Committee Secretary
Senate Legal and Constitutional Committees
PO Box 6100
Parliament House
Canberra ACT 2600
Australia
Friday 29 April 2011

Dear Secretary,
I thank the Senate Legal and Constitutional Committee for the opportunity to contribute to the Family Law Legislation (Family Violence and Other Measures ) Bill 2011 Inquiry.

The fact remains that the problems surrounding the protection of children in Family Law cases has been raised, outlined and sounded as far back as the 1994 ALRC inquires. To anyone who cares to research the literature on Family Law, the awareness of the problems with child protection has been overwhelmingly clear for a relatively long time. Yet, another inquiry is yet again performed when the knowledge and empirical information about the lack of protection of children in Family Law proceedings is well documented.

As an LLB(Hons)/BA (Politics, Gov't and Int Relations)student at Griffith University, I have been trained to support my arguments by information that is grounded in reliable and credible bases. May I suggest that it is equally if not more crucial that reliable and credible information be drawn from to inform the latest and present inquiry in respect to the amendments being considered for responding to family violence in the Family Law Act.

I would like point out that the submissions from parties or organizations that represent non-custodial parents; usually fathers, are the reason behind the repeated necessity to launch yet another round of inquiries into family law. This latest round appears to be after the death of yet another child, Darcey Freeman, at the hands of her father following the parents attendance at the Family Court.

On September 2 2009, it was reported that a man had driven his car into a tree, killing himself and his two children (http://www.watoday.com.au/wa-news/car-crash-dad-was-mentally-unstable-exwife-20090902-f83g.html). It was reported that the mother said, "I, as well as others, had ongoing concerns - expressed to the Family Court - about my ex-husband's mental stability and the children's safety when in his car because of his history of psychiatric illness." In this case, 2 children were killed by their father after the Court ordered that he have supervised visits with the children, and the supervisors were his own family members.

The observations that can be made from this case is as follows:

1. The mother had raised enough evidence to warrant the Court's decision to order supervised visits;
2. The supervision was to be carried out by family members;
3. The extent of the father's danger he posed to his children was presumably underestimated by the family member supervising the father;
4. The extent of the father's danger he posed to the children was also underestimated by the Family Court;
5. Two more children died while with their father while under orders made by the Family Court.

While it is regrettable, difficult to accept and horrific to think that children die at the hands of their own parent, that children die or are abused while under the orders of a Court is nothing short of unacceptable and perverse in modern societies that have ratified such documents as the Convention on the Rights of the Child. In 2006, I wrote to the then Federal Attorney General and warned him that after the Dalton case, if no determined action was taken in respect to child protection in the Family Court, we would see more children killed or abused in cases where those children would be sent to the offending parent due to Family Court orders. Distressingly, my prediction and warning continues to be fulfilled. I am pleased to produce that letter to the Committee if requested.

It is the opinion of this writer that a reason that the Family Court has not been able to provide for the protection of children is due to the impact that the father's rights campaigners and advocates have had on the culture within the jurisdiction of the Family Court and the agencies at its intersect. This is even in cases where evidence of dangers that a father can pose to his own children has been tendered such that supervision has been ordered.

The Family Court it appears, has become a court where the right to a father's contact has overridden most other considerations in respect to children, including and alarmingly - their safety. This could be seen as well in the promulgation of the father's rights agenda in the media such that there may be a generalized notion in Australian society that women routinely make up disingenuous allegations of domestic violence and child abuse for strategic purposes only. I fear that this impact has reached the Family Court, along with a real concern that the responses to evidence of domestic violence and child abuse are not grounded in best practice principles or best knowledge available. Instead, it appears that the Family Court has become "father friendly" (http://www.news.com.au/story/0,10117,16656403-421,00.html ) at the expense of the safety of children and to the cruel results of mothers seeking protection for their children in the most unimaginable cases of violence and child abuse.

In a bizarre twist, the results are also onerous and congruent with the disbelieving approach to protective mothers for the small number of protective fathers in Family Law proceedings. Furthermore, while the Criminal Court recently in a child gross negligence case sent a mother was jailed for life for murder because she was the primary carer of the child, the father was not held to the same "shared care" view although he was living in the same house at the same time (http://news.ninemsn.com.au/national/870624/mum-jailed-for-life-after-girl-starves). To the contrary, the Family Court appears to have dispensed with the basic generally accepted and biologically testified view that children need their mothers to continue the stability of their primary roles as caregivers, even in the face of presumably opposing conditions. Justice Carmody stated the following in respect to making shared care orders;

> He said the onus to apply equal shared parenting orders was part of the reason he resigned from the bench in July.
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> "It created a real crisis for me," Mr Carmody said. "I just couldn't keep doing it."
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> The orders appear to fly in the face of exceptions to the legislation, such as family violence or when equal time with parents is not "reasonably practicable"
>
> (http://www.news.com.au/couriermail/story/0,23739,24626307-953,00.html).

It is unclear why Justice Carmody felt compelled to make these shared care orders when the best interests of the child are invoked as the overriding principle, unless shared care has become the de-facto best interests of a child instead.

Consequently, it is crucial that any legislative amendments geared towards the protection of children be accompanied by steps that will affect the promulgation of the myths that are generated by campaigners for “fathers rights” in Australia. These groups can be readily identified as those who claim to advocate for separated fathers with wholesale approaches that minimize domestic violence and child abuse issues. They also promote notions of unfairness to fathers in child support matters, and make unsupported assertions about the victimhood of fathers wholesale in Australian society. They promote the discriminatory view that women in Family Law proceedings that raise allegations of child sexual abuse are often “mentally ill” and also promote scientific fallacies such as the pseudoscientific mental illness “Parental Alienation Syndrome”.

These groups also implore for a presumption of shared care in Family Law, where in contrast research by credible sources have identified that child abuse in the Family Court is severe, serious and real (Brown et al, Child Abuse & Neglect, Vol. 24, No. 6, pp. 849–859, 2000). They claim that raising allegations of child abuse is all that is required in the Family Court to prevent ”good fathers” from seeing their children where the reality is that even good evidence that indicates danger to children by fathers will not be taken seriously. It is this writer’s assertion that these claims are nothing short of creating the ideal conditions for the promotion of any parent, male or female, that can gain an advantage by the minimisation and denial of domestic violence and child abuse in the Family Court. Only cases with genuine evidence of domestic violence and child abuse can gain from the minimisation and denial of it – cased with no evidence of domestic violence and child abuse will not be advantaged by it’s minimisation or denial as there is no evidence to corroborate the allegations.

Unfortunately, it seems that the Family Court may be attempting to conform to the agenda of the father’s rights campaigners, thus leading to the unprecedented publication of shared parental responsibility statistics online. Note the differences in the statistics regarding “mental illness” of mothers as compared to fathers (http://www.familycourt.gov.au/wps/wcm/connect/FCOA/home/about/Court/Admin/Business/Statistics/SPR/FCOA_SPR_2008).

Therefore, it is recommended that any groups that promote the agenda that compromises the safety of children by minimising the violence and abuse of those children in cases in the Family Court do not receive public funding. Furthermore, a concerted effort to correct the myths and mendacious assertions by the father’s rights campaigners should be promoted by education to the general community in Australia. It is this writer’s assertion that father’s rights campaigners also promote notions that are contrary to the anti-discrimination laws of Australia. Their promotion of the Parental Alienation Syndrome as an exclusive mental illness of women in the Family Court is clearly discriminatory and baseless. They should stop receiving public funding.

Yours Sincerely,

Patricia Merkin.

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