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Submission to the Senate Inquiry into the Family Violence bill

I submit my submission on the Senate Inquiry into the Family Violence bill, supplemented by the well written article below, re-printed with kind permission from the author, on the misuse of well intended but poorly thought out laws to protect victims against family violence in the US.

Please read this article because it is very pertinent to the current family violence bill in Australia.

As a practicing medical professional who has first hand and extensive exposure to the complex dynamics involved in cases of family violence, my submission contends that this particular bill has no checks and balances in place, and unfortunately reads like an enthusiastic but reckless attempt to reduce family violence, by adopting a simplistic presumption of guilt in cases where abuse has been alleged or implied.

This is a completely naïve application of a serious law, with serious implications, and will as a result capture almost every instance of separation in Australia, as well as every in-tact family in Australia if applied, given that benign, short term disagreements are part of life for all couples.

However, these normal family tensions should be no justification to separate a father from their child, but unfortunately this is clearly what this bill seems designed to do.

I find this new family law amendment quite pointless as well, given the enormous level of protection currently afforded to both women and children in the current family law act (shared responsibility 2006).

The clear community perception that I have witnessed in my practice has been that these changes are politically motivated, designed to repeal the shared parenting provisions by stealth, and have very little community confidence in these laws effecting any new protections for vulnerable people against domestic violence.

There is also a dangerous presumption in this bill that allegations of abuse are self-evidently truthful, but for those who are professionally exposed to the day to day dynamics of family violence, this presumption is simply not an accurate reflection of the human dynamic of separation.

Unfortunately, both mothers and fathers routinely exaggerate, distort and misrepresent allegations of abuse during episodes of separation and divorce, and perhaps it would not be an exaggeration to say in the majority of cases where medical verification is sought, the allegations are found to be less than accurate.

For this bill to have any merit there should have been an objective assessment, by an independent and credible party, not a womens' group nor a partisan ex-Judge who has publicly condemned shared parenting for many years, into the countless claims of false allegations within the Family Court and associated institutions.

Without a genuine attempt to assess the level of false allegations occurring in the Family Court, which the community believe are by far the overwhelming majority, then this law is not based on any facts or credible research, but on the say so of lobby groups, and is in contrast to the government's own AIFS study on the risk of abuse inherent in the 2006 family law act.

Please reject this change to the family law act. The problem of family violence will never be solved by the implementation of punitive laws that reject the notion of natural justice or the inclusiveness of all parties in finding a solution.

Raise Your Voice, Lose Your Child

A Grim Reflection on the Family Violence bill – a family law amendment with zero checks and measures that will not reduce family violence, but will create even more victims in family law.

"He raised his voice at me, and I was frightened he was going to hurt me and the kids."
That's it. That's all it takes for a man to lose his children in today's hyper-sensitive landscape of domestic violence prevention.

This sea change can be traced to the days and months following the tragic death of Nicole Brown Simpson, when the public outcry by the *domestic violence* lobby moved beyond confronting actual physical altercations and began focusing on the perceived threat of violence. By casting such a wide net, centered almost entirely on male against female domestic violence, there have been unintended consequences that play themselves out in Family Court every day.

With nothing more than a woman stating, "I was frightened he might hurt us," a court can remove a man from his home and prevent him from seeing his children for a minimum of three weeks. Often the court will also order either an anger management or a batterer's intervention class and generally grant the demand by his ex-spouse that he have supervised visitation.
The intrusion by the courts into family dynamics has become so extreme that the domestic violence laws are no longer being used to protect potential victims, but rather to victimize potential abusers.

Let me be clear about this: in the eyes of the court, all men are considered to be potential abusers. No matter his history, if there was any provocation, or if he was in fact the abused victim. This last point is made even more interesting when considering that female-on-maledomestic violence make up 50-percent of all cases, yet it is the man who is singled out as being potentially dangerous. And while as an attorney, my professional life is predicated on “innocent until proven guilty,” and “all” is a word to be carefully considered before using, I will say that due to O.J. Simpson’s horrific, inexcusable, and deadly behavior, a shadow has been cast on all men in all cases.

The courts no longer believe there is any appropriate expression of anger and, in essence, have outlawed the emotion. We have made it strategically impossible for a person to display anger in any form, whether a mental health professional would label it a “healthy expression” or not, without the line being automatically drawn to an actual act of physical violence.
But the fact is that humans have a full range of emotions. We get happy, we get sad, and yes, we get angry. And while it is absurd to think that our judicial system could legislate our happiness or sadness, it appears to gladly accept the notion that expressing anger in any fashion should have legal consequences.
In states across the country, if one parent is determined to be an “abuser”—and in California that means a raised voice—that person is no longer presumed to be a fit parent. The “victim parent” is now presumed to be a better parent and has an advantage when the court makes final determinations of child custody, visitation, and move-away plans to new cities, states, or countries. This has created the unintended consequence of the strategic domestic violence restraining order. When one parent wants to take unfair advantage in a divorce or paternity case, all that is needed is the granting of domestic violence restraining order and the court will automatically suspend the other parent’s parental rights—usually for a short period. But to the cut-off parent, that brief time can seem like an eternity.

If the court determines that there are grounds for a permanent order, the cut-off parent may be forced to endure a 52-week batterer’s intervention course. The problem with this is that in the flimsy guidelines of what defines domestic violence these days, almost any fact pattern can be twisted to create “violence.”

For fathers who are required to have a monitor to see their children, which is becoming a more common occurrence as a requirement due to the domestic violence allegations, they may be unable to see their children. The costs of a paid monitor can quickly become prohibitive since the man will also be ordered to pay child support, often spousal support, the cost of the batterer’s intervention or anger management classes, and he has to find his own apartment since he’s been evicted from his home.

Domestic Violence Restraining Orders originally were meant to be a protective measure by the courts. But they have become a fast track process by which unscrupulous parties gain sole legal and sole physical custody of the children.

And, as is typical in “win at all cost” child custody cases, it is often the child that suffers the most. The “victim parent” strategy may yield short-term results for the accusing spouse, but the bad lessons learned by the child may last a lifetime.

Fathers who are truly guilty of domestic violence or child abuse should be viewed as criminals and treated as such. But in our rush to avoid these types of tragedies through a “zero tolerance policy,” we have gone against the most important tenet of the law: Innocent Until Proven Guilty. And the result is that we are creating and perpetuating a new type of abuse—the marginalization of fathers.

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