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Submission to the Senate

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

Dads in Distress Support Services deplores violence in all forms and congratulates the Federal Government for its continued effort to improve the treatment of family violence in the Commonwealth's legislative and policy framework. In particular, we welcome the recent release of the National Plan to Reduce Violence Against Women and their children 2010-2022, and The Family Law Amendment (Family Violence) Bill currently before the Senate.

The Federal Government's recent initiatives, with a few modifications to the Bill, appear to represent a necessary advance in the government's overall strategy to improve the treatment of family violence. We also believe that there are many more reforms needed to achieve the outcomes of reduced family violence that we are all working towards.

From our experience, there are two important and underpinning considerations that the current reforms tend to overlook.

First, that the incidence of violence and abuse by women against men and children, although generally argued to be a lesser percentage, is also a serious matter. In our experience, it is common for men to not want to discuss with a trusted peer, let alone report to police, their female partner's violent behaviour. Usually this is because they feel either ashamed or that they do not want to 'make matters worse'.

Second, situational violence when it occurs as a rare event triggered by a family breakdown needs to be recognised as such. It is violence, and still needs to be dealt with accordingly, but it needs to be identified as a rare event, and one particularly associated with family breakdown. This is different to violence that is entrenched and a known problem within a family unit. Requiring the courts to assess the history of family violence may be one way to achieve this. Where there is no history, there might also be more immediate support interventions made available to those involved, to more speedily and appropriately help the children maintain a healthy and meaningful relationship with both

parents. We believe this would also require greater cooperation between agencies and possibly a review of privacy laws.

Such acknowledgement that family violence is not gender-specific and is often a rare and out-of-character occurrence, not entrenched, is essential if we are to create a framework that reduces the incidence of family violence, rather than one that inflames it. From this perspective we will be better able to promote more positive parenting in all situations and to build better understanding of the behaviours that provide children with safer and healthier environments.

The 2006 reforms are working well

The Family Law Amendment (Shared Parental Responsibility) Act 2006 firmly established that ‘a meaningful relationship’, and that ‘substantial and significant time’, with both parents is an essential consideration in family legal disputes, and that it is in the best interests of children to do so. As a result, in our work we have witnessed a significant improvement in how cases are managed, both prior to and during family law proceedings, to ensure children maintain healthy relationships with both parents.

We want to see a strengthening of these 2006 principles, such as providing early interventions where violence has been either alleged or found to have occurred to ensure that children can maintain an appropriate but meaningful relationship with both parents. We also want to see a greater commitment to resourcing policies that support these principles, rather than see them being weakened in any way. We are greatly concerned that some of the proposed amendments do threaten to directly weaken these important principles. Our experience confirms that many grandparents and extended family members are also particularly sensitive to any diminution of the Act in this respect.

Risk of heightened mental anguish must be considered alongside family violence issues

We have deep concerns about the proposed amendments in relation to mental suffering. Several proposed amendments, in our view, will not positively address issues of family violence but will impose new and increased risks of heightened mental anguish for those experiencing family breakdown.

As a national harm-prevention charity, we seek to work in partnership with all concerned community groups and government agencies to create a healthier and more solution-focussed environment for those experiencing family breakdown. Our views are solidly grounded in the work of our national team of volunteers who currently contribute more than 1300 volunteer hours every month in face-to-face, telephone, and online support to several thousand non-custodial parents and their families. The majority are fathers but the number of non-custodial mothers we are helping is also growing. The psychological pressures are very similar for both male and female non-custodial parents.

According to the Child Support Agency, in 2008-2009 there were 760,372 payer parents. From our experience we would predict that a majority of payers, particularly those earning less than \$100,000 per annum and in the first four years of separation, would be experiencing a reasonable to high degree of distress.

The tragic murder-suicide of baby Oliver at the hands of his mother Gabriela Garcia in 2008 and then, at the same bridge, the equally unthinkable and murderous act by father Arthur Freeman of his young daughter Darcey in early 2009, are hideous and painful reminders for all of us. They require us to re-double our efforts to create more effective ways of helping parents who are suffering mental anguish during a family breakdown, before it really is 'too late'.

In their March 2010 media release, MensLine Australia reported that fathers living alone are 'twice as likely to have experienced a serious mental health concern and three times more likely to be suicidal when calling the professional telephone counselling service'. From our experience, this statistic highlights the dangers of the pressures on the non-custodial and displaced parent, be they male or female.

Financial hardship (particularly with the costs of legal representation), the emotional strain of not being able to maintain substantial and significant contact with their children, grief over the loss of an intimate relationship, the psychological strain of trying to maintain work commitments while adjusting to being separated, the social strain of having to establish new friendship and support networks and various other factors often fall more heavily on the shoulders of the non-custodial parent.

The system is severely under-resourced, don't push it further.

Currently, when a parent has been accused of some form of abuse and the Court deems it necessary for there to be supervised access for a period of time, the parent and child involved can often wait up to six months before a facility is available. Whether the allegations are proven to be true or untrue (and, in our experience, the majority are found to be untrue), this results in a serious exclusion of one parent and their extended family members from the child's life.

The lack of systems and resources to conduct speedy and thorough investigations into any claims made under the Bill's proposed amendments would lead to the inevitable outcome of greater 'violence' as defined by the proposed amendments themselves, in terms of preventing children from having meaningful connections with one or other parent.

We offer four recommendations to reduce the risk of this Bill causing heightened mental anguish

We acknowledge that non-custodial parents do not have any greater 'right' or 'need' than those of custodial parents and we also acknowledge that children's 'best interests' are, and should be, the main priority in looking at how to improve the legislation. With that in mind, we ask that the Senate seriously consider our four recommendations, and pay particular attention to our concerns and the likely effects the proposed amendments will have.

Recommendation 1. **To delete** the three clauses expanding the definition of 'violence' to include matters relating to 'financial autonomy', 'financial support', and 'threatening to commit suicide'. These are numbered Item 3, ss 4(1) (e) (i), (ii), and (h). Refer page 3, item 3 Subsection 4(1) (definition of *family violence*).

To be effective, and not bogged down in subjective and argumentative views, the inquisitorial nature of family law requires tighter definitions that are readily measured, assessed and dealt with. The expanded definition appears far too broad to be effective in practice and we expect it would only

result in an unprecedented level of vexatious claims from either side, and a higher risk of mental anguish as a result. In particular the following definitions raise serious concerns for us:

(e) (i) 'denying the second person the financial autonomy...' and (e) (ii) 'withholding financial support...'

Concern: the claim of 'control' in this respect may be upheld based merely on a second person's verbal claim. But there appears to be no provision for speedy and thorough investigation as to whether or not the first person has, in fact, the financial capacity to provide the 'autonomy' or 'financial support' that the second person claims.

(h) 'Involves the first person threatening to commit suicide or self-harm, with the intention of tormenting or intimidating the second person'.

Concern: We acknowledge that such threats are sometimes made and, in our experience, usually by people who are suffering from a serious degree of mental anguish arising from the family breakdown. We have grave concerns that such a definition for 'violence' would in fact create a greater 'violence' against those suffering from mental anguish and illness and could indeed pressure them further into violent or self-harming behaviours. Furthermore, there is no provision for what constitutes evidence of such an intention. Once again this could only result in prolonged assessments that, in effect, prevent children from having meaningful contact with one or both parents.

Recommendation 2: To delete item 37, Section 117AB, which would repeal the provision for sanctions against those who make false accusations. Refer page 12, item 37, Section 117AB.

Sanctions are fundamental in deterring people from making false allegations. Without them, there will be an explosion of false allegations and this will lead to an escalation of mental anguish. The majority of the people we support claim they have been falsely accused of wrongdoing. More often than not this takes the form of an Apprehended Violence Order or similar. Quite often it includes accusations of violence that usually take many months to be considered by appropriate professionals.

The negative psychological impact of false allegations cannot be over-estimated. A large percentage of people coming to us for support have been subjected to false allegations and suffer considerable anguish as a result. It is highly offensive to those who are victims of false allegations to suggest that there be no sanctions against those proven to have made false claims. The current sanctions would not appear to be strong enough in our view, but to repeal them would only add to the psychological pressures on many non-custodial parents.

Repealing this section also serves no purpose in positively addressing issues of family violence, but would only serve to give greater incentive for some to make vexatious claims.

Recommendation 3: To delete items 18,19 and 20. Section 60CC and items 25 and 26 (Note 1) that would remove the 'friendly parent provisions' from the proposed amendments. Refer page 7, items 18,19 and 20. Section 60CC and refer page 10. items 25 and 26 (Note 1).

If not deleted, these items of the Bill will result in more children being excluded from access to/time with their non-custodial parent, due to the Court not making any inquiry into the custodial parent's actions to support a healthy relationship between children and non-custodial parents.

The removal of these 'friendly parent provisions' would appear to serve no useful purpose in addressing the threat of family violence. On the contrary, they threaten to escalate the risk of mental anguish and the potential for violent behaviour that such anguish may induce.

Recommendation 4: **To add** new definitions of violence, per 'torments, intimidates or harasses the second person...' under subsection 4(1) (d) to include:

- i) To threaten to deny or reduce, or to actually deny or reduce, child access as a punitive action, or in order to control the other parent's behavior. (E.g. Second person loses job and is not able to pay child support at previous level, first person threatens to deny or reduce access if payment levels are not maintained.)
- ii) To threaten to remove or to move a long distance, or to actually remove or move a long distance, a child from the other parent, without reasonable cause. (E.g. first person has unfounded fears about second person and takes child overseas to keep them separated.)

Threats and actions such as these are common behaviors, particularly where one parent considers the financial arrangements to be unsatisfactory. These behaviors cause extreme mental anguish and need to be acknowledged in the same way as the other behaviors being newly defined as 'violence' in this Bill.

Summary

The 2006 legislation laid down some essential principles that have worked well to achieve better outcomes for all involved in family law disputes. The proposed 2011 amendments contain a number of positive improvements, particularly by expanding the definition of 'abuse' and by making necessary administrative adjustments for the legislation to be more practicable.

Based on our national effort as a harm-prevention charity, we have some deep concerns about several of the proposed amendments. As listed above, these amendments seriously threaten to diminish the principles of 'a meaningful relationship', and 'substantial and significant time'. Furthermore, they would appear to serve no positive purpose in addressing issues of family violence. On the contrary, they threaten to escalate the risk of mental anguish and thereby heighten the risk of fuelling, rather than appeasing, further violent behaviors.

We respectfully implore the Senate to consider our concerns and to modify the Bill according to our four recommendations above.

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