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Submission to Senate Committee on Legal and Constitutional Affairs
Family Law Legislation Amendment (Family Violence) Bill 2011

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Introduction

I write in strong support of the direction of the proposed legislative changes which will go some way to better ensuring the safety of children. I urge the Committee to also consider additional changes which will strengthen the legislation's protection of children and other victims of family violence.

The urgent need for this change has been identified both in the government's commissioned large scale empirical study evaluating the broad impacts of the 2006 legislation (Kaspiew, et al., 2009) and its study specifically evaluating the effects of family violence on post separation parenting arrangements (Bagshaw, et al., 2010). My own research - No Way to Live – Women's experiences of negotiating the family law system in the context of domestic violence (Laing, 2010) – comprising in-depth interviews with women, described in further detail below, provides compelling evidence of the need for legislative change because of the effects on the safety of women and children of the short-comings of the current legislation.

The urgency of legislation that addresses the safety of women and children in the family law system is further attested by the vast body of research literature that shows that: Domestic violence is common in Australia; the majority of its victims are women; and it is a key reason for marital separation (Brown & Alexander, 2007; Brown, Frederico, Hewitt, & Sheehan, 1998; Mouzos & Makkai, 2004)

Exposure to domestic violence is extremely harmful to children's health, development and well being (Holt, Buckley, & Whelan, 2008; Margolin & Vickerman, 2007)

The presence of domestic violence is a high risk indicator that direct abuse of children is co-occurring in the same family (Edleson, 1999; Kellogg & Menard, 2003)

Domestic violence and child abuse are common, rather than rare in families proceeding through the Family Court, and that they occur at serious and dangerous levels (Brown, Frederico, Hewitt, & Sheehan, 2000)

The impact of the 2006 legislation on women experiencing domestic violence

Many of the key findings of the research study: No Way to Live – Women’s experiences of negotiating the family law system in the context of domestic violence (Laing, 2010) are extremely relevant to the current inquiry. The 22 women interviewed in depth about their experiences are ideally placed to inform this inquiry because of their contact with the family law system since the 2006 changes. The domestic violence that they had experienced and to which their children had been exposed was severe and continued post-separation. Changeovers were a common time for this post separation violence, continuing children’s exposure to violence. For example:

...I was severely assaulted, I was beaten unconscious ... part of it happened in the flat while I was picking up the kids and then it sort of moved outside ... So my younger [child] saw him beating me and he was in the stairwell and he kept hiding his head and – and I was beaten so I fell to the ground... and he has told his counsellor that I wouldn’t wake up – that he kept telling me ‘mummy wake up’...

Women were often advised not to raise allegations of abuse or violence in the family law system.

The women received strong messages from various sources that if they alleged violence and abuse they would be seen as “unfriendly” parents or as undermining the father-child relationship. As a consequence, they did not feel that they were able to put the full story of violence and abuse before the court.

I was told by my doctor – don’t go into that because if you mention domestic violence in Court, you’re stuffed ...

The women encountered a “climate of disbelief” in their interactions with practitioners throughout the family law system.

Women who did disclose domestic/family violence in an attempt to secure parenting arrangements that would protect their children from ongoing exposure to it, reported their disclosures were often not believed. Their motives in raising the issue were questioned and they were accused of fabricating allegations of child abuse and domestic violence because of bitterness towards their ex-partners and of “alienating” children from their fathers to stop contact. For example:

The duty lawyer said that DoCS was involved. The [Federal] Magistrate flew off the handle and she said: “I have seen all this before where a mother feeds her story to DoCS, so of course they support her”.

Findings such as these highlight the importance of the proposal to repeal the “friendly parent” and “mandatory cost order” provisions of the legislation. The family law system must have access to all the necessary information to make decisions that promote children’s safety.

Women received the message that shared parenting or significant time with both parents was inevitable

Even when they reported severe domestic/family violence and child abuse, many professionals throughout the family law system emphasised to the women that children need relationships with their fathers and that shared care or at least substantial time with fathers was inevitable, no matter what violence or abuse had occurred prior to or since separation. The emphasis on shared parenting was not matched by attention to safety issues or to risk assessments and women reported being pressured to consent to unsafe arrangements because they believed that they had no other choice. For example: I had already made up my mind that I didn't want the sleepovers because I really didn't think it was safe for the children but [my lawyer] convinced me that if I wouldn't do it, the Judge would probably even now give me a slap on the wrist and give [ex] more than I would be willing to give, so he really strongly recommended me to do this otherwise it would all blow up in my face. So I did agree. I didn't feel like I had a choice.

This suggests that the emphasis in the legislation on one form of post separation parenting has had the effect of diminishing that priority that is made in decisions on children's safety.

Violence against women and children is interconnected.

The women reported the co-occurrence of woman abuse and child abuse before and after separation – children were exposed to violence against their mothers; mothers were exposed to violence against their children; and many forms of abuse were directed simultaneously to both women and children. (e.g. a father chasing and ramming a car driven by a woman in which her young children were passengers).

While the proposed revised definitions of family violence and child abuse represent improvements over the previous definitions, consideration should be given to developing an inclusive definition of family violence that incorporates both exposure to domestic violence and child abuse.

The women reported a lack of understanding from professionals about the dynamics of domestic violence and child abuse, of their interconnection and their effects on women and children.

Women found that there was limited understanding of forms of abuse other than physical violence. As a result, the perpetrators' ongoing use of domestic violence tactics often went unrecognised as did the impact of the trauma on women. A very strong theme in the women's accounts was the failure to take into account the extent to which the traumatic impacts of the abuse undermined their ability to participate constructively in the various court and court-related processes.

Summary of Recommendations

Based on the research evidence, including my own study, I strongly support:

Broadening the definition of 'family violence' to include elements of coercion and control and fear, a wider range of behaviour and removing the objective test of 'reasonableness' so that family violence can be properly considered whenever the victim actually fears for their safety

A broader definition and understanding of child abuse that includes exposure to violence

Prioritising family violence when considering what is in the best interests of the child
Removing the ‘facilitation’ aspects of the ‘friendly parent provision’
Repealing section 117AB about costs orders relating to false allegations or denials of violence

I also believe that additional changes would enhance the protection of children and other victims of family violence:

The safety and protection of children should be prioritised above all else. Its priority should not be subject to proving an “inconsistency” with other considerations.
The Act should make it clear that exposure to family violence is a form of family violence and that it applies to behaviour by the person perpetrating violence, and not the victim of the violence.

There should be no presumptions in family law – every family should be treated as unique. This means that there should be no presumption of equal shared parental responsibility and the courts should not be required to start from any particular care arrangement.

The Act should protect the safety of the primary carer as this increases children’s safety.

I also submit a PDG copy of the report “No Way to Live” as an addendum to this submission.

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