

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

**Submission to the Family Law legislation Amendment (Family
Violence and other Measures) 2011**

Beryl Spencer

07/07/2011

Introduction:

Congratulations to the Government on its initiative of taking the first steps in addressing some of the anomalies in the Family Violence Bill of 2011. I have taken the time to peruse a 'snapshot' of the submissions to date and am pleased to see that most of these have drawn attention to some key points: the priority of the child's safety in all decisions and the need to re-define the 'friendly parent' and 'family violence'

I would like also to advocate for a 'less complicated formulation' of much of the detail. If this Legislation is to benefit Australian families, then I believe it is important that all who wish to have access to it are able not only to read but it understand it's content without necessarily the assistance of a lawyer. I fully support an agenda that will deliver education not only to the judicial system but also to families, and suggest that such an attempt to educate families on Family Law Legislation would also include 'parenting skills'.

I write this today as a mother, grandmother, parenting facilitator, high school chaplain, and foster parent of abused children (we fostered for 15 years). (...)

We don't want another day to pass, where more precious and innocent, little Australians have their lives changed forever, firstly in the homes where they are supposed to be safe, and then in a court system that many times fails them.

I urge you to consider the following:

Broader definitions and understanding child and family abuse:

As I have read this Legislation, the concept of Child Abuse/Family Violence has failed to fully capture or to understand the reality in many of today's 'blended' and – 'not-so blended' family homes, or that there is ***little that is 'reasonable' or 'normal' any more for thousands of children and families.***

ON the other hand, Family Violence does not necessarily always fit the "typology of coercive controlling behaviour." Perpetrators of abuse may present as loving caring people some of the time. So Family Violence and Child Abuse must be far more broadly defined. "Friendly parent" also needs re-defining as we simply cannot presume that a child is necessarily safe with either parent or in a shared parental situation and though the parent may be 'friendly' he/she not necessarily presents a safe environment for the child.

- What goes on behind closed doors is often not friendly, or reasonable, normal, and is often birthed in anger and conflict and fuelled by alcohol and or drugs or jealousy for that matter.

- On the other hand, in the secret of a child's bedroom, a perpetrator grooms and seduces an innocent child (no real evidence of violence) until at a much later date the perpetrator actually violates the child. This evidence remains secret unless, or until another adult is informed, or un-explained behavioural tendencies are observed outside the home (school) ... a form of 'passive abuse'.
These changes of character in the abused child may present as self-harm, attempted suicide, anorexia, a fall in school grades, attention getting behaviour or other psychological disorders ,as the child 'cries on the inside" (See further information in footnotes).¹ "Grooming and manipulation" must be recognised as 'abusive behaviour'
- Adults often 'tolerate' various forms of abuse "to keep the family together" or 'through fear of being left destitute,' or the shame of not being 'able to cope'. Another form of 'passive' abuse.
- I strongly recommend that this legislation in its final form be such that it will **protect** our children in the future. The '**littlest victims**' of Domestic Violence and Child Abuse must not only have a voice, but that voice will:
 1. *Prioritise* their status
 2. *Protect* them physically and emotionally
 3. *Provides* a future in which they can emerge into adult life in a safe environment.
- These points must be the filter or eyes through which the Legislation must be viewed. While I have specifically addressed the issue of child abuse, there must also be protection for the abused parent. These two issues, I believe must be given adequate, and separate attention within the broader spectrum of 'family violence'
- Definition of Family Violence (4AB) Re-define 'family violence' to more accurately define not only the modern Australian family but also the word 'violence' to reflect as above. Note this should **not** detract in any way from the traditional family of a mum and dad, but **include** the broader definition.
- Congruence of Federal and state Law. Federal Legislation is typically written in a form that allows the two systems to function without contradiction. However should there be such a contradiction, then the Commonwealth Law prevails.² It is important therefore to include the definitions (next page) into the Family Law Legislation Amendment to clarify and broaden these definitions.

¹ http://en.wikipedia.org/wiki/Child_sexual_abuse **Child sexual abuse** is a form of [child abuse](#) in which an adult or older adolescent uses a child for sexual stimulation.^{[1][2]} Forms of child sexual abuse include asking or pressuring a child to engage in sexual activities (regardless of the outcome), [indecent exposure](#) of the genitals to a child, displaying [pornography](#) to a child, actual [sexual contact](#) against a child, physical contact with the child's genitals (except in certain non-sexual contexts such as a medical exam), viewing of the child's genitalia for the purpose of sexual gratification, or using a child to produce [child pornography](#).^{[1][3][4]} The effects of child sexual abuse include [depression](#),^[5] [post-traumatic stress disorder](#),^[6] [anxiety](#),^[7] propensity to further [victimization](#) in adulthood,^[8] and physical injury to the child, among other problems.^[9] Sexual abuse by a family member is a form of [incest](#), and can result in more serious and long-term [psychological trauma](#), especially in the case of parental incest.^[10]

² Federal Constitution Federal Legislation s 109 "When a law of a state is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid."

- With reference to abuse, broaden the definition to references to consent and rape in the Queensland Family Law Amendment Bill of 2000:
 - Include a reference to what I have called the act of ‘grooming and manipulation’ as a prelude to an more abusive or violent act of sexual nature (Page 1)
 - This sexual abuse of a child is addressed by interpretation, in the QLD *Criminal law Amendment Bill of 2000 and includes a broad definition of ‘consent and rape’ 349 (1) Consent and 349(1) Rape. When does sexual abuse or incest become rape? These legal interpretations become a midfield to be used in courts to detract from ‘actual evidence’ Some of these are included in the Family Law Amendment Bill 2010, further include 349 1 (e)*
 - - “false and fraudulent representation about the nature or purpose of the act (This is the coercion that often goes on behind closed doors)
 - Rape **349** (1) Include (a), (b) (c) penetration by other means etc.³
- Advisor obligations in relation to parenting plans and ‘friendly parent’ provisions:
 - There no place for **‘presumption’ or ‘reasonableness’** in family law. The child’s safety must be **the first priority** when deciding the best interest of the child.
 - Ex-partners may become very abusive and controlling. Over the last 6 months, 2 little girls have been murdered and several abductions have taken place. “proof” that the family Law Court will take seriously, is often very difficult to prove, and another of our ‘littlest victims’ either dies or is seriously hurt while someone else decides their destiny. It would appear that our law does not adhere to or conform to the UN Convention of the rights of the Child.
- While the issue of a child having a meaningful relationship with both parents may be appropriate in some cases, shared parenting may not be a safe environment for a child and should never be presumed as such.

Prioritised Key Points and recommendations:

1. Advisor’s Obligations and priorities:

- a. Remove the presumption of equal shared parental responsibility from the Family law Act
- b. The first priority must always be given to the protection of the child from physical, emotional, psychological harm through being subjected to or exposed to further abuse or violence.
- c. Of secondary consideration is the child’s having a meaningful relationship with both parents. IN some circumstances this may **never** be appropriate.

³Page 24 ‘definitions’ for 32 www.legislation.qld.gov.au/LEGISLTN/ACTS/2000/00AC043.pdf

2. Education:

- a. Critical to the future outcomes of the Amendments to the Family Law Legislation Bill 2010, will be the dedicated training and professional development of judicial officers.
- b. A community, education campaign to accompany the introduction of the Family Violence Bill. This would include instruction on parenting that would improve the well-being of all families and children.

3. Definitions:

- a. Broadening the definition and understanding of child abuse and family violence.

4. Formulation and wording:

- a. Less complicated formulation of the data compiled within the Family Law Act. Even though this is a legal document, ordinary Australians have to be able to both interpret and understand the legal requirements on themselves.
- b. If some of the wording is a legal requirement, then a summary of clauses should be given.

Please carefully consider the above and give some hope to our “littlest victims” in the Nation...our children!

Sincerely,

Beryl J Spencer,
(...)