

Dear Mr/Ms/Mrs/Senator,

RE: Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011

I wish to express strong opposition to aspects of the proposed Family Law Amendment Bill 2011 and the winding back of the 2006 Family Law Reforms.

I have first-hand experience with this parasitic malfunctioning Family Court machine having had to spend a year of misery and desperation, and \$50,000, to defend against contrived family violence allegations and thankfully secure what has since proved to be a very successful shared custody arrangement in which my child has been prospering.

However, through men's support groups I have met scores of decent but unfortunate Australian fathers who have not been so lucky and whose lives and those of their children have been profoundly blighted by abuse of the family law system and unfair child support enforcement.

Furthermore it grieves me to learn that the already difficult, biased and expensive system is now set to worsen for fathers and their father-loving children.

I would like to express my support for the Statement of Claim submitted by the Men's Rights Agency and everything contained therein, which for your convenience I include below as an appendix to this letter.

Yours Sincerely,

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:

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 prevent 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.^[1]

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.

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^[2].

The father was granted custody of his child, the mother appealed, but was wholly

unsuccessful^[3]. 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. He 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^[4]. 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 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^[5] 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 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' [6]. Chisholm J following on the questioning about false allegations confirmed that, "...in practice, sexual abuse allegations are quite common". [7]

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?"^[8]

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".^[9]

9. Legal Aid

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

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: