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

16/4/2011

Dear Committee Secretary,

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

I am a Social Worker and am writing to express my support for the changes to the *Family Law Act* proposed in the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011, and also recommend that further changes be made to ensure that the family law system ALWAYS prioritizes the safety of children and primary care givers to protect them from ongoing trauma.

I have been involved in the Family Court since 1993 in my capacity as Social Worker and/or court support person for separated mothers or women escaping abusive relationships. I have witnessed some incredible miscarriages of justice and I have been traumatized in supporting these women by their treatment and that of their children at the hand of our legal system. What is unforgiving is the utter contempt that magistrates show in the way they address and speak to [unrepresented] mothers in particular. All people should be treated with respect in the court system and as professionals Magistrates or judges should set this example and not demand respect themselves while showing little respect for those before them as this experience further traumatizes those already victimised.

I would rather see that the court err on the side of caution to protect vulnerable children from sexual abuse and to look at the **evidence** rather than defer to uninformed opinion.

Silencing or punishing mothers for speaking out is not the strategy the Family Court should continue to adopt.

In my experience what the Court labels "*entrenched conflict between the parents*" reveals a history of abusive power dynamics at the hand of a perpetrator with the victimised party trying everything to escape further abuse. Whenever I have witnessed a mother raising allegations of family violence it has been incorrectly labelled "entrenched parental conflict" or undermined, even trivialised – from magistrates and legal representatives alike. When different accounts are presented by parents, what "he says…she says…" is not even challenged with supporting evidence to the contrary but both are dismissed and assumed to be lying. It only takes one person to want to use their power to go to court and the other party has little power to change this. Likewise if one party is allegedly misrepresenting the facts or abuses the Court system it must be treated seriously for perverting the course of justice. *

In my experience whenever a mother has raised allegations of abuse by the father it is automatically treated as a strategy to alienate the father from the child or that *"I believe the mother has waged a 'campaign' against the father*" – as stated in a case I attended in February this year BEFORE it had even gone to trial and the evidence presented! Perpetrators of abuse are very calculating and manipulative and hide their behaviour very well rather than admit to it – part of their psychology is that they have to blame everyone else other than themselves for their relationship breakdown when their partner invariably leaves them.

It seems logical that the 5% of separated cases that make it to court would include the most abusive and violent perpetrators of child abuse and domestic violence but the professionals involved all have **a huge denial of this reality** – magistrates, judges, family report writers/psychologists, lawyers, barristers, Independent Child Lawyers (ICL's) alike. Over the past decade parents I have been involved with have no issue with children going with the other parent, despite differences between the parents, IF their child is looked after and safe. It seems unpalatable to the legal profession that parents can cause harm to their children and that the quality of the relationship a child has with each parent is more important than the need of a child to have a relationship with both parents. How is it better that a child be subjected to ongoing abuse in the course of maintaining a relationship with a parent or else is repeatedly traumatised in witnessing their primary care giver being subjected to ongoing abuse!?!

I have been astounded at the complete willingness of the Court to accept the hearsay of the father that "the mother keeps breaching court orders" with no supporting evidence, despite contrary reports from other parties.

I am equally appalled at the Courts view that when a child raises allegations of abuse or refusal to go with the other parent that "the mother has instilled these ideas in the children" – even if the child airs them with their ICL, psychologist or Family Court report writer. The opposite view is rarely considered – i.e. that the children are too scared to say to the Court/ICL that they don't want to go with the other parent for fear of repercussions by that parent who reads what they have said in such a report.

It is considered quite normal for children reaching secondary school age to want to develop relationships and activities independent of the family arena. However those children in this age bracket before the Court are not given any say in how they want to spend their weekends or holidays if their parent demands this time as per court order until they reach the age of 18! Before 2006 the Family Court gave increasing consideration to the wishes of the child in this regard, pursuant to their developmental age, now it is the demand of the non-resident parent to spend time with their child that takes priority! How unproductive is it for a caregiver to have to go through constant battles, week in year out, with their children to enforce court orders? I know of mothers who have to regularly carry screaming and kicking children to forcefully hand them over to their fathers when the children are reluctant to go and then have the added difficulty of trying to settle the children back down upon their return when they often act out. The mothers bear the brunt of their children's complaints and protests, and then also resentment when their wishes are not being considered. It is disempowering for children to have their voices ignored particularly if they are subjected to poor treatment by the non-resident parent. The Court needs to be more diligent when children are reluctant to spend time with the other parent instead of just dismissing this as a result of the mother's propaganda/campaign - or else err on the side of caution by considering supervised contact with the other parent but it seems the Court prefers to protect the non-resident parent's liberty than the safety of the child in this regard!

Recommendations:

There needs to be a formal independent body to investigate complaints regarding the conduct of the Family Court and its clergy. Judges and Magistrates need to be held accountable for their decision making. Currently there is no avenue for aggrieved parties to make formal complaints about magistrates, judges and psychologists writing reports for the Family Court.

The outcomes of judicial decisions should be quantified and made public. Where procedural changes are introduced [eg. starting from the presumption of shared-care child arrangements] they must be evidence-based and well researched otherwise this should give rise to a class action against the Family Court by those victimised as a result.

I propose that the Family Court starts from the premise that those cases that make it to court currently have or have had a history of abusive power dynamics – any combination of emotional, physical and financial abuse. That this is the rule rather than the exception.

The Court needs to protect children from ongoing conflict and litigation between parents in recognizing that this impacts adversely on the development and wellbeing of the child and the primary care giver.

Broadening the definition of 'family violence' to include elements of coercion and control, while recognising a wider range of abusive behaviour and removing the objective test of 'reasonableness' so that family violence can be properly considered whenever the victim actually fears for their safety. [I have had many mothers fear for the lives of their children if the other parent becomes too aggravated – and the murder of 4 year old Darcey Freeman by her father is a real reminder of the ultimate *spousal revenge* they may face].

A broader definition and understanding of child abuse that includes exposure to violence and prioritising avoiding family violence when considering what is in the best interests of the child. Courts also need to take the lack of child maintenance or financial support seriously as it is a form of child neglect - in the US it is treated as a criminal offence when a parent reneges on their child support obligations as the court recognizes the harm to the child of withholding financial support.

Remove the ‘facilitation’ aspects of the ‘friendly parent provision’.

Repeal section 117AB about costs orders relating to false allegations or denials of violence.

In concluding, I strongly recommend you support the amendments suggested in the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011, and additional recommendations as addressed in this letter.

Yours sincerely,

* Some examples of common dirty trick strategies I have witnessed or had reported by women I have supported in Court include:

- Not receiving formal notification of a hearing date.
- Receiving blank pages via registered mail instead of the correct papers/Affidavit so one party has no preparation of material the Court receives by the other party to refute with evidence or prepare for.
- Receiving a phone call from the other parties [alleged] solicitor’s office to misleadingly inform them they don’t have to appear in Court the next day and/or that the hearing has been adjourned.

cc. Email sent to: legcon.sen@aph.gov.au