

NON-CUSTODIAL PARENTS PARTY (EQUAL PARENTING)

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

Dear Sir/Madam

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

We thank the Senate Legal and Constitutional Committees for providing us with the opportunity to make a submission with regard to the *Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011*

Our submission is identical to the combined media release issued by the Family Law Reform Association and other similar organizations such as our political party.

The *Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011* was introduced by the Attorney-General Robert McClelland into the House of Representatives on 24 March 2011. If passed by Parliament, the resulting legislation will significantly adversely amend the *Family Law Act 1975*.

The proposed amendments to the *Family Law Act* are a source of deep concern and dismay to our members and to the many thousands who have sought greater equity and justice in parenting orders made by The Family Court.

Since the introduction of the 2006 reforms giving greater emphasis on shared parental responsibility, doctrinaire feminists, academic ideologues

and others with entrenched positions associated with the Family Law system, have been working to overturn them. Now, under the guise of dealing with family violence, the current government's proposed amendments will effectively sabotage the success of shared parenting responsibility under Family Law.

The proposed amendments will make it much easier to postpone, minimise or terminate parental contact by an allegation of some form of "family violence".

It is worth noting that a major architect of the proposed reforms preferred a legal presumption that family violence existed in all cases before The Court. Whilst this extremist view has rightly been rejected, the combination of proposed provisions outlined below will come close to achieving the same effect.

In essence, the proposed amendments contain the following provisions:-

Schedule 1. Item 9, subsection 12E(3) and item 32 "Before paragraph 69ZQ(1)(a)".

The Court, in every case before it, will be required to "proactively inquire" i.e. invite the parties to make allegations of family violence against each other. This is additional to similar obligations on the party's legal representatives

Schedule 1. Item 3, subsection 4(1)).

The definition of "family violence" will not be restricted to physical or mental abuse but will be completely open ended. It will include any behaviour a party claims makes them feel threatened "irrespective of whether that behaviour causes harm", or to feel unsafe. Such fears need not be reasonable but instead are to be totally subjective, based only on the complainants claimed state of mind. The normal legal standard of the reasonable person test will not apply. Thus, it will be almost impossible for an accused to refute such claims.

Schedule 1. Item 43, Section 117AB).

The Family Court does not have criminal penalties for perjury despite false testimony having the potential to create enormous wrongs, injustice and damage. Partly because of this, the Family Court is notorious as "The Liar's Castle". The Court's reputation will be further damaged by the proposed provision to dispense with

the existing meager sanctions for those knowingly making false allegations or statements in proceedings. This can only give encouragement to make such allegations or statements. When added to the other proposed provisions it creates a toxic legal cocktail.

Schedule 1 Items 18,19 and 20 “Section 60CC” and Items 26 and 27 (Note 1)).

The dangers outlined above are further exacerbated by the removal of the "friendly parent provisions". This will prohibit the Court from giving consideration to the extent the parents have fulfilled their obligation to encourage a healthy relationship between the children and the other parent. The Court should not be placed in this legislative "straightjacket". It is vital that The Court is able to examine all the issues central to the welfare of the child rather than having to operate wearing legislative "blinkers". Given that the parties before The Court are in dispute, standard legal principles require the Court be able to investigate all issues directly relevant to the merit or otherwise of the parties. Any attempt to fetter a Court of Law in its relevant enquiries is generally condemned by the legal fraternity. Again, this provision reveals a diminished view of the importance of maintaining a healthy relationship between both parents and the child and exposes the true intent of the amendments.

Effects of the amendments

Inevitably and predictably, the amendments will encourage a sharp increase in totally false or grossly exaggerated allegations by one parent against the other in cases before The Family Court. Far from diminishing actual family violence, the following likely outcomes will only increase the risk.

- Greatly increase the workload of The Court and other organisations as a plethora of claims are investigated and assessed.
- Greatly increase the time and cost in settling cases creating a lawyers bonanza whilst increasing stress and frustration to the parties.
- Greatly increase the cost to the taxpayer of operating the Family Court and its associated agencies and the cost to the community as a whole of increased friction and more protracted Family Court cases.
- Increase the demand on limited government funded legal aid.

- Greatly increase the demand for supervised contact centres, already overburdened, costly and unavailable to most parents desperately needing such a service.
- Greatly increase the number of children whose relationship and contact with their non resident parent is terminated, postponed, reduced or otherwise curtailed due to false or grossly exaggerated claims of “family violence”.
- Greatly increase the amount of friction between the parties as one or both take advantage of system’s multiple invitations to make allegations of “family violence” against the other.
- Hamper the Courts ability to identify real and acutely dangerous situations as it is diverted with vexatious, false or grossly exaggerated allegations.
- Greatly increase the potential for actual violence between parties where previously there would have been little or none. This will occur as non resident parents find the system has stacked all the cards against them, dramatically affecting their contact and relationship with the children and all the associated consequences.
- Greatly increase the level of suicide and deterioration of mental health for non resident parents (typically the male). Respected studies have shown that separated males are six (6) times more likely to suicide than attached males. Further, this rate was even higher amongst younger males (thus more likely to have younger children). Moreover, the highest rates occurred during the divorce phase.
- Without the normal legal protections, the chances of success for the vexatious, manipulative, inflexible, vindictive, dishonest, or mentally unbalanced parent will be greatly increased. Parents with these and similar attributes will readily take advantage of the “free kick” being offered by the proposed amendments. This parent will then become the primary or sole parental role model for the children.
- Faced with the prohibitive cost of pursuing a right of contact, and the associated psychological stress, many non resident parents will simply withdraw, leading to a great increase in the numbers of the “family law stolen generation” children wrongfully alienated from a non resident parent (typically the father). This will amplify the well documented higher rates of negative outcomes for children brought up in fatherless environments

Impact on legal principles

The proposed amendments have provisions which are unmatched in any other area of law. We believe they offend several basic legal principles:

- a) The ambiguity and lack of certainty in the new, unlimited and subjective definition of “family violence”.
- b) The presumption of guilt unless an allegation of “family violence” can be disproved which will be frustrated by the subjective test for “family violence”.
- c) The proposed amendments will force the judge to ignore the standard legal test of the reasonable person.
- d) The restrictions on the court’s ability to investigate the merit of the parties.
- e) The lack of any real sanction from knowingly making false allegations and statements in the proceedings.
- f) The court making “proactive inquiry” into the single issue of “family violence” tantamount to inviting the parties to make an allegation and additional to similar obligations on the parties legal representatives.

Lack of objective research

Although the amendments are claimed to be supported and underpinned by various academic studies etc, such studies are only valid if they are objectively conducted with an open mind and from a non ideological platform. We have seen no reliable statistics or studies which show:

- a) Any significant upsurge in actual family violence, supported by police and medical records since the introduction of the 2006 Family Law reforms and which can be reasonably attributed to the 2006 reforms.
- b) Any explanation of how an inevitable increase in tensions, legal costs, case time and demands on limited resources will reduce family violence.
- c) Any explanation of how an inevitable increase in the number of cases where parent – child contact is unjustly affected, will reduce family violence.

- d) Any studies on the affect on children of curtailing contact with a parent who has had a caring, loving relationship with the child but has been subjected to allegations by the other parent.
- e) Any studies on the impact on suicide rates and other mental issues in non contact parents, unjustly denied contact with their children.

Summary

Based on our research and experience, we maintain that the 2006 reforms have worked well and sensibly in encouraging shared parental responsibility while at the same time providing appropriate protective measures for adults and children against family violence. The evil in the amendments is to encourage a presumption that family violence and abuse of children customarily exist in contested matters before the Court.

We also believe the amendments are an underhand means of sabotaging the 2006 reforms under the guise of preventing family violence. We vigorously oppose the amendments.

Thanking you.

Yours faithfully

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APPENDIX

Family Law Amendment (Joint Residency) Bill 2002.

(This Bill was proposed by the then Senator Len Harris in 2002, but not adopted)