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Senate Legal and Constitutional Committees
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Committee Chair, Secretary and others

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

Thank you for speaking with me on Friday last. Appearing by teleconference has its disadvantages as Senator Crossin acknowledged. While the Senate Committee did not ask me specifically to address further issues, I would like to address those which were frequently raised during the day with others and ask you to accept this supplementary submission.

1. Understanding the safety issue and implications The brief ‘to prioritise safety while preserving shared parenting’ will undoubtedly be difficult to balance where there is a claimed history of violence and abuse. Part of the problem courts and litigants will meet is the ever-developing understanding and research into what is Family Violence applied at the state level, only to then meet a different, less informed definition when the case traverses Family Law processes and courts. It is completely wrong for a person to be treated in one way by state agencies, then find themselves falling far short of federal requirements on the same issue. They are Australians and entitled to consistency from the agencies they support with tax dollars.

As Ms Samantha Page of Family Relationship Services so accurately said – words to the effect of ‘these changes in definition will bring clarity and education’. Whilst ever a determining body trivializes or excludes aspects that are crucial to the understanding of ‘what is family violence’, people – men and women, victims and perpetrators both, will not understand this complex, destructive issue. As it is, too many, particularly from men’s groups, refuse to consider the destructive impact of behaviours that do not involve actual, physical violence.

I am concerned that unless the Senate Committee honestly asks itself ‘How safe would I want my own Australian child/grandchild to be’ and looks broader into Australian life than simply a family law decision, into the projected life path of abused children and parents, you will risk increasing youth homelessness (and costs) drug uptake, alcohol abuse and associated medical and mental health costs to the nation, and suicide with the ongoing damage that creates for survivors. Similarly, the term ‘conflict’ does not at all capture the torment delivered so often by one parent/ex partner to victims of family violence.

Anecdote: Increasing numbers of young men (12-15) are joining gangs to get the support from each other that they do not get in their violent homes. Some of these youths attend my service. The stories of what those gangs are doing is bloody, vicious & horrifying.

2.Professor Chisholm. I couldn't disagree more with his recommendation to essentially rate as barely helpful, the AVO process. To do would be the equivalent of 'throwing the person seeking protection under the bus' – making them suffer unintended consequences of state process in responses to violence.

The Senate MUST understand that seeking an AVO is not something nasty women go seeking as an advantage in a Family Law case, but is often the ONLY course of action that is made available to women exposed to violence. It is in fact the state strategy of police and DV services. Women seek services and are then obliged to follow pathways that are indicated by the experts.

To apply for an AVO on behalf of a person, or to advise the person needing protection to apply for one themselves, happened because of the unique nature of DV. So often, even when the violence is escalating, the women just want the violence and abuse to stop – but to keep the family together for the sake of all concerned. They think it is the right thing to do. It is only when the abuse and violence passes the point of no return that they leave. This is what the men's groups call 'conflict over leaving' – when she has finally had enough. She still doesn't usually see him as 'a criminal' and generally doesn't want her children's father to go to jail. The AVO process is a crucial link. Not necessarily effective, not necessarily given the time or effort they ought to have, but it is often all women escaping violence can get.

3.Proof The judicial spokespeople and Professor Chisholm were clear that 'the courts are not going to be influenced without evidence'.

Best Practice principles for use in parenting disputes in family law confirms that courts can adjourn proceedings awaiting the outcome of state courts, but there is nothing in them to qualify the disparity in representation between the vastly different processes that a victim and the accused have available to them, and nor are outcomes qualified after they are reached. The victim is revictimised. Often.

State prosecution services cannot handle the volume of work that currently exists. That's why 'plea bargains', even in the most violent cases are so frequent. The level of proof is often not available due to the nature of the crime of 'private violence'. Indeed, what I believe that so many experts do not comprehend, is that even if a matter does go to hearing, it is usually over one event, and not the series of events that shows the true history of the violence. Yet that one event's outcome is seen as the whole of the proof. In a criminal matter:

- The victim is PREVENTED from giving the history, is only allowed to speak of the event.
- The accused is NOT prevented from giving their version of the whole history of the relationship
- The victim's character can be attacked
- The accused's character, and criminal history, even of prior acts of violence against the victim, cannot be mentioned.

- The prosecution does not receive material, evidence or other material of the intended defence
- The Defence must receive all material, evidence the prosecution will rely on
- The victim & other Crown Witnesses cannot be coached in giving evidence
- The accused and their witnesses can be coached

The whole point of me describing, when appearing before you, the case where my client's injuries were 'bargained down' was to quickly demonstrate the gap between what actually happened, in just that one event, and the criminal legal system's machinations.

NB: It is only the outcome 'guilty', or 'not guilty' of the actual court charges (which may already have been reduced from the actual crime suffered – reflecting what can be proven rather than what happened) that gets passed into 'evidence' in the Family Court – not the progressive diminution & machinations that went on in the case. The victim does not get to explain the unfairness and inequality.

- Again I make the point that the victim of violence has NO representation in such a matter in a criminal court and no rights because they are not parties to proceedings.

I was very worried when repeated judicial officers before the Senate made it clear they wanted proof, and they rely of criminal proceedings as the highest level of that. Yet surely they must be well aware of how the criminal system itself works and how a progressive weeding process works in their courts too?

Children's matters. This is also particularly relevant to relate to child sexual assault cases. The Senate would no doubt be aware that child sexual abuse is rarely regarded as 'at risk of substantial harm' according to state risk analysis. As I set out in my opening remarks, child sexual abuse is serious, is substantial and can have life-long impacts as evidenced in my work, no matter what the current state policies are. If it isn't stopped at the grooming stage, it will escalate.

A child aged less than 7 is unlikely to be able to give evidence in a criminal court, (where all of the above applies) irrespective of the child's age and development. The result is that police do not investigate because they know a prosecution cannot be successful. The case would be marked 'not substantiated' but that does not refer to the crime, but to the capacity to successfully prosecute.

The Family Court still relies on the Briginshaw standard of proof – as its authority. This 1938 case puts the level of proof closer to 'beyond reasonable doubt' rather than 'balance of probabilities' that the federal court requires. Once again the child victim's actual suffering is jeopardized by well-established state practices, protocol and the inabilities of the criminal system, but the political reality seems to disappear from the eventual analysis of what 'proof' is before the court. I would never want an innocent person convicted, but you must understand the process does not support a child victim or their protective parent.

It's a lot like the story of the emperor's new clothes – everyone can see the man is naked but they pretend he's beautifully dressed, well, because that's just the way it is! The fact is though, he is naked but woe betide anyone who says so!

4.Father's Rights a) These groups were **against the inclusion of finances** in the description of abuses.

The Senate must understand that in Family Violence, financial control and abuse is the very glue that binds the parties to the relationship. Abused, violated women can rarely leave with very much at all, nothing like their just desserts, business interests and finances included. Many leave and live lives of poverty because freedom is better than dying or watching your kids suffer. I was one of these. It's hard, you never recover financially, but better than the alternative.

These groups frequently accuse the women of 'getting the house', all the money, but in fact I am yet to see an abused, violated woman end up with even a fair share, whether or not she has the children. This type of man will not pay for what they cannot control.

b) Threatening suicide. Playing on the other's emotional responsibility for an abuser's well-being, and setting up a guilt dynamic for the wife and the children by threatening suicide is par for an abuser's course of action.

It is common. The cyclic litany of abuse and dominance, punctuated by a range of conflicting behaviours, some 'loving', others abusive or violent goes like this:

'You will never find anyone who cares about you as I do.'

'You can never leave me.'

'No one else will ever want you.'

'I will take the kids.'

'I will see you in the gutter, where you belong.'

'I will kill myself.'

'I knew you never cared about me.'

'I will kill that dog.'

'I will kill you.'

'No. I will kill the kids.'

And the victim sort-of believes him, yet hopes it's just words, then reads about another child / wife / other murdered. That helps answer 'why doesn't she leave'.

The Senate of Australia needs to be up-to-date with current research and understanding in this growing field of family violence. To exclude either of these aspects (finances & suicide threats) would be a backward leap, and make the legislation AGAIN inconsistent with state policies, procedures and practices. In doing so, it would be again setting women up to fail to convince courts of their safety concerns.

5.False Denials. I do not recall hearing these words during the entire day of listening to the Senate hearing. They are supposed to be of the same weight as false accusations yet never mentioned, rarely found and go unpunished. There is no punishment for lying about important child-related safety as my previous submission showed.
(...)

(...)

' You won't find that sort of remark in any of the transcripts you have asked for. Judges do not allow the inclusion of such remarks in the transcripts they must sign off on.

6.Friendly parent provisions. This aspect is frequently misused. One self represented litigant in the Family Court, the mother, was 'vigorously' cross-examined by a barrister for days. When her turn came to cross-examine her ex husband, the Judge sternly warned her that she had better be very careful lest he found her line of questioning to be unfriendly. Friendly parent provisions seem reasonable, until you see them being very unevenly applied between men and women. Women tend to be required to bend over backwards to facilitate a relationship with their abuser, no matter what his own behaviour is to the child or to her.

7.Lying I was concerned at the assumption that 'most people come to court and try to tell the truth' by the two from the family court. Surely the court is aware that the type of person who uses family violence to control may well also be a skilled liar, or even one whose make-up is such that they believe their own lies. Interestingly, in the cases I see, it seems to be that it is the mother who is seeking protection for her children who is regarded as the liar, and not the perpetrator. Narcissists, psychopaths, sociopaths, alcoholics, drug addicts are recognised as accomplished and convincing liars, because what they say is true in their own minds, but not necessarily in fact. The court must be aware that these types litigate more than other types?

8.Increasing litigation: The Committee asked whether there would be a predictable increase in litigation if the definition and legislation was changed. I say that there would be no increase, because the definition is already inclusive at the state level, where the people live. The only increase I hope for is an increase in judicial comprehension about the complex ways an abuser manipulates, brainwashes, harms and controls their victims, and why. Of course some will now try to say they were harassed to see themselves as victims, 'she made me mow the lawn' and the courts will need to separate normal family disagreements from the far more insidious Family Violence.

What is increasing divorce and litigation is the failure of systems to facilitate safe and wholesome relationships, at many levels.

Regards

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