, the Attorney General has directed the Commission to conduct an inquiry contrary to the above and contrary to our commitment to uphold the provisions contained in the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights preventing discrimination based on sex.

Without the need to repeat the detail, we refer you to Mr Roger Smith’s submission to the ALRC for further explanation (attached ALRC FV 135).

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<sup>10</sup> Bagshaw D., Brown T., Wendt S., Campbell A., McInnes E., Tinning B., Batagol, B., Sifris A., Tyson D., Baker J., and Fernandez Arias P., April 2010, *Family Violence and Family Law in Australia: The Experiences and Views of Children and Adults from Families who Separated Post 1995 and Post 2006*, Vo.I.1, University of South Australia, James Cook University and Monash University

<sup>11</sup> Australian Bureau of Statistics 2006, Personal Safety Survey, Australia, 2005, cat no 4906.0, ABS, Canberra.

[http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4906.02005%20\(Reissue\)?OpenDocument](http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4906.02005%20(Reissue)?OpenDocument)

<sup>12</sup> Australian Bureau of statistics, 1996, Women’s Safety Survey, cat.no 4128.0, ABS Canberra

<sup>13</sup> ALRC, April 2010, *Family Violence: Improving Legal Frameworks – Consultation Paper Summary*



We would remind the Attorney General of his 6 May 2010 announcement: “ Sex Discrimination laws to also apply to men ... to provide stronger discrimination protections for Australians with family responsibilities,.... including ensuring that protections from sex discrimination apply equally to women and men.”<sup>14</sup>

When considering changes to the family law reform scheme, now would be a good time to start practicing that philosophy!

**The proposed amendments:**

We acknowledge the proposed bill is non-gender specific, but because it has been framed after viewing the gender discriminatory recommendations of the ALRC recommendations; the proposals from National Council to Reduce Violence against Women and their Children; the self-serving research conducted by some academics who are well known for their association with groups who are not supportive of shared parenting principles we suspect the suggested changes have been formulated to service the needs of women. The implementation of the changes will follow the current widely held, but incorrect belief, that only women are victims with men constantly described as the perpetrators; similarly when children are murdered or harmed the first suspicion frequently falls on the father rather than the mother, due to the failure to honestly disclose the statistics relating to child abuse.

The suggested removal of cost penalties for ‘knowingly made false allegations’ and the ‘friendly parent provisions’,— the sections of the current act attracting complaints from women’s groups, together with the expansion of definitions relating to domestic violence and the acceptance of ‘belief related information’ as evidence supports the notion that the proposed changes to the family law act are to provide an advantage to one gender over the other.

The Attorney General has advised the changes will not affect those who do not have issues of violence or abuse. We suggest if you remove the provision to curb the level of false allegations you will naturally see an increase in litigation initiated by those who will use any and all measures to achieve their aims.

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<sup>14</sup> Attorney General, 6 May 2010, “ *Sex Discrimination laws to also apply to men*”, Press Release - Adam Siddique (McClelland) 0407 473 630  
[http://www.attorneygeneral.gov.au/www/ministers/mcclelland.nsf/Page/MediaReleases\\_2010\\_SecondQuarter\\_6May2010-StrengtheningDiscriminationLawsforFamilies](http://www.attorneygeneral.gov.au/www/ministers/mcclelland.nsf/Page/MediaReleases_2010_SecondQuarter_6May2010-StrengtheningDiscriminationLawsforFamilies)

Consequently we are firmly opposed to the removal of the provisions designed to limit false allegations and parental alienation and the inclusion of an expanded criteria used to describe domestic violence and child abuse.

**Changes need to be supported by unadulterated statistical evidence:**

Before any changes are made we would like to see and expect the Attorney General's department would provide or seek out the statistics to prove the claim that the Family/Federal Magistrates Courts are handing over children to violent fathers, before any changes are made to the current legislation.

The following statistical evidence needs to be sourced and thoroughly considered:

- Historically, how many children who have been allowed contact with their father have been abused or harmed in any way?
- Historically, how many children have been abused or harmed in any way by being left in the care of their mother?
- Since the introduction of the Shared Parental Responsibility Act how many mothers and fathers (clearly identified by gender), who have been before the Family/Federal Courts for a decision or who have separated, have harmed their children.

Further research and inclusion of the known statistics will, we suspect, continue to reveal a greater risk to children comes from mothers, mother's boyfriends, other siblings than from biological fathers. Mothers and their boyfriends kill, abuse and neglect children more often than biological fathers.

**2006 Family Law reforms need longer to settle in before change considered:**

We remind the current Labor Government that the Committee<sup>15</sup> instrumental in recommending the 2006 changes to the family law system to encompass a move towards giving greater recognition to the importance of fathers in their children lives; with the need to encourage greater involvement and the introduction of mediation prior to court action, was comprised of both Coalition and Labor Party members. The Committee clearly heard, recognised and responded to evidence relating to the problems of false allegations; misuse of domestic violence legislation to gain an advantage in family court proceedings and the prevalence of one parent using various deliberate/misguided means to eliminate the other parent from the child's life, amongst other issues. The reforms were introduced over a period of two years 2006 – 2008.

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<sup>15</sup> 2003, House of Representatives Standing Committee of Family and Community Affairs Child Custody Inquiry

In 2007 a program was devised by the Australian Institute of Family Studies at the request of the Attorney-General's Department (AGD) and the Department of Families, Community Services and Indigenous Affairs (FaCSIA) to assess the changes and their effects on parents and children. The Government's implementation plan identified the separate components of the reform package as: Changes to the Law (*Family Law Act 1975* and consequential changes to the *Federal Magistrates Act 1999*, the *Income Assessment Act 1997* and the *Marriage Act 1961*); Family Relationship Centres; The Family Relationship Advice Line; Family Relationships Online; Expanded Early Intervention Services<sup>1</sup> These include: Mensline Australia, Men and Family Relationships, Family Relationships Counselling, Family Relationships Education and Skills Training, and enhanced responses to family violence; Expanded Post-Separation Services<sup>2</sup> These are the Parenting Orders Program (formerly Contact Orders Program (COP)), Children's Contact Services Program and Family Dispute Resolution services (previously known as Family Relationship Mediation, Conciliation Services and Regional Primary Dispute Resolution).

The Institute's brief excluded the Combined Court Registry, the Community Education Campaign and the 30% increase in funding for established FRSP services, but it was considered that these components of the reform package and their effect would be captured in the wider evaluation.

The proposed framework had been designed to provide information for the following: Initial evaluation of the operation of the first 15 Family Relationship Centres, Family Relationship Advice Line and Family Relationships Online (July – December 2007); contribution to administrative reviews of the new and expanded services as required; and set the **Full program evaluation (by approximately) 2013**, with a 10 year ongoing longer-term evaluation.

Changes to the family law scheme included the need for a significant shift in attitudes of service providers, the courts and the general community towards recognising children's need to have both parents in their lives. Clearly the framework above recognised the need for time to allow the changes to take effect. The earliest suggest evaluation should be implemented by 2013 not 2011.

#### **Failure to consult:**

In July 2008, the Attorney-General convened a roundtable of key organisations in the family law system, but excluded those on the front line representing men/fathers, such as Men's Rights Agency and others, presumably because we are a self funded, non –



government organizations. Perhaps, because without government funding, government control is absent?

According to the Report, published in 2009, the following personnel/organisations were consulted because they are considered to be part of the family law system.

3. For the purposes of this paper, the family law system includes the Family Courts of Australia and Western Australia, the Federal Magistrates Court, legal aid commissions, community legal services, private legal practitioners practicing family law, Indigenous legal services, family dispute resolution practitioners and services funded under the Family Relationship Services Program (FRSP) (including family relationship centres).

4. Other important institutions that work in the area of family law or family law related matters include State courts, Centrelink, the Child Support Agency, child protection and family violence agencies and other (non-FRSP) **funded** family and crisis support services.<sup>16</sup>

Widespread consultation for women's groups had been facilitated, whilst men's/fathers groups have been ignored. The newly created *National Council to Reduce Violence against Women and their Children*, initiated and sponsored by the new Labor Government, ensured their consultation process called for contributions from 2000 domestic violence and other stakeholders who are listed as providing assistance to women (and children).(s52)<sup>17</sup>

Despite this forum acknowledging that amendments made to the Family Law Act in 2006. included ***“the elevation of the status of the protection of children from harm associated with family violence to that of a primary consideration, and the imposition of obligations on family courts to deal with allegations of violence expeditiously”*** the Government seems intent on introducing further unnecessary, regressive changes to satisfy the complaints from a small unrepresentative community dedicated to maintaining their status and control of domestic violence services.

The same rules apply to the Australian Institute of Family Studies. The Attorney General suggested MRA should participate in the AIFS inquiry into the 2006 family law reforms, but our approach to the organization was rejected and we were told only certain organisations as approved and designated by the government could be included.

Unfortunately contributions from father's/men's groups have not been called for or included in some of the reports giving consideration to the changes to the family law system until

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<sup>16</sup> Attorney General's department , Civil Justice Division February 2009 Towards a National Blueprint for the Family Law System

<sup>17</sup> Ibid s.52.

the proposals have been formulated and published for general consultation. A process that does little more than satisfy the requirement for the government to be seen to be consulting widely despite the agenda having been clearly set and considered by those behind the scenes to be a *fait accompli*. Refusal to consult or even consider that men/fathers should have a voice in these forums early in the process is a clear sign of the existing bias and use of exclusionary tactics.

For further confirmation of the tactics used to formulate the agenda and direction prior to widespread consultation consider the timetable and procedure adopted by the ALRC in their recent inquiry into domestic violence and family. The ALRC had 12 months from April 2009 to create a large document containing their recommendations which had been formulated after consultation with stakeholders involved in domestic violence and women's groups. On the release of this document everyone else was given one month to read, digest and respond to a 1000 page + document. We would suggest this is not exactly a level playing field.

Those in control of further recommendations and drafting legislation need to be reminded of the reasons for the original changes contained in the report, *Every Picture Tells a Story*<sup>18</sup>.

### **Research into the effects of the 2006 changes**

The Australian Institute of Family Studies commissioned report has found as a result of their evaluation of the 2006 family law reforms that "although a minority of children 2 – 12%, depending on age<sup>19</sup> (p.134) had shared care time, the proportion of children with these arrangements has increased. This is part of a longer term trend in Australia and internationally. Judicially determined orders for shared care time increased post-reform, as did shared care time in consent cases".

"The majority of parents with shared care-time arrangements thought that the parenting arrangements were working well both for parents and the child. While, on average, parents

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<sup>18</sup> House of Representatives Standing Committee on Family and Community Affairs, December 2003, *Every Picture tells a Story*, Report on the inquiry into child custody arrangements in the event of family separation. Accessed <http://www.aph.gov.au/house/committee/fca/childcustody/report/fullreport.pdf>

<sup>19</sup> LSSF W1 2008 in Kaspiew, R., Gray, M., Weston, R., Moloney, L., Hand, K., Qu, L., & the Family Law Evaluation Team. (2009). Evaluation of the 2006 family law reforms . Melbourne: Australian Institute of Family Studies.

with shared care time had better quality inter-parental relationships, although violence and dysfunctional behaviours were present for some". (p.351).<sup>20</sup>

**Statement of Claim:**

The Evaluation Report shows too few children are being cared for equally by both their parents. More needs to be done to encourage greater levels of father involvement in their children's lives by amending the legislation and social policies that contribute to the exclusion and removal of perfectly good/adequate fathers. Recognition is needed that some mothers are incompetent to care for their children or do not have their interests at heart or have violent tendencies towards their children.

Overall recognition is needed that most parents are perfectly adequate and care for their children as expected.

Unfortunately some of these parents are caught up in decisions that are made in the shadow of the family law legislation; the courts' findings and the personal opinions of those providing mediation services as to how a family should structure their separation. Sometimes the mediators' views have been influenced by their own dysfunctional family life or separation.

In the interests of promoting an improved family law structure we submit the following Statement of Claim:

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<sup>20</sup> Kaspiew, R., Gray, M., Weston, R., Moloney, L., Hand, K., Qu, L., & the Family Law Evaluation Team. (2009). Evaluation of the 2006 family law reforms . Melbourne: Australian Institute of Family Studies.

## **STATEMENT OF CLAIM:**

**In consideration of the previous commentary we present a Statement of Claim which includes recommendations to uphold a child's right to have both parents in their life and a parent's right to maintain their role in the child's life. We also include our reasons for including a recommendation.**

**A parent should be considered no less of a parent because employment or other unavoidable circumstances might be prevented them from participating in 50/50 shared care. In all family separation the expectation should be that parents will care for their children equally or at least have the opportunity to do so.**

### **1. Results of family law decisions should be followed up to ensure 'good' decisions are being made for the benefit of both children and parents:**

Interestingly, Professor Richard Chisholm when he appeared before the Committee in his position as a judge of the Family Court of Australia answered a question from Mr Pearce MP as to whether they ever heard from people involved in cases as follows:

**Justice Chisholm**—It is a subject that I am particularly interested in. I was an academic before I was appointed—and, who knows, I might be an academic after I finish. It would be wonderful, frankly, to be able to have access to information about the consequences of our decisions. It might be painful in some cases to look at them, but as an educational thing I could imagine it would be very good.<sup>21</sup>

We endorse that suggestion. There is a lack of follow-up inquiry about how court decisions are affecting the children and parents. (see comments below)

### **2. All family law cases should be published:**

There are benefits to be gained if the family law courts authorises the publication of all decisions, rather than concealing transcripts which might give encouragement to fathers to apply for the children to live with them or for shared care. An environment of openness, ensuring adequate scrutiny of decisions will alleviate concerns and criticisms of the courts to date that they operate under an agenda that is dismissive of the importance of fathers and a child's right to have their father actively involved in their life.

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<sup>21</sup> Chisholm R., 10 October 2003, House of Representatives Standing Committee of Family and Community Affairs Child Custody Inquiry, Hansard, p.15

Two examples immediately come to mind — a father successfully applied for care of his child in a case which was described as being the worst case of parental alienation seen<sup>22</sup>.

The father was granted custody of his child, the mother appealed, but was wholly unsuccessful<sup>23</sup>. Access and reference to this case would supply an adequate precedent to follow in other cases of a similar nature and would serve to illustrate how a transfer of care from the mother to the father can be successfully achieved.

It is not easy, but it can be done with good psychological counselling for all parties, including the mother and with a father willing to go through several very difficult months until the damage caused by the mother is undone and the child comes to trust and understand that the father loves the child unconditionally. Now the young adult in question has grown into a self-assured, confident person who loves both mother and father. The young person might never have known or enjoyed the benefit of the father's love and care if the case had been decided the other way.

A further case is hidden from view, but should be available to all parties making an application for shared care<sup>24</sup>. Justice La Poer Trench in making a decision for the parents to share the care of two children on a week and week about basis contrary to the family counsellor's advice used 47 of the 157 page decision to analyse studies and consider previous court findings about shared care. His Honour acknowledges there are "circumstances where shared residence is not appropriate", but considers "the advantages for children are significant, however the greatest advantage is that at its optimum, shared parenting is implemented in circumstances where the parents create the arrangement themselves without outside intervention. He also found that "from a judicial point of view some degree of disharmony between parents is not a disqualifier". Which tends to support our argument that notions of conflict are being unnecessarily inflated to use as a reason to refuse contact.

### **3. Transcripts should not be altered:**

We have been aware for a number of years that some transcripts are altered before being provided to the parties. The transcript is supposed to give an accurate account of the

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<sup>22</sup> Family Court of Australia, Brisbane, No BR6845 of 1996 Date of Judgement 29 August 2001

<sup>23</sup> Full Court of the Family Court of Australia, Brisbane Appeal No NA46 of 2001, File No. BR6845 of 1996, Date of Judgment 21 June 2002.

<sup>24</sup> Family Court of Australia, Sydney No SY3605 of 2001

proceedings and sometimes comments are made by the judge or others appearing in the court that could be considered discriminatory or providing ill advised directions/comments. Parties order transcripts with the expectation that all the comments made during the hearing will be included so they can then base their appeal on the way the case evolved. Bias is difficult to prove when prejudicial or biased remarks are deliberately removed.

**4. Conflict – the parent or parents (if mutual) causing the conflict must be properly identified:**

The Courts are failing to identify which parent is causing conflict and routinely appear to be removing the father from shared parental responsibility and limiting his further contact with his child even though it is the mother who is causing the conflict. This is unjust and unfair and risks leaving the children in the care of a parent who is bad-tempered/ violent/ aggressive and generally dysfunctional.

**5. Fathers excluded from their child's life ... in the best interest of the child?**

Recently we have observed a trend for the courts to give children into the mother's sole care<sup>25</sup> despite evidence given in family reports supporting a father's claim for contact or other evidence provided to the court under oath about the behaviour of the mother in alienating the children or her abusive behaviour towards her family. Inexplicably, the father is refused contact and is only allowed to send cards on special occasions and receive school reports and the children remain in the care of the abuser. We can only conclude in

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<sup>25</sup> 1. Arlington, K. 4 Jan 2011, *Mother wins custody despite 'delinquent attitude'*, The Age, Melbourne  
Introduction: HER "delinquent attitude" to parenthood was denounced in the Family Court after she waged a campaign to alienate her two children from their father.

But the woman still won sole custody of the children, who are so distressed by the prospect of a reunion with their father that a judge ruled they should not have to see him.

[2010] FamCA 1111 decision Wiggins & Wiggins

[http://www.familycourt.gov.au/wps/wcm/resources/file/ebad524ebf45ec7/2010\\_FamCA\\_1111.pdf](http://www.familycourt.gov.au/wps/wcm/resources/file/ebad524ebf45ec7/2010_FamCA_1111.pdf)

2. Dennison & Wang [2010] FamCAFC 182 Family Law – Appeal – Children – With whom a child lives and spends time.

Where the trial judge ordered the mother and father have parental responsibility, but for the children to have no time with the father – Unsubstantiated sexual and physical abuse allegations made by the mother against the father – where the trial judge made adverse findings against the mother – where the children could be emotionally and physically harmed if order required the children to spend time with the father.

<http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FamCAFC/2010/182.html?stem=0&synonyms=0&query=Dennison>



these cases the mother has intimidated the court into believing she will harm the children if they go to live with their father or shared care is ordered. It is outrageous that the court should take the view that pandering to the mother's bad behaviour should be rewarded with sole care of their children.

This is not in the best interests of the children?

Provisions can be made to protect children from harm. We know there have been cases where residency has changed and prior to hand-over to the father, the mother has killed the child[ren], sometimes taking her own life as well. These situations can be managed providing the courts and counsellors are aware that mother's may react negatively, just as a father may do when permanently denied contact to their children. Intense psychological counselling must be provided for parents of either gender who might be denied contact with their children. "No contact orders" should only be issued after stringent inquiry to confirm the necessity of such an order. All "no contact orders" should take into account that after a period of counselling it may be possible to reunite the child with the parent. Reference to a previously mentioned (Item 2 case where a child was reunited with the father would be a useful study for those seeking solutions to parental alienation).

#### **6. Deliberately made false allegations must result in penalty and compensation**

False allegations made in family court proceedings or to gain a domestic violence order must be identified and taken into account in decision making. Compensation is essential whether provided by the state or the false accuser to alleviate some of the expense incurred in proving one's innocence. Damage to reputation also deserves compensation. The turn-around of the basic principle of being regarded as innocent before being proved guilty in family court proceedings has contributed to an attitude whereby the courts will make extensive excuses for those who make false allegations. When accusations of wrong doing are made in applications, the courts will immediately suspend access, remove fathers from homes and cause them to endure the full ambit of family court proceedings, family reports, etc that bear little resemblance to the fact finding investigation and cross examination process occurring in criminal proceedings. Proof is a little known commodity in family court proceedings. A parent wishing to make criminal allegations against the other parent should be required to raise these with the police, as the appropriate authority to investigate and bring charges if required against an alleged offender. The family courts should then only take proven offences into account. The

previous Chief Justice of the Family Court of Australia admitted to the Child Custody Committee that the Family Court is not an investigative agency (FCA 5). He further acknowledged whilst explaining his view of whether an accusation in a sexual abuse case is a “false allegation” or a “false interpretation” of what happened that this ‘not uncommonly does occur’<sup>26</sup>. Chisholm J following on the questioning about false allegations confirmed that, “...in practice, sexual abuse allegations are quite common”.<sup>27</sup>

## **7. Friendly parent provisions:**

The introduction of the ‘friendly parent’ requirement must remain. It has been suggested the provision prevents parents from making complaints against the other parent for fear of being seen as not encouraging the other parent’s relationship with the children. We have stated before on numerous occasions that we doubt that if a parent had serious concerns and a belief that their child was being abused by the other parent, then nothing would stop them from making appropriate complaints. If a genuinely held complaint is eventually disproved, then perhaps consideration should be given to providing counselling to the parent making the accusation to alleviate their suspicions, which can arise very easily by listening to coffee club chatter and rumour-mongering.

## **8. Perjury**

Perjury is a serious offence causing untold harm and must be prosecuted, particularly if occurring in family law proceedings. The Attorney General’s Department must revise current protocols and activate procedures to forward complaints to the DPP for prosecution without delay. Lying in family court is no less serious than lying in a criminal court and the person who is the target of the perjurer may suffer extreme harm to his/her wellbeing - resulting in removal of their family, their possessions and the life they have created or a person guilty of an offence may escape penalty.

Perjury is an offence which is prosecuted in all jurisdictions apart from family law, which can possibly be explained by comments made by the then Chief Justice of the Family Court of Australia. Alastair Nicholson told the 2003 Child Custody Committee when asked by Mrs Irwin MP, “Given that perjury is a criminal offence that requires police action and a decision to prosecute, what can the Family Court do to address this problem?”<sup>28</sup>

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<sup>26</sup> Nicholson A. CJ., 10 October 2003, House of Representatives Standing Committee of Family and Community Affairs Child Custody Inquiry, Hansard,

<sup>27</sup> Chisholm R., 10 October 2003, House of Representatives Standing Committee of Family and Community Affairs Child Custody Inquiry, Hansard, p.6.

<sup>28</sup> Nicholson A. CJ., 10 October 2003, House of Representatives Standing Committee of Family and Community Affairs Child Custody Inquiry, Hansard, p.14

Nicholson CJ replied “If a judge feels that there are particular concerns about the evidence of a witness all they can do is refer that matter to the Attorney General’s Department. They cannot refer it to the DPP. My experience of having done that is that nothing happens.”

No doubt not too many suspected perjury complaints have been forwarded to the AGD due to the excuses offered in the now retired, Chief Justice’s explanation, “The person who is the victim of the allegation of abuse says it is perjury, whereas the judge who heard it would probably say that it was a misunderstanding or a heightened apprehension”.<sup>29</sup>

## **9. Legal Aid**

Legal Aid family law funding is distributed to women in the ratio of \$2 for every \$1 granted to men. The reasons used to deny aid to men are:

- The matter does not have any merit (in other words Legal Aid does not think you are going to be successful).
- The cost doesn’t warrant the outcome (in other words LA does not think the case is worth pursuing).
- There is a *conflict of interest* (“we are already funding the other party”).

In the first two mentioned items it would appear Legal Aid feels confident in making decisions that would normally be reserved for when a judge hands down a finding after hearing all the evidence. We suggest this is not an acceptable approach in deciding who should be funded.

## **10. Include UN Conventions**

The Attorney General has indicated the Convention of the Rights of the Child should be included. We believe that as Family law legislation encompasses the whole of the family, not just children, but parents and other relatives the legislation should also include reference to the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR) to provide protection from discrimination, and gender profiling while ensuring parental rights and the rights of the child are protected.

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<sup>29</sup> Nicholson A. C.J., 10 October 2003, House of Representatives Standing Committee of Family and Community Affairs Child Custody Inquiry, Hansard, pg 6.

## **11. S60I Certificates and the requirement to undertake dispute resolution counselling before accessing court:**

Whilst accepting that the introduction of a certificate process to encourage parents to resolve their parenting dispute without the need for court action is a positive move, there are occasions when the delays incurred through accessing the mediation process prevent a parent from recovering their children or seeing their children for too long.

There needs to be recognition that in some instances parents should be able to make an application to the courts to recover and/or have contact with their children without waiting months in a queue for an appointment with a Family Relationship Centre to just find out the other parent refuses to attend.

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As a result of the 2006 changes there has been a significant drop in the number of court applications/decisions – whether that is because a cultural change and expectation about the care of children has been achieved or whether the intervention of dispute resolution is assisting parents to settle on more amicable parenting agreements we do not as yet know. The Government does not seem to place significant value on the newly initiated family relationship centres because they withdrew \$50 million in the 2010 budget from the program. Perhaps the Government is privy to insider information advising of the limited success of FRCs or perhaps it is not.

It would seem however, the Government is more focused on restoring the combative approach, which will be the result if the current proposals contained in the bill are adopted.

Before any move towards radical change takes place, which will take the system back to pre 2006 levels of dispute, we call for a full Parliamentary Inquiry with all parties participating, then we can be more assured full consideration has been given in an open and accountable forum to any proposed changes. Open and accountable discussion does not seem to have been a feature of the current inquiry and men/fathers have certainly been ignored until asked to comment on proposals that appear to be adopted into policy already.

The Government should be considering moves to promote greater father involvement rather than these regressive steps as proposed.

For further information please contact the writer:

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Attachment "A"

Roger Smith's submission to the ALRC No FV 135



22 June 2010

The Executive Director  
Australian Law Reform Commission  
GPO Box 3708  
SYDNEY NSW 2001

Dear Madam / Sir,

### **Family Violence Inquiry**

I am writing in response to the current Family Violence Inquiry and thank the Commission for the opportunity to make a submission as well as for the extension of the time limit.

My interest in this subject comes as a result of having acted as the National Research Officer of Relationships Australia from 2005 to 2007 and from my work as a human rights lawyer, consultant and campaigner in Indonesia and East Timor from 1996 to 2004.

In this capacity, I have become most concerned about, firstly, the use of false statistics on family violence to silence male victims, and secondly, the use of human rights arguments to effectively subjugate the human rights of others.

#### **Human rights aspects of family violence proposals:**

Unfortunately, all the worst aspects of discriminatory domestic violence policy are contained in the Australian Law Reform Commission's Consultation Paper and its list of proposals<sup>30</sup>. The main flaw is contained within Proposals 4-22 and 4-23 in which it is proposed that domestic violence be legislatively prescribed as "gendered" and that this prescription even be extended to the recently reformed Family Law Act 1975.

Further, Proposal 4-22 recommends that the preamble to the Family Violence Protection Act 2008 (Vic) be adopted as a model. This preamble states that "family violence is predominantly committed by men against women, children and other vulnerable persons". Gender or racial and ethnic profiling of offenders is controversial in law enforcement, but for the ARLC, given its human rights focus, to recommend it in legislation is absolutely extraordinary. As I am sure you would be aware, gender or racial profiling of offenders in legislation violates Australia's international human rights obligations since it creates a bias in the minds of judges and magistrates that a particular class of defendants is more likely to be guilty by reason of his gender or race than would be the case if he were of a different gender or race (and likewise the other gender more likely to be innocent).

This gender profiling then effectively turns all the other 'rubber' proposals into extremely powerful tools to subjugate the due process rights of male suspects and the protection rights of male victims. In this regard, while it is certainly the right of all members of society of whatever sex to feel safe in their own homes, it is important to remember that this inquiry deals with family violence and most of the proposals recommend extending the already far-reaching powers of police and judicial authorities to engage in the forcible break-up (whether temporary or permanent) of families and the removal of parents from their children.

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<sup>30</sup> I understand that this is partially due to the discriminatory and offensive Terms of Reference over which the ALRC has no control providing only for measures to protect "women and *their* children" whilst excluding male victims.

We have only in recent decades reached the point where we no longer deem it acceptable for police or the criminal law system to intervene in domestic bedrooms. We therefore need to be extremely careful in granting the State wide-ranging power to intervene in the economic and domestic arrangements of Australian families as would be entailed in the extension of domestic violence to cover economic and psychological abuse. This is even more so if the laws upon which the interventions are founded base themselves upon discriminatory gender or racial profiling of offenders that is inconsistent with international human rights instruments.

Examples of some of the ‘rubber’ recommendations with far-reaching potential to violate the rights of suspects are Proposals 5-6, 6-5 and 6-7 which seem to provide for the arbitrary eviction of property owners from their home on the basis of an allegation of psychological intimidation or controlling behaviour. This would, in my view, violate Article 17 (2) of the Universal Declaration of Human Rights which states that “no one shall be arbitrarily deprived of his property”. It is aggravated by Proposal 9-4 which provides that the division of family property may be determined on the basis of such family violence.

I wish to emphasise, however, that the main human rights shortcoming within the proposals is the gender profiling of offenders in Proposal 4-22. The other ‘rubber’ provisions could be ameliorated were the sex discrimination element within the legislation and any accompanying instruments removed.

In that respect, I wish to draw the Commission’s attention to Articles 2, 4 and 26 of the International Covenant on Civil and Political Rights (ICCPR), to which Australia became a party in 1980, and which in turn reflect the rights set out in Articles 2, 7, and 16 (1) of the Universal Declaration of Human Rights. These provisions are quite explicit and uncompromising in prohibiting discrimination based on sex. They are certainly not consistent with gender profiling of offenders in legislation. Article 26 of the ICCPR, in particular, guarantees “to all persons equal and effective protection against discrimination on any ground such as, *inter alia*, sex”.

The ICCPR even contains a particular provision dealing with family violence, especially the type of controlling emotional and/or economic abuse which the ALRC recommends be encompassed within the ambit of family violence laws. This is Article 23 (4) requiring Australia to “take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution”. Family violence, particularly of the controlling type, is undoubtedly the most egregious and abhorrent crime that a person can possibly suffer as a result of entering into marriage. If family violence policy effectively makes protection - through advocacy, service delivery, legislative prescriptions and the terms of reference of inquiries such as this one – contingent on the victim’s gender, this would mean that a woman suffering domestic violence or spousal abuse during marriage would have access to an extensive range of processes to afford her protection, while a husband who suffered the same violence or abuse in marriage could be precluded due to his gender. This clearly violates Article 23 (4) of the ICCPR as it produces inequality of rights and power imbalance during marriage.

Subsequent human rights instruments, such as the Convention on the Elimination of Discrimination Against Women (CEDAW) and the Declaration on the Elimination of Violence Against Women did not purport to repeal or restrict the above rights and protections afforded by the Universal Declaration on Human Rights or the ICCPR any more than instruments dealing racial discrimination could be used to annul the rights of, for instance, Zimbabwean whites.

#### **Use of false statistics to justify human rights abuse:**

Presumably, the rationale of those advocating discriminatory family violence laws and policies, including the gender profiling of offenders as recommended by the ALRC, is that male victims of domestic violence, while they do exist, are numerically so insignificant that discrimination in this area is justified. But is this really the case?

A relevant question in this respect would be: what percentage of the total victim population does the target group of the government initiative need to make up before discriminatory laws are justified? Is it 99 per cent, 95 per cent? Or is 80 percent perhaps sufficient? Would an overwhelming gender or racial imbalance in rates of victimization render valid a law that might otherwise violate Australia's international human rights obligations?

In respect of the first matter, you would be aware that the Australian Bureau of Statistics in its Personal Safety Survey, Australia, 2006 (ABS Catalogue No. 4906.0) surveyed the extent to which respondents had experienced physical violence in the home within the previous 12 months. It found that 60,900 men had experienced such domestic violence by a female perpetrator, compared to 125,100 women reporting acts of physical violence by a male perpetrator. That makes roughly one-third of domestic violence incidents occurring within the 12 months prior to the survey involving male victims at the hands of female perpetrators.

In addition, nearly all peer-reviewed academic population-based studies published in academic journals around the world have found that at least one-third, and often one half or more, of the victims of domestic violence are men. An example in our part of the world is: "Partner Violence and Mental Health Outcomes in a New Zealand Birth Cohort" by Fergusson, Horwood & Ridder published in the *Journal of Family and Marriage* (vol. 67. no. 5, Dec 2005, pp. 1103-1119). Its key findings were that men and women have similar incidence of victimization and perpetration of domestic violence and that the mental health effects of domestic violence are equally as severe for men as for women. Martin Fiebert of the Department of Psychology, California State University, Long Beach has even compiled a bibliography of hundreds of scholarly investigations indicating that women are as physically aggressive as men in their relationships with their spouses or male partners. The URL of this bibliography can be found at: <http://www.csulb.edu/~mfiebert/assault.htm>.

Even the two other related Family Law Reviews and Public Inquiries displayed on this Inquiry's home page do not adopt a discriminatory or gendered approach to this issue. Rather, they follow the humane path of recognizing that men also suffer from and deserve equal protection from family violence.

The first of these, the *Family Courts Violence Review* by Richard Chisholm released in January this year states that "it is not necessary that this report be based on any particular view about the connection between gender and family violence" (at p.46). The other, the Australian Institute of Family Studies' *Evaluation of the 2006 Family Law Reforms* found that a relatively high 17 per cent of fathers surveyed reported that their partner had physically hurt them before or during separation compared to 26 per cent of mothers – well above the rule-of-thumb one in three figure (at page 26 of the report).

The discourse on this issue thankfully is slowly but surely moving toward a humane centre ground that recognises the appalling harm that family violence inflicts regardless of the victim's gender or socio-demographic characteristics. It therefore seems extraordinary that a respected legal body would take a contrary view and recommend embedding gender discrimination in proposed changes to the law.

### **Conclusion:**

In my view, any attempt to reform family violence law must fulfill a number of important prerequisites if it is to achieve acceptance in the community. Firstly, it must be humane and protect the rights of men, women, and especially children. Secondly, it must be compliant with international human rights law. Thirdly, justice must be seen to be done with fair treatment and unequivocally equal protection to all demographics within the Australian community.

In their current form, the proposals fail to achieve any of these prerequisites. Frankly, I believe that the proposals, due to the sexist and anachronistic Terms of Reference for the inquiry (over which admittedly the ALRC had no control) and the proposed embedding of sexist language in the Family Law Act (Proposals 4-22 and 4-23) will be seen merely as an attempt to severely further disadvantage men in family law proceedings – not as a genuine effort to reduce violence and abuse in families – especially since the bulk of the provisions grant potentially far-reaching parental and property rights to women who allege family violence. I believe that the effect will be to increase rates of depression, family break-up, parental suicide and entrenched conflict that will harm Australian children.

Further, it is not improbable that the proposals will actually lead to an increase in family violence in the community by giving the implicit message, through gender profiling of offenders, that it is acceptable for women to act violently and abusively in the knowledge that the police and judicial authorities will likely blame their male partner for the violence.

Every day, approximately five Australian men commit suicide with family law discrimination and family breakdown being anecdotally possibly the number one cause. Please do not add to the toll of suffering through judicially and legislatively prescribed discrimination.

I would urge you to uphold the human rights principles that we have signed up to as a civilization and to the fair, equal, and humane treatment of Australian men, women and children.

Sincerely,

Roger Smith