



Committee Secretary
Senate Legal and Constitutional Committees
PO Box 6100
Parliament House
Canberra ACT 2600

24 April 2011

Dear Committee Secretary,

**Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011
[Provisions]**

The One in Three Campaign aims to raise public awareness of the existence and needs of male victims of family violence and abuse; to work with government and non-government services alike to provide assistance to male victims; and to reduce the incidence and impacts of family violence on Australian men, women and children.

We wish to express our concerns about the process used by the Government which has led to the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011 [Provisions]. In addition, while we welcome the expansion of the definition of family violence to include a wider range of abusive behaviours, we are concerned about the removal of the “reasonableness clause” and worry that the new definition fails to adequately capture the full range of experiences of victims of family violence.

RECENT FAMILY VIOLENCE RESEARCH SHOWS THAT AT LEAST ONE IN THREE VICTIMS OF FAMILY VIOLENCE IS MALE (PERHAPS AS MANY AS ONE IN TWO)

The Australian Bureau of Statistics *Personal Safety Survey* (2006)¹ is the largest and most recent survey of violence in Australia. Its data shows that:

- Physical assaults in the home were experienced almost equally by men and women
- Physical assaults by family or friends were by far the most prevalent form of family violence in Australia, followed by assaults by “boyfriends, girlfriends, or dates” or previous partners; and lastly by current partners
- Males made up the vast majority of victims of physical assault by “other known persons” (including ex-boyfriends or girlfriends); half of victims of physical assault by “family or friends”; a third of victims of physical assault by boyfriends, girlfriends, or dates; more than a quarter of victims of previous partner assault; and around one in seven victims of current partner assault
- Overall, women (61%) were slightly more likely to experience family violence than men (39%)
- 9,700 men (29% male victims) and 91,900 women (57.4% female victims) had children in their care when experiencing abuse from a current partner

“I was petrified to come home from work and would see her car in the drive and have to drive away and sit for an hour or so by myself to prepare for the likely barrage to come. I lived in terror walking on eggshells around her for nigh on 20 years. I attempted suicide a number of times.”

(Dan)

- 176,900 men (55.1% male victims) and 645,500 women (62.4% female victims) had children in their care when experiencing abuse from a previous partner.

The Australian Institute of Criminology (2008)² found that 48.7% (almost one in two) adult victims of family homicide and 35.4% (over one in three) victims of intimate partner homicide in 2006-07 were male.

The Australian Institute of Family Studies' evaluation of the 2006 family law reforms (2009)³ found that 39% (more than one in three) victims of physical hurt before separation were male; and 48% (almost one in two) victims of emotional abuse before or during separation were male.

The Australian Institute of Family Studies (1999)⁴ observed that, post-separation, fairly similar proportions of men (55 per cent) and women (62 per cent) reported experiencing physical violence including threats by their former spouse. Emotional abuse was reported by 84 per cent of women and 75 per cent of men.

The *Young People and Domestic Violence* study (2001)⁵ surveyed young people aged 12 to 20 and found:

- while 23% of young people were aware of domestic violence against their mothers or step-mothers by their fathers or step-fathers, an almost identical proportion (22%) of young people were aware of domestic violence against their fathers or step-fathers by their mothers or step-mothers
- an almost identical proportion of young females (16%) and young males (15%) answered "yes" to the statement "I've experienced domestic violence"
- an almost identical proportion of young females (6%) and young males (5%) answered "yes" to the statement "my boyfriend/girlfriend physically forced me to have sex".

"Up until dad left, she held the reins in the house. It was unbearable; her pedantic scrutinies were like police interrogations. He practically made the bloody money, he would give her the lot and then beg for pocket money. Everyone knew of her moods, and dad played always by ear and we managed to get by with little disruption on her part. But there were times when it didn't work. Then... poor dad. I had seen him walking naked in the back yard at night all upset and embarrassed; and I had seen him crawling under the bed to escape her vicious attacks, and I have seen him nursing his fresh wounds in the toilet, and he would say no word against her... When he left mom, I was very sad because I knew that I would miss him, but I felt also happy, because I knew that he was a decent man and that he deserved better."

(Son talking about his parents)

A University of Melbourne / La Trobe University study (1999)⁶ found that men were just as likely to report being physically assaulted by their partners as women. Further, women and men were about equally likely to admit being violent themselves. Men and women also reported experiencing about the same levels of pain and need for medical attention resulting from domestic violence.

An extensive study of dominance and symmetry in partner violence by male and female university students in 32 nations by Murray Straus (2008)⁷ found that, in Australia, 14 per cent of physical violence between dating partners during the previous 12 months was perpetrated by males only, 21 per cent by females only and 64.9 per cent was mutual violence (where both partners used violence against each other).

The Queensland Government Department of Communities (2009)⁸ reported that 40% of domestic and family violence protection orders issued by the Magistrate Court were issued to protect males.

A study of risk factors for recent domestic physical assault in patients presenting to the emergency department of Adelaide hospitals (2004)⁹ found that 7% of male patients and 10% of female patients had experienced domestic physical assault. This finding shows that over one in three victims were male (39.7%).

The Queensland Crime and Misconduct Commission (2005)¹⁰ found that 32.6% (almost one in three) victims of family violence reported to police were male.

The SA *Interpersonal Violence and Abuse Survey* (1999)¹¹ found that 32.3% (almost one in three) victims of reported domestic violence by a current or ex-partner (including both physical and emotional violence and abuse) were male

The Victorian Victims Support Agency (2008)¹² found that 31% (almost one in three) persons admitted to Victorian Public Hospitals for family violence injuries were male.

The NSW Bureau of Crime Statistics and Research (2005)¹³ reported that police statistics showed 28.9% (almost one in three) victims of domestic assault were male.

A MISGUIDED PROCESS BASED ON FALSE ASSUMPTIONS

The process used by the Government to arrive at the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011 [Provisions] was based on the false assumption that only women and children need protection from family violence. Many of the reports commissioned into the 2006 family law reforms, and how the family law system deals with family violence, contained terms of reference that focused only upon women and children – entirely excluding the experiences of family violence of male victims and their children.

Not only did this “research” ignore between one-third and one-half of victims of family violence, it can only be described accurately as “advocacy research” designed to come to a pre-determined conclusion. By commissioning many studies on the impact of family violence against women and children in the context of family law and *not a single study* on the issue of false allegations of violence and abuse (themselves serious forms of family violence), the Government has made it clear that it has always had a pre-determined agenda and was never interested in an open inquiry. A new public inquiry into the entire Family Law industry, similar to that held in 2003, is absolutely essential if such a large proportion of the population – especially children - is to be affected by the proposed changes.

THE EXPERIENCE OF MALE VICTIMS OF FAMILY VIOLENCE

Barriers to disclosing

Male victims of family violence and abuse - like women - often face many barriers to disclosing their abuse. Male victims are only one-third as likely as female victims to report their abuse¹⁴:

- They are likely to be told that there must be something they did to provoke the perpetrator's abuse
- They can suffer shame, embarrassment and the social stigma of not being able to protect themselves
- They can fear that if they disclose the abuse there will be nowhere for them and their children to escape to
- They can fear that if they disclose the abuse or end the relationship, their partner might become more abusive and/or take the children
- They can feel uncertain about where to seek help, or how to seek help
- Services are less likely to ask whether a man is a victim of family violence, and when they do ask, they are less likely to believe him (indeed many state health departments have mandatory domestic violence screening for young women, but no such screening for young men)
- Male victims can be falsely arrested and removed from their homes because of the assumption that because they are male, they must be a perpetrator and not a victim. When this happens, children can be left unprotected from the perpetrator of the violence, leading many men to suffer the abuse in silence in an attempt to protect their children.

“My wife would not let me see the kids. She accused me of sexually molesting my daughter. I was devastated. After a Court hearing which lasted ten days, the judge found that my ex-wife herself had molested my daughter in an effort to generate evidence against me. Despite this, she was still allowed custody.”

(George)

Because of these barriers, men are much less likely to report being a victim of family violence than are women (and women also frequently don't report violence against them).

Forms of abuse

Abuse of men takes many of the same forms as it does against women - physical violence, intimidation and threats; sexual, emotional, psychological, verbal and financial abuse; property damage and social isolation. Many men experience multiple forms of abuse. Men often experience legal and administrative abuse - the use of institutions to inflict further abuse on a victim, for example, taking out false restraining orders or not allowing the victim access to his children.

Impacts on male victims

The impacts of family violence on male victims include:

- Fear and loss of feelings of safety
- Feelings of guilt and/or shame
- Difficulties in trusting others
- Anxiety and flashbacks
- Unresolved anger
- Loneliness and isolation
- Low self-esteem and/or self-hatred
- Depression, suicidal ideation, self-harm and attempted suicide
- Use of alcohol or other drugs to cope with the abuse
- Physical injuries
- Sexual dysfunction and/or impotence
- Loss of work
- Loss of home
- Physical illness
- Loss of contact with children and/or step-children
- Concern about children post separation.

“She reduced me to a state of total powerlessness. I couldn’t function as a husband, as a father. I did everything she wanted and got abused for it. The more I gave in to her the more she destroyed me. I became like a little man just towing the line. I had to ask permission to go and see a friend. I was just her slave in the relationship.”
(Nigel)

To add insult to injury, male victims of family violence often find it distressing to see social marketing campaigns such as *Violence Against Women Australia Says No* (Federal) and *Don’t Cross the Line* (SA), which suggest that men are the only perpetrators of family violence and women and children the only victims.

Children of female perpetrators

Children of female perpetrators of family violence can suffer the same impacts as children of male perpetrators, including

- The abuse of witnessing family violence by their parents or step-parents
- Direct violence and abuse themselves
- Negative impacts on their behavioural, cognitive and emotional functioning and social development
- Harm to their education and later employment prospects
- Shaping their attitudes to violence in positive or negative directions
- The possibility of being more likely to grow up to perpetrate violence or become victims of violence in their own relationships (the majority however do not).

DEFINING FAMILY VIOLENCE

The existing definition of family violence in the Family Law Act 1975 is:

family violence means conduct, whether actual or threatened, by a person towards, or towards the property of, a member of the person's family that causes that or any other member of the person's family reasonably to fear for, or reasonably to be apprehensive about, his or her personal wellbeing or safety.

The proposed changes to this definition of family violence attempt to capture a wider range of abusive behaviours - something we would strongly support. However, there are two serious problems with the proposed definition.

Removing the 'reasonableness' clause

The existing definition of family violence requires that any fear or apprehension about a person's personal wellbeing or safety be *reasonable*. Fear and apprehension are very subjective terms. In order to prevent false allegations of family violence being used as a strategy in Family Law proceedings, the 'reasonable apprehension' clause *must* be retained. Without it, anyone can claim to be in fear or apprehension of their (ex-)partner without any reasonable basis for this emotion. And with the current law reform process based on the (incorrect and misguided) assumption that only women and children are victims of family violence, it will be more likely that women will be able to successfully apply this strategy.

"In my relationship with Deborah, I didn't like to admit that I was scared - in fact it took me a long time to admit that I felt scared and was affected by her abuse. That admission was challenging to my own identity as a male. I could not even admit to my close and supportive friends how much her behaviour was hurting me."
(Mervyn)

Not adequately capturing the full range of experiences of victims of family violence and abuse

The language of 'coersion' used in the proposed bill fails to capture the serious and ongoing nature of family violence. The proposed bill also fails to acknowledge that much family violence and abuse involves threats of violence as a means of control, even if actual violence is rarely used. Also, recent research by Edith Cowan University has determined that many male victims of family violence and abuse suffer legal-administrative abuse - a person using legitimate services in a way that abuses the rights of other family members. This form of abuse is not included in the proposed definition of family violence.

A proposed definition

Our proposed definition is as follows:

(1) For the purposes of this Act, family violence means violent, threatening or other behaviour by a person that dominates or controls a member of the person's family (the family member), or causes the family member to reasonably be fearful.

(2) Examples of behaviour that may constitute family violence include (but are not limited to):

- (a) an assault or threat of assault in order to intimidate; or*
- (b) a sexual assault or other sexually abusive behaviour; or*
- (c) emotional or psychological abuse;*
- (d) stalking; or*
- (e) repeated derogatory taunts; or*
- (f) intentionally damaging or destroying property; or*
- (g) intentionally causing death or injury to an animal; or*
- (h) unreasonably denying the family member the financial autonomy that he or she would otherwise have had; or*
- (i) unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or his or her child, at a time when the family member is entirely or predomi-*

nantly dependent on the person for financial support; or
 (j) preventing the family member from making or keeping connections with his or her family, friends or culture; or
 (k) unlawfully depriving the family member, or any member of the family member's family, of his or her liberty; or
 (l) using legitimate institutions to inflict abuse.

Our proposed definition differs from the government's proposed definition in the following important respects:

1. We have replaced the term "coerces" with the term "dominates" in order to better capture the serious ongoing nature of the abuse. Simple coercion in a relationship by "digging one's heels in" or by bribing or whinging does not necessarily reflect family violence. To illustrate with a trivial example, if I coerce my partner to mow the lawn or do the ironing instead of watching TV by whinging until they relent, I might not be acting with maturity but am I really committing family violence?
2. We have added the term "reasonable" to avoid spurious allegations of family violence based on entirely subjective claims of fear (such false allegations themselves being a serious form of family violence).
3. We have added the term "threat of assault in order to intimidate" to point (a) in order to reflect the fact that much abusive behaviour involves threats of violence as a means of control, even if actual violence is rarely used.
4. We have added a 12th point (l) "using legitimate institutions to inflict abuse" to capture legal-administrative abuse: a person using legitimate services in a way that abuses the rights of other family members. Legal-administrative abuse refers to such issues as making false accusations in order to obtain a violence restraining order, denying a parent access to their children and undertaking vexatious actions in the Family Court or through the Child Support Agency.

DEFINING CHILD ABUSE

The proposed changes define abuse, in relation to a child, as meaning "causing the child to suffer *serious* psychological harm" or "*serious* neglect of the child" [our emphasis]. We would argue that *any* psychological harm or neglect of children - however serious - should be considered child abuse. Why does the government believe that only "serious" psychological abuse or neglect should be defined as child abuse, while physical assault and sexual abuse are defined as child abuse whatever their level of seriousness? If the government is serious about protecting Australian children from abuse and neglect, we would urge you to amend the proposed definition of child abuse as follows:

abuse, in relation to a child, means:

- (a) an assault, including a sexual assault, of the child; or
- (b) a person (the first person) involving the child in a sexual activity with the first person or another person in which the child is used, directly or indirectly, as a sexual object by the first person or the other person, and where there is unequal power in the relationship between the child and the first person; or
- (c) causing the child to suffer psychological harm, including (but not limited to) when that harm is caused by the child being subjected to, or exposed to, family violence; or
- (d) neglect of the child.

"Almost everything I did that wasn't done with her constituted a threat to her. By the end of the relationship I had no friends. I had no outside activities. I had nothing, because everything that I was interested in, every friendship I had, threatened her. She would make things so difficult for my friends that they just drifted away."

(Scott)

CONCLUSION

In conclusion, we urge the Federal Government to abandon the proposed changes to the Family Law Act and to commission an open and transparent public inquiry into the 2006 amendments, and any further changes that are needed to improve Family Law for all Australians.

Should the proposed changes regrettably proceed, we urge you to revise the proposed definition of family violence so that it retains the “reasonableness clause” and adequately captures the full range of experiences of victims of family violence and abuse.

We have attached, for your information, a series of Fact Sheets that provide more information about male victims of family violence and their children.

Yours sincerely,

Greg Andresen
Senior Researcher
One in Three Campaign

“I had to work long shifts and often when I came home, I’d find my wife had left the children (the youngest was only a few months) and had gone down to the club, drinking and playing the poker machines. Sometimes when I went to get her, she’d smash a glass or a bottle across my head. Several times I had my head cracked open.”

(Roy)

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