Submission from Justice for Children Please see covering letter for notes on format etc

Exposure Draft Family Law Amendment (Family Violence) Bill 2010

Justice for Children agrees wholeheartedly with the ideas expressed by the Attorney General below but we do not agree that the Family Violence Bill sends an unequivocal message that family violence and abuse are unacceptable.

To make this a reality, judicial officers and, in particular, judges, would have to either be trained so that they understood a good deal more about the effects of being a child in situations of insecurity, fear and apprehension or they would have to be replaced by a panel or tribunal composed of people who did know something about children. It is possible that some judges and single experts are not amenable to training. They should be replaced whether or not there is an alternative system for child assessment.

Family violence and child abuse cannot be tolerated. The safety of children is of critical importance in the family law system and the Gillard Government takes the issue of addressing and responding to violence very seriously. The family law system must prioritise the safety of children to ensure the best interests of children are met.

The Family Violence Bill proposes amendments to the Family Law Act 1975 in the following key areas:

- *prioritising the safety of children*
- *changing the meaning of 'family violence' and 'abuse' to better capture harmful behaviour*
- *strengthening the obligations of lawyers, family dispute resolution practitioners, family consultants and family counsellors*
- *ensuring courts have better access to evidence of family violence and abuse, and*
- *making it easier for state and territory child protection authorities to participate in family law proceedings where appropriate.*

The Family Violence Bill sends a clear message that family violence and child abuse are unacceptable…

We have used this Consultation paper as an outline but there is often more than one section or *Item* where our comments apply. Apologies if it a bit cumbersome and disorganised. Attachments contain various documents where we have already outlined our ideas in the past and some Case Notes.

In principle Justice for Children supports the kind of changes outlined in the *Family Law Amendment (Family Violence) Bill 2010* proposed by Attorney General McClelland in that the changes may prevent or alleviate the suffering now endured by children affected by family law. These changes, in our view, do not go far enough and are not prescriptive enough to ensure that courts do make decisions which really protect children.

We applaud the Item 13 Section 60B – Objects of Part VII – Revised provision which aims to give effect to the Convention on the Rights of the Child because children's rights are currently not being considered.

The system needs a complete overhaul and because it is system, parts must work together. Justice for Children will continue to pursue the issues which apparently aren't in this Bill or aren't stringently applied. For example we have grave concerns about:

- **Reliance on single experts instead of conducting proper assessment of a child's wellbeing by studying their interaction with family members, in different circumstances and over a period of time;**

- **Adversarial proceedings instead of proper investigation into factors affecting the wellbeing of the child (eg making DoCS evidence available to judges) without one side or the other presenting it. This Bill is trying to improve the presentation of evidence but the adversarial system may still undermine that;**
- **Inconsistency and expense of obtaining transcripts and/or access to court material**
- **Evidence problems – not timely, missing, tampered with, not considered or even admitted;**
- **Surveillance. It should be acknowledged that fairly sophisticated phone tapping, interference with emails and other communications and unsophisticated methods (just plain theft of documents, photos etc) is rife and is extremely debilitating to the victims. If however such a victim records a conversation or videos an attack by the other party, they cannot present this evidence in court and can be accused of illegal activity. We believe that fear of the first type of surveillance extends to judges and others in the family court and hampers their ability to make unbiased decisions.**
- **Intimidation: this is rampant throughout the system and probably worse in small towns and country areas where doctors, police, employers etc can be 'got at' more easily. Friends and other potential witnesses are threatened as are, we believe, court professionals. People are liable to self-censor and back off once they hear that others have suffered from being 'involved'.**
- **Suppression orders. Justice is not done and certainly not seen to be done in these secretive courts. Media and the public should be able to know what goes on, how judges arrive at decisions. Transparency might help achieve fairer and safer outcomes. Children's identity should be protected but it is still possible to report on processes without identifying the parties. Decision makers i.e. judges, magistrates and expert witnesses (if they still continue to exist – we would prefer that they didn't) should be identified;**
- **Suppression orders are not applied equally anyway. Why is Ken Thompson allowed to put his case to the media and Melinda Stratton is not?**
- **All cases should be available on AUSTLii;**
- **Transcripts should be available at a minimal fee and all proceedings should be recorded so transcripts can be checked for accuracy;**
- **Judges conduct is apparently not overseen by any higher authority. They should be accountable and trained in at least common politeness and respect for anyone appearing in their court.**
- **Legal representatives likewise. The fee structure, sources of advice and other essential information should be provided to all clients;**
- **The 'club' of legal professionals and single experts should be broken up or at least not made so obvious as to intimidate parents and witnesses appearing in court.**
- **Judges decisions about children should be reviewable. It should not be left to the judge to decide whether to disqualify him/herself and whether their decisions are appellable. Parents (usually mothers) who have been sent broke and otherwise damaged by going through the courts are not in a position to ask for a 'rematch' ;**
- **No child should be removed from the home where they have lived with their primary carer and sent to live with a parent who they have not previously lived with (and who they often don't want to live with). Where this has happened there must be follow up and review of the child's welfare;**

- **The courts can and do refuse children's access to counselling or any other support in such cases. This is against human rights and is extremely damaging to the child;**
- **In regard to children: a specific definition of abuse must be included as being "deprivation of meaningful contact with primary carer (usually the mother) who has not been accused or convicted of any wrongdoing";**
- **Nobody (eg psychiatrist/counsellor) should be able to interview children alone and without video of the interview being taken;**
- **Parenting history must be taken into account;**
- **Children must be given far more of a voice and a choice. Most are perfectly capable of speaking for themselves at 9 years old – some earlier, some later but they should be given a chance;**
- **There is no oversight of human rights and natural justice. A Children's Ombudsman should be appointed at state and federal levels and the Human Rights Commission should get teeth so that it can pursue any derelictions under the proposed Section 60B (4);**
- **A Minister for Children (not just children's services) and a Children's Ombudsman should be appointed at state and federal levels.**

Our experience of the family law system leads us to believe that the courts are self-regulating, self-perpetuating and given to self-congratulation when there is absolutely nothing to be proud of; (examples available – will add if time permits). This is bad enough when adults are harmed but what is being done to children is draconian and inexcusable.

<u>Shared Parenting and other orders affecting children:</u> The High Court ruling about shared parenting orders needing to be 'reasonable and practicable' has been addressed to some extent by the Family Law Amendment (Validation of Certain Parenting Orders) Bill 2010 passed on 26 November. This, however, is an inscrutable piece of legislation which does not lend itself to easy interpretation and is therefore not immediately helpful to most of the people who have arrived at Shared Parenting agreements in the past.

All parents and children who have been harmfully affected since July 2006 because of what is basically a government error should be compensated by having their cases reviewed at no cost to them.

These children have already suffered irreversible damage because of unworkable shared parenting arrangements and other court orders where children are not allowed reasonable time with the parent they love and want to live with. Children don't have the rights due to them under the Convention on the Rights of the Child. In Australia, in 2011.

We can give many examples (unfortunately) of decisions in the Family and Federal Magistrate's Courts which adversely affect children and cause them irreparable harm but we have not included them in this submission. They can be provided if required.

In other cases where bad and wrong decisions have been made by courts to the detriment of children, revisiting these matters must be made possible without adversarial process

and without having to pay lawyers to do it all again. Most mothers that we know are physically, emotionally and financially unable to restart any part of this process.

In relation to financial matters, we think that the Child Support Agency should never have been introduced and should now be abolished. We spoke out against it at the time in 2004 because it was just a revenue raising exercise for government and it risked bringing back the parent who was expected to pay (usually the father) into the family's lives even though they had never asked for support and didn't want anything to do with him.

This is exactly what happened with dire consequences for some children and women too.

If the interests of the child are paramount, the child should be the recipient of an allowance via the custodial/resident parent or shared between whoever has care of the child until they are say, 16. This allowance should derive from increasing tax very slightly on taxpayers and distributing it to the children's guardian/parent/carer as used to happen in some countries. Maintenance agreements worked out by parents would be better and cheaper than the current system. Where there is no agreement the state could cover allowance as suggested above.

The money factor reinforces in some parents (fathers in particular, sorry to say) the belief that the child is their chattel. Possession should not be the motivation for wanting to have access to any child, nor should the desire to seek revenge on the other party.

Justice for Children strongly suspects that a large part of the motivation for bringing in the 2006 Family Law reforms was to get mothers off government support by making it easier for fathers (who generally were more likely to have paid jobs) to get a large part of the access to the child. This in turn would mean that the mother was not eligible for parenting payments etc and would not get other child- oriented benefits even though she might see the child for minimal time and be paying a Contact Centre to do so.

Any parent seeking to enforce a contravention order should be obliged to show how such enforcement will benefit the child. This might eliminate some of the procedures undertaken solely to get back at the other parent – eg trying to get them jailed for keeping a sick child for an extra day beyond the stipulated time.

Where a parent is motivated by something other than what's good for the child, this parent must be made to explain what benefits accrue to anyone from their action. For example, trying to bankrupt a mother of three children who is already surviving only on Centrelink payments and has no other assets can hardly be good for the children.

Perhaps the 'unfriendly' parent provision could be replaced by the 'obstructive' parent. This would include such gambits as putting a block on one's phone so that when the other parent is travelling long distances to bring the child back, there is no way to communicate any delays (floods, car breakdown etc) except by Australia Post. The first parent then

brings a contravention on the grounds that they were not informed that the child would arrive late.

It is obvious to anyone who knows anything about the court processes that not only are many of them unjust and inexplicable to the reasonable man or woman, but they defy common sense.

The current Bill under discussion does not seek to remedy most of these ills but our hope is that if the system is opened up to more scrutiny it will not be able to continue in its present destructive and dysfunctional form

Exposure Draft Family Law Amendment (Family Violence) Bill 2010

Justice for Children comments on Consultation Paper

NOTE: points may have been renumbered by Justice for Children

INTRODUCTION

The Exposure Draft Family Law Amendment (Family Violence) Bill 2010 focuses on prioritising the safety of children whose rights and interests are considered under the *Family Law Act 1975* (Cth). This Bill would amend the Family Law Act to strengthen the role of family courts, advisers and parents in preventing harm to children while continuing to support the concept of shared parental responsibility and shared care where these are safe.

Definition of 'preventing harm' and 'safe' must include not being separated from the parent that they want to live with who has done them no harm. It is very damaging to children to be prevented from seeing or communicating with their loving and protective parent. When this is explained (often by the other parent and/family) as being unwillingness on the part of that parent to see the child, the damage is even more severe.

PRIORITISING THE SAFETY OF CHILDREN

1. Children deserve to be protected from harm. The Family Law Act aims to uphold this principle in a number of ways—most notably by requiring family courts to regard the best interests of the child as the paramount consideration when making parenting orders and in other provisions involving court proceedings. A key challenge is to ensure that children are protected from harm where their parents make arrangements without going to court. **Even more challenging is the inability of some judges to take this principle into account when making orders.**

Convention on the Rights of the Child

2. In 1990 the Australian Government ratified the United Nations' Convention on the Rights of the Child (the Convention). This is an important international instrument which sets out the basic human rights of all children. In ratifying the Convention, the Australian Government agreed to develop and undertake all actions and policies to promote the best interests of the child. **We heartily endorse this inclusion of the UNCRC but we have serious concerns as to how this will really be given effect in the day to day decision-making processes and who will make the decision-makers accountable (this is true of the whole process).**

> Item 13 of the Family Violence Bill would place a new object in Part VII of the Family Law Act confirming that the Act gives effect to the Convention. The effect is that decision-makers, including family courts, must take account of the Convention of the Rights of the Child when dealing with matters in relation to children under Part VII of the Act.

Prioritising safety in the two primary considerations

3. **The child should be central focus of family law decisions which involve them. For this reason we recommend that the assessment of what is in their best interests should be taken away from single experts and judges and given to a panel made up of people from a variety of professions and from the community who understand children.**

4. **The child should be assessed in various environments, with each parent, at play, at school etc so that a realistic picture can be formed. It's impossible to make an assessment on the basis of one or two interviews often in an office or some such place which is unfamiliar and not normally part of the child's experience.**
5. Recent reports into the family law system highlight tensions between the two primary considerations where there are concerns about family violence or abuse.
6. **Parenting history should be taken into account. Under the current system, parents who have either never paid any attention to the child or have perpetrated abuse and violence in the family, are able to claim a share of that child as if it was an inanimate object.**
7. **We can't emphasise enough that depriving children of their loving parent who has done no harm and who the child loves and wants to be with is one of the worst forms of abuse.**
8. **When this happens, the child often feels deserted and betrayed by the parent they loved best and who was usually their primary carer.**
9. **What does this sense of abandonment do to a child?**
10. **The myth that children are 'resilient' is bandied about by experts and judges. Children may twist themselves into the shape that enables them to survive from day to day in hostile circumstances but their long term welfare is jeopardised by this distortion of their true nature.**

Item 17 would amend section 60CC of the Act to direct family courts to give greater weight to the primary consideration of protecting the child from harm above the benefit of having a meaningful relationship with each parent where there is an inconsistency in applying the primary considerations. It would not affect the treatment of cases where abuse and family violence are not a concern. **Our views expressed above must be taken into account when identifying abuse.**

Recommendations from the panel assessing the child's welfare could be shaped into a prescriptive test that the judgement has to pass. For example:

The judgement must not be based on judicial fear of the abusive parent - fear of reprisal/ fear of ongoing litigation/fear of suicide/ fear of confrontation. *[see Attachment C: Notes on Cases]*

The judgement must not ignore a parent who has been the primary carer, who has not been accused or convicted of any wrongdoing and who has a loving relationship with the child.

We could call this the 'perfectly good parent (PGP)'. When such a parent exists and wants the child to live with them, the judge cannot proceed further to examine whether they 'wish' to give custody to the other parent. They must stop there and give residency to the PGP and only then examine how much access the other parent will have. This would be recommended by the panel based on how abusive, violent, that parent is and on their previous parenting practice.

It should be possible to 'grade' parenting so that everyone is clear about where they stand before going to court. Top of the parental grade might be the person who got up in night to sick child/took them to school, sport, doctor etc /arranged the daily schedule/washed nappies/who spent most time/who may have given up their career/who put child before themselves and arranged their lives around child needs. It is not rocket science to make sure the child's best interests are served. If you look at the best parent for the child (based on history as above), being with that parent will usually be in the best interests of the child. How can it not be? There is no way these parents and children should be in the situations described in [Case Notes]. Grades:

1.....EXEMPLARY PARENT = always gets residency
2.....PGP = as above
3.....Good enough = ?
4.....substandard = ?
5.....supervision (any abuse/ violence). May be able to upgrade gradually by attending training and counselling to No. 4
6.....no contact
The bottom line is: if child does not want to see the other parent some very good reasons would need to be provided to make them have that contact.

REDEFINING 'FAMILY VIOLENCE'

11. Some of the problems in trying to prove violence and abuse to others outside the family – including the court – are identified in the research below. Justice for Children finds that despite many years of (somewhat half-hearted) government campaigns, changes to the law (eg police prosecuting AVOs on behalf of women) reviews and committees etc etc, domestic violence against women has not been eradicated or even alleviated.

Children have only recently received some mass media mentions relating to the effect such violence has on them even if it's not directed at them specifically.

An Australian study, conducted by Drs Heather Douglas and Tamara Walsh of the University of Queensland, argues that the competing discourses of child protection and family violence create difficult dilemmas for women.[44] They argue that there is:
the 'interpersonal conflict' misunderstanding—failing to recognise the particular dynamics associated with family violence, with 'ramifications for the way in which child protection workers respond to abused mothers and their children';[45]
the 'protective parent' dilemma—if a mother is not perceived as acting protectively, she may be seen as 'part of the reason for the dangerous environment' and the removal of children from her care becomes more likely;[46]
'the mother is to blame' phenomenon—the focus of child protection authorities is on the woman and her capacity to protect the children, and not on the father's 'capacity to cease using violent or abusive behaviour';[47] and
the 'leave' ultimatum—move to 'accommodation away from the domestic violence perpetrator and continue to care for the children, or stay with their abuser and lose the children'.
H Douglas and T Walsh, 'Mothers, Domestic Violence and Child Protection' (2010) 16 *Violence Against Women* 489. [as quoted in ALRC Report 114].

12. We agree with the ideas below if they have the effect of protecting the vulnerable but there are great problems with the current evidence system. For example, evidence goes missing, is lost, stolen, tampered with, not recorded, not presented (eg Form 4), only disclosed at the last minute (at 9am on the day of hearing or in the court itself), and transcripts are often inaccurate and too expensive for the 'vulnerable' to afford.

1. Being able to identify family violence is an important first step in responding appropriately to this often hidden problem. Understanding the way violent or coercive behaviour impacts upon children is crucial to informing views about the potential value or detriment to a child of an ongoing relationship with a family member who behaves in this way.
2. Presently, the Family Law Act defines 'family violence' to mean 'conduct, whether actual or threatened by a person towards, or towards the property of, a member of the person's family that causes that family member or any other member of the person's family reasonably to fear for, or reasonably to be apprehensive about, his or her personal wellbeing or safety'. Recent reports have highlighted concerns about this definition.
3. The Family Law Council concluded that the definition is too narrow and does not reflect current understanding of what constitutes family violence. The AIFS Evaluation Report indicates that legal professionals consider the requirement for a person 'reasonably to fear' for their personal wellbeing or safety imposes a significant evidentiary burden on people who are already vulnerable. The Family Courts Violence Review recommended that the provisions relating to family violence be strengthened, so that the nature and consequences of family violence are clearly identified in the Act.

Item 3 of the Family Violence Bill proposes a new definition of 'family violence' that better specifies the types of behaviour that constitute family violence. The proposed definition recognises that family violence can take the form of physical assault, harassment, emotional manipulation, financial abuse and threatening behaviour.

13. This is a big step forward because it presumably encompasses the kind of belittling, controlling, capricious and bullying behaviour which is probably the most prevalent form of abuse in our society –whether it is in the family, workplace or elsewhere (Family Court? Parliament?).

Children are very badly affected by these behaviours which can be very subtle. We have plenty of present day examples but if you prefer one from literature, read *Portrait of a Lady* by Henry James.

IDENTIFYING 'ABUSE' OF A CHILD

14. We would like to see an investigative procedure as mentioned in 4. above. Put simply, we think that all available evidence relating to the child should be put before a panel whose job is to arrive at the truth without adversarial process.

This might seem time-consuming and expensive but it can hardly be more costly in terms of people's lives and wellbeing (and money!) than the current system. It might possibly save children from becoming permanently damaged because there would be less inclination to place the child in an abusive and harmful environment.

The Family Law Act requires courts to protect children from abuse when making parenting orders and imposes mandatory obligations on court personnel, arbitrators, family dispute resolution practitioners and independent children's lawyers to report child abuse to relevant State and Territory agencies.
Presently, the Family Law Act defines 'abuse' in relation to a child as including assault, sexual assault and sexual exploitation. Broadening this definition to cover other forms of abuse, including where serious harm is caused by exposure to family violence, is consistent with social science research understanding about what is damaging to children. For example, the National Association for the Prevention of Child Abuse and Neglect and the Australian Institute of Health and Welfare have recognised the serious, and often long-term, negative effects of exposure to violence on a child's physical and social development. Serious neglect amounts to abuse by omission and should also be recognised and reportable.

Item 1 of the Family Violence Bill proposes a new definition of 'abuse' in relation to a child for the purposes of the Act. This would expand the existing definition to include the forms of abuse recognised in State and Territory laws such as physical abuse or non-accidental physical injury, sexual abuse and exploitation, psychological abuse (including where this is caused by exposure to family violence) and neglect. **And being deprived of their protective and loving parent who has done no wrong.**

STRENGTHENING ADVISER OBLIGATIONS

15. Advisers play an important role in the family law system. Advisers are family dispute resolution practitioners, legal practitioners, family counsellors and family consultants, each of whom assist parents to make arrangements for their children. The information that advisers convey to parents should be consistent with the focus of the Family Law Act.

16. Advisers have obligations under the Family Law Act to give advice in relation to parenting plans so that, among other things, these serve the best interests of the child. The Family Law Act does not currently impose obligations on advisers at a general level. Recent reports suggest that existing obligations in relation to parenting plans may lead advisers to place greater emphasis on the benefit of the child having a meaningful relationship with both parents and subordinate the protection of the child from harm.

Items 22-24 of the Family Violence Bill would introduce new obligations on advisers who discuss matters arising under Part VII of the Family Law Act and amend existing adviser obligations in relation to parenting plans. The adviser obligations would encourage parents to consider the child's best interest as the paramount consideration. They would also require parents to prioritise protecting the child from harm where family violence and abuse are concerns. **We have grave concerns about the integrity of the Children's lawyers (ILCs) and single experts. Like judges, too often they seem to be unaccountable and not subject to natural justice. We also have many instances where legal representatives did not represent their client's interests and actually acted against those interests but still received an unconscionable fee.**

BRINGING EVIDENCE OF VIOLENCE AND ABUSE TO COURT

Finding ways to encourage people to put forward evidence about family violence and abuse is a great challenge confronting family courts. Courts can only protect families where parents and others provide sound evidence of the family dynamics. Recent reports have recommended that new measures are required to get better evidence of family violence and abuse into family courts.

Requiring parties to disclose family violence

Recent reports indicate that family law practitioners and parties have been reluctant to report family violence to the court despite Family Law Rules requiring them to do so. This requirement is not currently included in the Family Law Act.

Please see comments above.

Item 29 of the Family Violence Bill would require parties to proceedings who allege family violence to file a Notice of Child Abuse or Family Violence with the court. Once reporting occurs, the court would be required to act promptly to ensure that the issues are dealt with expeditiously. **This will only work if the 'unfriendly parent ' provision is removed [see items 18 and 20 below] and judges attitudes to 'allegations' change radically. What could effect the latter miracle? Possibly a change of judge.**

Requiring parties to disclose involvement of child welfare authorities

17. Information about whether a child is or has been the subject of a care order under a child welfare law is crucial in assisting the family courts to make decisions about children, including a decision to allow the relevant child welfare authority to protect the child from harm. Information about whether a child is the subject of child protection proceedings or is or has been the subject of a notification, investigation, inquiry, assessment or report by a child welfare authority is also important information for the family courts to consider in making an order in relation to the child.

Item 29 of the Family Violence Bill proposes new provisions that would impose obligations on parties to proceedings to tell the court if a care order under a child welfare law is in place for the child and if the child is or has been the subject of a notification to or investigation by a child welfare authority. The provisions would allow other people to tell the court that same information. **In an investigative situation, all these reports would be put on the table for assessment and subpoenas or other requests could be issued for further details.**

REMOVING DISINCENTIVES TO DISCLOSING VIOLENCE

18. When determining whether parenting arrangements are appropriate and in the child's best interest, family courts need accurate information about issues affecting the family. To help courts deal effectively with family violence and abuse, it is important that legislation does not create barriers to raising concerns about these issues.

Disclosure should not make a parent 'unfriendly'

19. Under the Family Law Act, the willingness and extent to which one parent has facilitated the child having a relationship with the other parent is taken into account in determining the best interests of the child and, ultimately, orders dealing with parenting arrangements and parental responsibility. This is known as the 'friendly parent' principle. Recent reports indicate that some lawyers caution parents against alleging family violence or abuse where there is limited evidence, to ensure that victims of family violence are not characterised as an 'unfriendly parent'.

Items 18 and 20 of the Family Violence Bill would remove the 'friendly parent' provisions of the Family Law Act, namely, paragraph 60CC(3)(c) and subsections 60CC(4) and (4A). Removing the 'friendly parent' provision would not prevent the court from considering a range of matters relevant to the care, welfare and development of the child such as a parent's attitude to the responsibilities of parenthood. **See our suggestions above at 10. 14. 15. etc There must be no coercion to make mothers retract their allegations unless they are proved beyond reasonable doubt to be untrue. Coercion is often exercised by the person's own legal representative who threatens them with the loss of access they already have. Judges also used this threat directly in court saying that 'if you don't withdraw those allegations you will lose access to your child'. It is a common practice and deplorable that judges and legal reps. can use the child as a blackmail tactic to silence the mother.**

What recourse does a parent have who makes allegations knowing them to be true and with evidence (see evidence comments above) and is put in this terrible bind? If the parent says," I withdraw" they are then considered a proven liar. If the child knows that the allegations are true but finds out that the parent has retracted them – what would that child feel? That nobody and nothing can help them.

This is an impossible dilemma which might - to some extent – be avoided with an investigative system.

Cost orders

20. Recent reports have found that provisions that direct the court to order a party to pay the costs of another party to the proceedings in certain circumstances have operated as a disincentive to disclosing family violence, with vulnerable parents deciding not to raise legitimate safety concerns for fear they would be subject to a costs order if their claims cannot be substantiated. Family courts have a broad power to order costs against a party, and the reports concluded that this power is adequate to deal with false allegations of family violence as well as false denials of family violence.

Item 37 of the Family Violence Bill would remove the mandatory cost order provision in section 117AB of the Family Law Act. **This is theoretically a good step but still leaves say, a mother who is convinced of abuse but can't prove it conclusively, open to massive costs. If there was less adversarial and more transparent process, more parties might be able to speak out without being penalised. No costs should be awarded against parents under this investigative system.**

Courts must ask about family violence and abuse

21. The Family Courts Violence Review notes the difficulties victims face in disclosing and reporting violence. Victims of family violence are often reluctant to share their experiences but are more likely to do so if directly asked. Courts can play an active role in drawing out family violence and abuse concerns, and ensuring that child welfare authorities receive early notice of allegations of child abuse.

Item 21 of the Family Violence Bill proposes that courts who are dealing with applications for parenting orders should inquire about past or future risk or previous experience of the children concerned in relation to child abuse and family violence. In giving effect to Principle 3 of the Principles for Conducting Child-Related Proceedings, as set out in subsection 69ZN(5), this new provision would impose a duty on the court to take steps to identify the parties' views on past risk or experience or future risk to the children. **See recommendations for investigative panel and also consideration of parental history. Counsellors family reporters etc must record interviews and fully disclose them to the court. Confidentiality must not be used to hide material information.**

IMMUNITY FROM COSTS ORDERS FOR STATE AND TERRITORY CHILD WELFARE AUTHORITIES

22. In some circumstances a family court will invite a state or territory child welfare authority to become a party to family law proceedings. In many instances, the relevant authority will decline the court's request to intervene in proceedings. It is important to ensure that requests are not refused simply because of a possibility that a cost order might be made against the agency or its employees or agents.

Item 36 of the Family Violence Bill would amend section 117 of the Family Law Act to provide immunity from cost orders to child welfare authorities and officers of the State, Territory or Commonwealth who intervene to become a party to proceedings under the Family Law Act at the request of the court where the officers act in good faith in relation to the proceedings. **If they don't act in good faith or are incompetent, it's not about money. It's about whether the true picture has been distorted. Perhaps they should not be protected from some other type of penalty. Perhaps the same should apply to parents under s37 if they can definitely be proved to be using the courts to bully their ex-partner.**

Please see individual amendments for further comment.

INFORMATION ABOUT INDIVIDUAL AMENDMENTS

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Item 1—Subsection 4(1)—Definition of *abuse*—New provision

Description of amendment

Remove the definition of 'abuse' in subsection 4(1) of the Family Law Act and replace it with a new definition of 'abuse'

Existing provision

abuse, in relation to a child, means:

(a) an assault, including a sexual assault, of the child which is an offence under a law, written or unwritten, in force in the State or Territory in which the act constituting the assault occurs; or

(b) a person involving the child in a sexual activity with that person or another person in which the child is used, directly or indirectly, as a sexual object by the first-mentioned person or the other person, and where there is unequal power in the relationship between the child and the first-mentioned person.

Proposed provision

abuse, in relation to a child, means:

(a) an assault, including a sexual assault, of the child; or

(b) a person (the ***first person***) involving the child in a sexual activity with the first person or another person in which the child is used, directly or indirectly, as a sexual object by the first person or the other person, and where there is unequal power in the relationship between the child and the first person; or

(c) causing the child to suffer serious psychological harm, including (but not limited to) when that harm is caused by the child being subjected to, or exposed to, family violence; or

(d) serious neglect of the child.

ADD: Removing a child from meaningful contact with their protective and loving parent who the child loves and wants to be with and who has done no wrong. This comes under psychological and emotional abuse [see 1.4 below]

1.1 This item would repeal the definition of 'abuse' in section 4(1) of the Family Law Act and replace it with a new definition of 'abuse'. The definition has been expanded to include forms of abuse recognised in the State and Territory laws, namely, physical abuse or non-accidental physical injury; sexual abuse and exploitation; psychological abuse; and neglect.

1.2 As with the existing definition, paragraph (a) would provide that an assault, including a sexual assault, amounts to abuse. However, the new definition would remove the requirement for the assault to be an offence under a law in the force of the State or Territory. This means that family members would not have to have regard to the terms of State and Territory laws when considering whether abuse has occurred. It would remove uncertainty about knowing the elements of an offence and whether an offence has, in fact, been committed.

1.3 Paragraph (b) which deals with sexual exploitation contains minor drafting changes that reflect current drafting practice.

1.4 New paragraph (c) provides that abuse involves causing the child to suffer serious psychological harm including by being exposed to family violence. This reflects current social science and approaches to child protection.

1.5 New paragraph (d) of the definition of 'abuse' would extend the definition to serious neglect of the child. The meaning of neglect is not defined and therefore takes its ordinary meaning. Neglect encompasses a range of acts of omission and remission, including a failure to provide adequate food, shelter, clothing, supervision, hygiene or medical attention. Serious neglect amounts to abuse by omission (or remission) and should be recognised and reportable under the mandatory requirements in subsection 67ZA(2) of the Family Law Act.

1.6 The existing discretionary reporting requirements in subsection 67ZA(3) for ill-treatment would not be changed.

Item 2—Subsection 4(1)—Definition of *exposed* in relation to family violence—New provision

Description of amendment

Insert a definition for 'exposed' in subsection 4(1) of the Family Law Act which would point to a more expansive definition of 'exposed' elsewhere in the Act

Proposed provision

1. *exposed*: **for when a child is *exposed* to family violence, see subsection (1AD) of this section.** See our comments at **This is a big step forward because it presumably encompasses the kind of belittling, controlling, capricious and bullying behaviour which is probably the most prevalent form of abuse in our society –whether it is in the family, workplace or elsewhere (Family Court? Parliament?).**

Children are very badly affected by these behaviours which can be very subtle.

2.1 This amendment inserts a 'signpost' or 'marker' to new subsection 4(1AD) of the interpretation section of the Family Law Act. Item 8 proposes that new subsection 4(1AD) would provide a more detailed and particularised definition of what it means to be 'exposed' to family violence.

Item 3—Subsection 4(1)—Definition of *family violence*—New provision

Description of amendment

Remove the definition of 'family violence' in subsection 4(1) of the Family Law Act and replace it with a new definition

Existing provision

family violence means conduct, whether actual or threatened, by a person towards, or towards the property of, a member of the person's family that causes that or any other member of the person's family reasonably to fear for, or reasonably to be apprehensive about, his or her personal wellbeing or safety.

Note: A person reasonably fears for, or reasonably is apprehensive about, his or her personal wellbeing or safety in particular circumstances if a reasonable person in those circumstances would fear for, or be apprehensive about, his or her personal wellbeing or safety.

Proposed provision

family violence means behaviour by a person (the ***first person***) towards a member of the person's family (the ***second person***) that:

(a) causes death or personal injury; or

(b) is an assault; or

(c) is a sexual assault, or another form of sexually coercive behaviour; or

(d) torments, intimidates or harasses the second person, including (for example) where that effect on the second person is caused by:

(i) repeated derogatory taunts, including racial taunts; or

(ii) intentionally causing damage to, or destruction of, property; or

(iii) intentionally causing death or injury to an animal; or

(e) controls, dominates, deceives or coerces the second person unreasonably, including (for example) where that effect on the second person is caused by:

(i) denying the second person the financial autonomy that he or she would have had but for the conduct; or

(ii) withholding financial support, if the second person is entirely or predominantly dependent on the first person for financial support to meet his or her, or his or her child's, reasonable living expenses; or

(iii) preventing the second person from making or keeping connections with his or her family, friends or culture; or

(iv) unlawfully depriving the second person, or any member of the second person's family, of their liberty; or

(f) causes the second person to feel fear for his or her safety or for the safety of another person; or

(g) causes the second person to feel threatened (whether because of a threat to engage in conduct that would be covered by any of paragraphs (a) to (f), or for any other reason); or

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

ADD misrepresenting a loved person eg by saying your mother doesn't want to see you when this is clearly not the case (iii) above sort of applies. See below 3.11

Note: None of the paragraphs of this definition is intended to limit any of the other paragraphs, and a particular incident of conduct may be covered by 2 or more of the paragraphs.

3.1 Item 3 replaces the existing definition of 'family violence' with one that better specifies the types of behaviour that constitute family violence. Identifying family violence is an important first step in responding appropriately to it.

3.2 The definition deals with behaviour by one family member towards another family member. Whether a person is 'a member of the family' is defined in subsection 4(1AB) of the Family Law Act. This definition includes people who are or were married or in a de facto relationship and relatives such as a parent, grandparent, step-parent, child, step-child; sibling, half-sibling, step sibling, uncle, aunt, cousin, niece, nephew and so on.

3.3 Paragraphs (a) to (h) set out behaviour that would be family violence for the purpose of the Family Law Act. The paragraphs cover physical abuse, sexual abuse and coercion, economic abuse as well as behaviour that torments, intimidates, harasses or unreasonably controls, dominates, deceives or coerces a family member or causes them to feel threatened or feel fear for safety.

3.4 Paragraphs (a) and (b) concern physically abusive behaviour. These would apply to behaviour that causes death or personal injury or constitutes an assault. The term 'assault' takes its ordinary meaning and is intended to encompass common law and criminal law assault.

3.5 Paragraph (c) provides that family violence includes a sexual assault or another form of sexually coercive behaviour.

3.6 Paragraph (d) concerns behaviour that is psychologically abusive. It provides a non-exhaustive list of examples that might meet this definition. This definition would generally encompass stalking of a family member which is a form of behaviour that torments, intimidates or harasses that person.

3.7 Paragraph (e) includes non-exhaustive examples of behaviour that could unreasonably control, dominate, deceive or coerce a person including behaviour that would be considered economic or financial abuse. This would include acts that result in the person's access to financial resources being blocked or obstructed as well as manipulation that prevents the person from maintaining friendships and more aggressive behaviour like depriving another person of their liberty.

3.8 Paragraph (f) refers to behaviour that might not be covered by the preceding subparagraphs but would cause the person to feel fear for his or her safety or for the safety of another person. The element of 'fear' would be a subjective test based on the victim's actual state of mind rather than an objective or semi-objective test of how a reasonable person in the street may react to the behaviour with or without the same history.

3.9 Paragraph (g) would cover behaviour that causes the family member to feel threatened irrespective of whether that behaviour causes harm. Paragraph (g) may apply to threats to engage in conduct covered in subparagraphs (a) to (f).

3.10 Paragraph (h) would apply to behaviour that involves a family member threatening to commit suicide or self harm with the intention of tormenting or intimidating another family member. This type of conduct is recognised under some other laws as emotional or psychological abuse.

3.11 ADD Using the courts to get revenge on a loving and caring parent (usually the mother) who has been the primary carer for most of the child's life must be recognised as family violence and abuse.

Imprisoning the mother, for example, for travelling overseas with her child who she believes is at risk of harm from the father does absolutely nothing for the best interests of the child. He loves his mother and was fine with her. He won't be able to see her in prison or if he does, it will not be pleasant or humane,

Imprisoning and/or threatening to imprison a mother for harmless contraventions such as keeping the child with her a few days longer because the child was sick (Doctor can vouch for this) is wrong. These and other actions which we would call vexatious and a waste of the court's time should be eliminated from the system.

Item 4—Subsection 4(1)—Definition of *member of the family*—New provision

Description of amendment

Remove the definition of *member of a family* in subsection 4(1) of the Family Law Act and replace it with a new signpost provision

Existing provision

member of the family, in relation to a person, has, for the purposes of the definition of ***step-parent***, paragraphs 60CC(3)(j) and (k) and section 60CF, the meaning given by subsection (1AB) of this section.

Proposed provision

member of the family: see subsection (1AB) of this section.

Note: The definition in subsection (1AB) applies for the purposes of the provisions specified in that subsection.

4.1 This item would repeal the existing definition of 'member of the family' and insert a new definition to act as a 'signpost' to subsection 4(1AB) which provides the more extensive definition of 'member of the family'. This amendment combined with changes to subsection 4(1AB) proposed in items 6 and 7 would apply the definition to a broader range of provisions in the Family Law Act.

4.2 This amendment follows existing drafting of the Family Law Act which places more extensive definitions at the end of the interpretation section.

What about step-siblings who can be abusers and sexual predators at quite a young age? If a parent is knowingly exposing his or her own children to this risk, they are not an adequate parent.

Revised provision

6.1 These amendments would ensure that new subsection 4(1AD), which defines the meaning of when a child is 'exposed' to family violence, picks up the definition of 'member of the family 'in subsection 4(1AB). New sections 60CH and 60CI, which place new obligations on parties to proceedings to report certain matters to the court, would also rely on subsection 4(1AD) to define 'member of the family' and therefore must be mentioned in subsection 4(1AB).

6.2 These amendments are consequential to amendments set out in items 8 and 21.

Item 8—Paragraph 4(1AB)(c)—Definition of *exposed*—New provision

Description of amendment

Insert a new provision in the Family Law Act explaining what it means for a child to be *exposed* to family violence

Proposed provision

4(1AD) For the purposes of this Act, a child is ***exposed*** to family violence if the child sees or hears family violence or otherwise experiences the effects of family violence, including (for example) if the child:

(a) overhears threats of death or personal injury by a member of the child's family towards another member of the child's family; or

(b) sees or hears an assault of a member of the child's family by another member of the child's family; or

(c) comforts or provides assistance to a member of the child's family who has been assaulted by another member of the child's family; or

(d) cleans up a site after a member of the child's family has intentionally damaged property of another member of the child's family (if that damage constitutes family violence); or

(e) is present when police or ambulance officers attend an incident involving the assault of a member of the child's family by another member of the child's family.

2. ADD belittling, controlling, capricious and bullying behaviour which is probably the most prevalent form of abuse in our society –whether it is in the family, workplace or elsewhere (Family Court? Parliament?).

Children are very badly affected by these behaviours which can be very subtle. The above 4 (1AD) are very physically focused and that may not be as harmful to a child in the long run as continual fear of unpredictable, irrational and threatening behaviour. Children often feel that they are to blame for the parent's unprovoked outbursts. They are sometimes used an excuse for attacking the other parent. Which just about sums up much of what happens in the Courts now!
Judge's remarks attacking or belittling the mother are all too common in our experience. It is extremely important for the child's welfare that the mother's evidence should be heard. How can this happen when women are told that they are too emotional, too stoney-faced, too educated, not educated enough, overdressed, underdressed. The source of information should not be the issue and judge's personal prejudices should be kept out of the process.

8.1 This item would include a new definition explaining what it means for a child to be 'exposed' to family violence.
8.2 This new term provides that 'exposed to family violence' means, among other things, behaviour that causes a child to hear, witness, or otherwise be exposed to the effects of, behaviour towards another family member. For the purposes of the Family Law Act, the examples listed in paragraphs (a) to (e) of the definition proposed by item 8 are examples only. The examples clarify that there does not need to be intent for a child to hear, witness or otherwise be exposed to family violence.

Item 9—Subsection 12E(3)(note)—Obligations on legal practitioners—Revised provision (note only)

Description of amendment

Repeal the existing note under subsection 12E(3) of the Family Law Act and include a new note pointing to new section 60D of that Act

Existing note

Note: Section 63DA also imposes information-giving obligations on legal practitioners dealing with people involved in Part VII proceedings.

- **Judges conduct. They should be accountable and trained in at least common politeness and respect for anyone appearing in their court.**

Legal representatives likewise. The fee structure, sources of advice and other essential information should be provided to all clients. Form 4 or equivalent must be submitted to the court and not withheld by lawyers. Lawyers must act in a timely manner and not withhold material from their client or the court.

Description of amendment

Repeal the existing note under subsection 12G(1) of the Family Law Act and include a new note pointing to new section 60D of that Act

Existing note

Note: Section 63DA also imposes information-giving obligations on family counsellors and family dispute resolution practitioners (not arbitrators) dealing with people involved in Part VII proceedings.

Proposed note

9.1 This item would repeal the note under existing subsection 12E(3) of the Family Law Act, which deals with the obligations on legal practitioners to give their clients documents containing information prescribed under section 12D of the Family Law Act.

9.2 The existing note refers the reader to additional information-giving obligations under section 63DA of the Family Law Act. The revised note would be reworded to include a reference to new general obligations for advisers to be introduced by new section 60D of the Family Law Act by item 22 of the Family Violence Bill.

Item 10—Subsection 12G(1) (note)—Obligations on family counsellors, FDR practitioners and arbitrators—Revised provision (note only)

10.1 This item would repeal the note under subsection 12G(1) of the Family Law Act which deals with obligations in family counsellors, family dispute resolution practitioners and arbitrators to give married persons (and in appropriate cases, that person's spouse) documents containing information prescribed under section 12C of the Family Law Act.

10.2 The existing note refers the reader to additional information-giving obligations for these professionals (except arbitrators) under section 63DA of the Family Law Act. The revised note would be reworded to include a reference to new general obligations for advisers to be introduced by new section 60D of the Family Law Act by item 22 of the Family Violence Bill.

Expert witnesses and judges should be accountable and trained in at least common politeness and respect for anyone appearing in their court.

All including Family reporters etc should be trained to recognise child abuse caused by exposure to violence and also sexual abuse.

Item 11—Paragraph 43(1)(ca)—Principles to be applied by courts—Revised provision

Description of amendment

In paragraph 43(1)(ca) of the Family Law Act change the word 'safety' to 'protection'

Proposed provision

43 Principles to be applied by courts

(1) The Family Court shall, in the exercise of its jurisdiction under this Act, and any other court exercising jurisdiction under this Act shall, in the exercise of that jurisdiction, have regard to:

(a) the need to preserve and protect the institution of marriage as the union of a man and a woman to the exclusion of all others voluntarily entered into for life;

ADD a relationship which produces children can't be legislated. It could be a one-night stand, AI or even incest. So does this constitute a family? Many relationships which are not marital are very successful in parenting. Naïve question – but why is this clause in here? Is it to put off de factos?

(b) the need to give the widest possible protection and assistance to the family as the natural and fundamental group unit of society, particularly while it is responsible for the care and education of dependent children; **This doesn't always go with(c) below which should come first anyway**

(c) the need to protect the rights of children and to promote their welfare; **put this at (a)**

(ca) the need to ensure ~~safety~~ protection from family violence; and

(d) the means available for assisting parties to a marriage to consider reconciliation or the improvement of their relationship to each other and to their children. **As long as it's voluntary and not coerced**

(2) Paragraph (1)(a) does not apply in relation to the exercise of jurisdiction conferred or invested by Division 2.

11.1 This amendment would promote consistency of terminology in the Family Law Act by replacing the word 'safety' with 'protection'.

Item 12—Section 60CA—What Division 1 of Part VII does—Revised provision

Description of amendment

After paragraph 60A(a) of the Family Law Act insert new paragraphs (aa) and (ab) pointing to revised Subdivision BA and new Subdivision BB of Division 1 of Part VII of the Family Law Act

Proposed provision

60A What this Division does

This Division contains:

(a) a statement of the object of this Part and the principles underlying it, and an outline of this Part (Subdivision B); and

(aa) provisions dealing with the best interests of the child in court proceedings (Subdivision BA); and

(ab) provisions dealing with an adviser's obligations in relation to the best interests of the child (Subdivision BB); and

(b) provisions relevant to the interpretation and application of this Part (Subdivision C); and

12.1 This amendment would update section 60A of the Family Law Act which sets out the issues dealt with in Division I of Part VII of the Act (covering introductory issues relating to children's matters). The issues are drawn from the titles of the Subdivisions in Division 1. Under this amendment, section 60A would refer to retitled Subdivision BA and new Subdivision BB introduced into the Act by items 16 and 22 respectively.

We have covered this elsewhere by asking that evidence should be taken out of the adversarial process and placed before a panel with an investigative focus.

Item 13—Section 60B—Objects of Part VII—Revised provision

Description of amendment

At the end of section 60B of the Act insert new subsection 60B(4) to include a new object

Proposed provision

60B Objects of Part and principles underlying it

(1) The objects of this Part are to ensure that the best interests of children are met by:

(a) ensuring that children have the benefit of both of their parents having a meaningful involvement in their lives, to the maximum extent consistent with the best interests of the child; and

(b) protecting children from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence; and

ADD change (a) (b) around if the intention of these amendments is to put children first.

(c) ensuring that children receive adequate and proper parenting to help them achieve their full potential; and

(d) ensuring that parents fulfil their duties, and meet their responsibilities, concerning the care, welfare and development of their children.

(2) The principles underlying these objects are that (except when it is or would be contrary to a child's best interests):

(a) children have the right to know and be cared for by both their parents, regardless of whether their parents are married, separated, have never married or have never lived together; and

(b) children have a right to spend time on a regular basis with, and communicate on a regular basis with, both their parents and other people significant to their care, welfare and development (such as grandparents and other relatives); and

(c) parents jointly share duties and responsibilities concerning the care, welfare and development of their children; and

(d) parents should agree about the future parenting of their children; and

ADD what if they don't? Some of the shared responsibility and access provisions are impracticable and unreasonable in practice. If they did agree they probably wouldn't be in this disputatious situation

(e) children have a right to enjoy their culture (including the right to enjoy that culture with other people who share that culture).

(3) For the purposes of subparagraph (2)(e), an Aboriginal child's or Torres Strait Islander child's right to enjoy his or her Aboriginal or Torres Strait Islander culture includes the right:

(a) to maintain a connection with that culture; and

(b) to have the support, opportunity and encouragement necessary:

(i) to explore the full extent of that culture, consistent with the child's age and developmental level and the child's views; and

(ii) to develop a positive appreciation of that culture.

(4) An additional object of this Part is to give effect to the Convention on the Rights of the Child done at New York on 20 November 1989.

ADD the Human Rights Commission would be able to assess whether processes and judgements met the criteria. Children must be able to speak out. Give them a voice and a choice! Children we know are perfectly capable of stating their case at the age of 6, let alone 10 when they can assume criminal responsibility but still be silent in FLAW

Note: The text of the Convention is set out in Australian Treaty Series 1991 No. 4 ([1991] ATS 4). In 2010, the text of

13.1 Item 13 would insert a new provision into section 60B, Objects of Part and principles underlying it, to provide that a further object of Part VII of the Act is to give effect to the United Nations' Convention on the Rights of the Child. This is an important international instrument which sets out the basic human rights of all children. In ratifying the Convention, the Australian Government agreed to develop and undertake all actions and policies to promote the best interests of the child.

We want this to come into effect but how can it be enforced?

13.2 The proposed provision reinforces this obligation on decision-makers and courts to interpret the Act, to the extent that its language permits, consistently with Australia's obligations under the Convention. To the extent that the Act departs from the Convention, the Act would prevail.

13.3 The note provides the reader with an internet reference for accessing the Convention.

Items 14 and 15—Section 60C (cell at table item 1, column headed 'Divisions and coverage') (cell at table item 8, column headed 'Divisions and coverage')—Revised provision

Description of amendment **We have tried to cover this elsewhere see comments above**

In section 60C of the Family Law Act (cell at table item 1, column headed 'Divisions and coverage') after 'object of Part and principles underlying it, and outline of Part' insert:

- best interests of the child: court proceedings
- best interests of the child: adviser's obligations

In section 60C of the Family Law Act (cell at table item 8, column headed "Divisions and coverage") after 'reporting of allegations of child abuse' insert:

- reporting of allegations of family violence

Proposed provision

OUTLINE OF PART	
Item	**Divisions and coverage**
1	**Division 1—Introductory** • object of Part and principles underlying it, and outline of Part • best interests of the child: court proceedings • best interests of the child: adviser's obligations • interpretation and application of this Part • how this Act applies to certain children Note: The extension and application of this Part is also dealt with in Subdivision F of Division 12.

8	**Division 8—Other matters relating to children** • liability of a father to contribute towards child bearing expenses if he is not married to the child's mother • orders for the location and recovery of children • reporting of allegations of child abuse • reporting of allegations of family violence • other orders about children

14.1 This item would update the table in section 60C of the Family Law Act which provides an outline of issues dealt with by Part VII of the Family Law Act (dealing with children's matters). New issues would be included for Division 1 as a result of items 16 and 22, and in Division 8 as a result of item 29.

Item 16—Subdivision BA of Division 1 of Part VII—(heading) Best interests of the child: Court proceedings—Revised provision

Description of amendment

Repeal the heading of Subdivision BA of Division 1 of Part VII of the Family Law Act and insert a revised heading

Existing provision

Subdivision BA—Best interests of the child

Proposed provision

Subdivision BA—Best interests of the child: court proceedings

16.1 This proposed amendment would change the heading of Subdivision BA of Division 1 of Part VII of the Family Law Act to indicate that the issues dealt with in that subdivision relate to court proceedings. This is necessary to distinguish between existing Subdivision BA which deals with matters a court must consider when dealing with a children's matter and new Subdivision BB which would deal with adviser's obligations in relation to children's matters which is to be introduced by item 22 of the Family Violence Bill.

16.2 Advisers communicate with parents and other people about their children, and these communications may occur before, during or after court proceedings. Accordingly, matters relating to courts and advisers warrant separate treatment.

Item 17—Subsection 60CC(2A)—Determining a child's best interests—New provision

Description of amendment

After subsection 60CC(2) of the Family Law Act include a new subsection 60C(2A) which would ensure that the protection of children from harm is given greater weight where there is inconsistency in applying the primary considerations

Proposed provision

60CC How a court determines what is in a child's best interests

Determining child's best interests

(1) Subject to subsection (5), in determining what is in the child's best interests, the court must consider the matters set out in subsections (2) and (3).

Primary considerations

(2) The primary considerations are:

(a) the benefit to the child of having a meaningful relationship with both of the child's parents; and

NO!!! didn't any of the law makers and judges etc have abusive parents?? The number one aim of kids who did was to get away from them not to have to be thrust back into a horrible destructive relationship.

(b) the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.

Note: Making these considerations the primary ones is consistent with the objects of this Part set out in paragraphs 60B(1)(a) and (b).

(2A) If there is any inconsistency in applying the considerations set out in subsection (2), the court is to give greater weight to the consideration set out in paragraph (2)(b).

Then make it paragraph (2) (a) – this seems like total betrayal of the child's right to be Number One in these disputes if bets are being hedged against – what exactly? The resistance of Father's Rights Groups? Either the child is the primary focus in child custody/care whatever the current jargon is. Or it is not. It can't be an each way bet. You're dealing with children's lives – Our Future, a hackneyed phrase but true.

Hola Australian society! Have you never heard the proverb Cria Cuervos? Raise crows and they'll peck out your eyes. Maybe you don't care about these kids. But reconsider how this might turn out for YOU!

17.1 Under the Family Law Act, family courts must consider two primary considerations when determining the best interests of the child. These considerations are the benefit to the child of having a meaningful relationship with both parents and the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse neglect or family violence.

17.2 Presently, in deciding what is in the child's best interests, there are two primary considerations for the court. Recent reports suggest that the apparent equal weighting of the primary considerations should be reassessed. The reports also describe perceptions that, in practice, greater attention is given to the benefit of a child having meaningful involvement with each parent.

17.3 Item 17 proposes a new subsection 16(2A) which would require the court to give greater weight to the primary consideration that protects the child from harm in cases where there is inconsistency in applying the considerations. In cases where child safety is a concern, this new provision would provide the courts with clear legislative guidance.

Items 18, 19 and 20—Section 60CC—'Friendly parent provisions'—Revised provision (revision and repeal)

Description of amendments

Remove paragraph 60CC(3)(c) and subsections 60CC(4) and (4A) of the Family Law Act
Remove paragraph 60CC(3)(k) and insert new paragraph 60CC(3)(k) of the Family Law Act

Proposed provision

Additional considerations

60CC (3) Additional considerations are:

(a) any views expressed by the child and any factors (such as the child's maturity or level of understanding) **Children are a lot more au fait than the system gives them credit for. From the age of at least 6, they are perfectly capable of expressing their feelings. But not many adults are capable either perfectly or otherwise of listening to them. The court – if that means the judge and single expert - are often not equipped with enough appropriate knowledge of children to form a decent view let alone a judgement which will affect these kids for the rest of their lives.**

(b) that the court thinks are relevant to the weight it should give to the child's views;

(b) the nature of the relationship of the child with:

(i) each of the child's parents; and

(ii) other persons (including any grandparent or other relative of the child);

~~(c) the willingness and ability of each of the child's parents to facilitate, and encourage, a close and continuing relationship between the child and the other parent;~~

(d) the likely effect of any changes in the child's circumstances, including the likely effect on the child of any separation from:

(i) either of his or her parents; or

(ii) any other child, or other person (including any grandparent or other relative of the child), with whom he or she has been living;

(e) the practical difficulty and expense of a child spending time with and communicating with a parent and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with both parents on a regular basis;

(f) the capacity of:

(i) each of the child's parents; and

(ii) any other person (including any grandparent or other relative of the child);

to provide for the needs of the child, including emotional and intellectual needs;

(g) the maturity, sex, lifestyle and background (including lifestyle, culture and traditions) of the child and of either of the child's parents, and any other characteristics of the child that the court thinks are relevant;

Yes – take up our idea of a panel constituted via input from all parties including Justice for Children

Section 60CC(3) continued

(h) if the child is an Aboriginal child or a Torres Strait Islander child:

(i) the child's right to enjoy his or her Aboriginal or Torres Strait Islander culture (including the right to enjoy that culture with other people who share that culture); and

(ii) the likely impact any proposed parenting order under this Part will have on that right;

(i) the attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents;

(j) any family violence involving the child or a member of the child's family;

~~(k) any family violence order that applies to the child or a member of the child's family, if:~~

~~(i) the order is a final order; or~~

~~(ii) the making of the order was contested by a person;~~

(k) any family violence order that applies to the child or a member of the child's family;

(l) whether it would be preferable to make the order that would be least likely to lead to the institution of further proceedings in relation to the child;

(m) any other fact or circumstance that the court thinks is relevant.

QUESTION What is wrong with some of the provisions below? Maybe we missed the point.

~~(4) Without limiting paragraphs (3)(c) and (i), the court must consider the extent to which each of the child's parents has fulfilled, or failed to fulfil, his or her responsibilities as a parent and, in particular, the extent to which each of the child's parents:~~

(a) has taken, or failed to take, the opportunity:

(i) to participate in making decisions about major long-term issues in relation to the child; and

(ii) to spend time with the child; and

(iii) to communicate with the child in a positive and non-destructive way;

~~(b) has facilitated, or failed to facilitate, the other parent:~~

~~(i) participating in making decisions about major long-term issues in relation to the child; and~~

~~(ii) spending time with the child; and~~

~~(iii) communicating with the child; and~~

~~(c) has fulfilled, or failed to fulfil, the parent's obligation to maintain the child.~~

~~(4A) If the child's parents have separated, the court must, in applying subsection (4), have regard, in particular, to events that have happened, and circumstances that have existed, since the separation occurred.~~

(continued over page)

Section 60CC(3) continued

Consent orders

(5) If the court is considering whether to make an order with the consent of all the parties to the proceedings, the court may, but is not required to, have regard to all or any of the matters set out in subsection (2) or (3).

Right to enjoy Aboriginal or Torres Strait Islander culture

(6) For the purposes of paragraph (3)(h), an Aboriginal child's or a Torres Strait Islander child's right to enjoy his or her Aboriginal or Torres Strait Islander culture includes the right:

(a) to maintain a connection with that culture; and

(b) to have the support, opportunity and encouragement necessary:

(i) to explore the full extent of that culture, consistent with the child's age and developmental level and the child's views; and

(ii) to develop a positive appreciation of that culture.

Item 18—repeal of paragraph 60CC(3)(c)

18.1 Item 18 repeals paragraph 60CC(3)(c) which, in combination with paragraph 60CC(4)(b), is commonly known as the 'friendly parent provision'. These provisions require the family courts to consider the attitude or conduct exhibited by one parent towards the other in facilitating a child's relationship with both parents. Recent reports have found that these provisions can prevent evidence of violence and abuse being brought to court.

Item 19—amendment of paragraph 60CC(3)(k)

19.1 Item 19 would delete paragraph 60CC(3)(k) and replace it with a similar provision which removes the requirement for family violence orders to have been final or contested. The effect of this new paragraph is the courts may have regard to any family violence order made and give appropriate weight to these orders including interim, non-contested and police issued orders. The definition of 'family violence order' in subsection 4(1) of the Family Law Act would remain unchanged. It is noted that this is an extensive definition relying on prescribed State and Territory legislation. It is intended to encompass all family violence orders recognised in the States and Territories.

Item 20—repeal of subsections 60CC(4) and (4A)

22.1 Item 20 would remove subsections 60CC(4) and (4A). The proposed deletion of paragraph 60CC(3)(c) warrants the removal of subsection 60CC(4) given the connection between those provisions. Subsection 60CC(4A) is a consequential amendment to the repeal of subsection 60CC(4).

Yes – absolutely!! The truth will make these kids free….we hope. Consideration must be given to the desire of the child to see or not to see the other parent. It is a very difficult issue because there are parents and family members who 'coach' children and/or feed them deleterious lies about their former partner. But many kids make up their own minds who they want to spend time with and under what conditions and must be given a greater say.

There are big problems with getting AVOs. One reason is that if the police decide to pursue the AVO they often do not consult sufficiently with the victim and when they appear in court the police testimony is inaccurate, irrelevant and ultimately not effective so the AVO is not granted. This is extremely disheartening for the victim and places them in an even more unsafe situation.

Item 21—Subdivision BB and sections 60CH and 60CI—New provisions

Proposed provisions

60CH Informing court of care arrangements under child welfare laws

(1) If a party to the proceedings is aware that the child, or another child who is a member of the child's family, is under the care (however described) of a person under a child welfare law, that party must inform the court of the matter.

(2) If a person who is not a party to the proceedings is aware that the child, or another child who is a member of the child's family, is under the care (however described) of a person under a child welfare law, that person may inform the court of the matter.

(3) Failure to inform the court of the matter does not affect the validity of any order made by the court. However, this subsection does not limit the operation of section 69ZK (child welfare laws not affected).

60CI Informing court of notifications to, and investigations by, prescribed State or Territory agencies

(1) If:

(a) a party to the proceedings is aware that the child, or another child who is a member of the child's family, is or has been the subject of:

(i) a notification or report (however described) to a prescribed State or Territory agency; or

(ii) an investigation, inquiry or assessment (however described) by a prescribed State or Territory agency; and

(b) the notification, report, investigation, inquiry or assessment relates to abuse, or an allegation, suspicion or risk of abuse;

that party must inform the court of the matter.

(2) If:

(a) a person who is not a party to the proceedings is aware that the child, or another child who is a member of the child's family, is or has been the subject of:

(i) a notification or report (however described) to a prescribed State or Territory agency; or

(ii) an investigation, inquiry or assessment (however described) by a prescribed State or Territory agency; and

(b) the notification, report, investigation, inquiry or assessment relates to abuse, or an allegation, suspicion or risk of abuse;

that person may inform the court of the matter.

(3) Failure to inform the court of the matter does not affect the validity of any order made by the court.

(4) In this section:

prescribed State or Territory agency means an agency that is a prescribed State or Territory agency for the purpose of section 69ZW.

21.1 Item 21 inserts two new obligations on parties to provide the court with information regarding risks to the child, or another child who is a member of the child's family. Section 60CH will require parties to parenting proceedings to notify the court of any orders or arrangements under child welfare laws relating to the children of one or both of the parties.

Section 60CI will require parties to disclose to the court whether the child has been the subject of notifications to, or investigations by, child welfare authorities.

21.2 Information about whether a child is or has been the subject of a care order under a child welfare law is crucial in assisting the family courts to make decisions about children. The information is an indicator of the risks of harm to the child and may alert the court to other evidence relevant to the child's welfare and best interests. In addition, the information will assist the court in determining if the jurisdictional matters under section 69ZK arise and whether to request the involvement of relevant child welfare authorities. For example, the court may order the authorities to provide information relating to the notifications and investigations.

We have tried to cover this in discussion of investigative powers of panel.

Item 22—New Subdivision BB (after Subdivision BA)—Best interests of the child: adviser's obligations—New provision

Description of amendment

Insert a new provision in the Family Law Act relating to adviser obligations when giving advice about matters concerning the child and how child safety should be prioritised

Proposed provision

Subdivision BB—Best interests of the child: adviser's obligations

60D Adviser's obligations in relation to best interests of the child

(1) If an adviser gives advice or assistance to a person about matters concerning a child and this Part, the adviser must:

(a) inform the person that the person should regard the best interests of the child as the paramount consideration; and

(b) encourage the person to act on the basis that the child's best interests are best met:

(i) by the child having a meaningful relationship with both of the child's parents; and

(ii) by the child being protected from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence; and

(iii) if there is any inconsistency in applying the considerations set out in subparagraphs (i) and (ii)—by giving greater weight to the consideration set out in subparagraph (ii).

(2) In this section:

adviser means a person who is:

(a) a legal practitioner; or

(b) a family counsellor; or

(c) a family dispute resolution practitioner; or

(d) a family consultant.

22.1 Item 22 would insert new Subdivision BB in Division 1 of Part VII that would outline the obligations on advisers when working with parents to reach parenting arrangements for their children. As with current section 63DA of the Family Law Act, an adviser would be defined as a legal practitioner, family counsellor, family dispute resolution practitioner and family consultant.

22.2 The new subdivision would direct advisers to focus on the best interests of the children when providing advice about parenting arrangements and other matters relating to children under Part VII of the Family Law Act.

22.3 Where there is inconsistency in applying the primary considerations of a child's right to a meaningful relationship with parents and the child's right to be protected from harm, advisers would be required to encourage parents to prioritise a child's wellbeing and right to safety. This approach is consistent with the amendments proposed at item 17. The new adviser obligations would enable parents to consider the protection of their children from harm as a priority at an early stage of discussions and with the assistance of their advisers.

Items 23 and 24—Section 63DA including new subsection 63DA(1A) and repeal of paragraph 63DA(2)(c) —Obligations of advisers—New provision

Description of amendment

Before subsection 63DA(1) of the Family Law Act insert new subsection 63DA(1A) highlighting adviser obligations in section 60D of that Act

Remove paragraph 63DA(2)(c) of the Family Law Act

Proposed provision

63DA Obligations of advisers

(1A) The obligations on an adviser under this section are in addition to the adviser's obligations under section 60D.

Note: Section 60D deals with an adviser's obligations in relation to the best interests of the child.

(1) If an adviser gives advice or assistance to people in relation to parental responsibility for a child following the breakdown of the relationship between those people, the adviser must:

(a) inform them that they could consider entering into a parenting plan in relation to the child; and

(b) inform them about where they can get further assistance to develop a parenting plan and the content of the plan.

(2) If an adviser gives advice to people in connection with the making by those people of a parenting plan in relation to a child, the adviser must:

(a) inform them that, if the child spending equal time with each of them is:

(i) reasonably practicable; and

(ii) in the best interests of the child;

they could consider the option of an arrangement of that kind; and

(b) inform them that, if the child spending equal time with each of them is not reasonably practicable or is not in the best interests of the child but the child spending substantial and significant time with each of them is:

(i) reasonably practicable; and

(ii) in the best interests of the child;

they could consider the option of an arrangement of that kind; and

~~(c) inform them that decisions made in developing parenting plans should be made in the best interests of the child; and~~

(d) inform them of the matters that may be dealt with in a parenting plan in accordance with subsection 63C(2); and…

23.1 Items 23 and 24 would provide that the adviser obligations in new Subdivision BB are in addition the obligations of advisers in section 63DA which (under item 22) would include taking account of the child's best interests and prioritising the child's safety.

Items 25 and 26—Repeal of Note 1 of subsection 65DAA(5) and revision to Note 2—Court to consider equal time or substantial and significant time in certain circumstances—Revised provision (notes only)

Description of amendment

Remove Note 1 under subsection 65DAA(5) of the Family Law Act
In Note 2 65DAA(5) omit the words 'Note 2:' and substitute the words 'Note:'

Proposed provision

Reasonable practicality

65DAA (5) In determining for the purposes of subsections (1) and (2) whether it is reasonably practicable for a child to spend equal time, or substantial and significant time, with each of the child's parents, the court must have regard to:

(a) how far apart the parents live from each other; and

(b) the parents' current and future capacity to implement an arrangement for the child spending equal time, or substantial and significant time, with each of the parents; and

(c) the parents' current and future capacity to communicate with each other and resolve difficulties that might arise in implementing an arrangement of that kind; and

(d) the impact that an arrangement of that kind would have on the child; and

(e) such other matters as the court considers relevant.

~~Note 1: Behaviour of a parent that is relevant for paragraph (c) may also be taken into account in determining what parenting order the court should make in the best interests of the child. Subsection 60CC(3) provides for considerations that are taken into account in determining what is in the best interests of the child. These include:~~
~~(a) the willingness and ability of each of the child's parents to facilitate, and encourage, a close and continuing relationship between the child and the other parent (paragraph 60CC(3)(c));~~
~~(b) the attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents (paragraph 60CC(3)(i)).~~

Note: ~~Note 2:~~ Paragraph (c) reference to future capacity—the court has power under section 13C to make orders for parties to attend family counselling or family dispute resolution or participate in courses, programs or services.

Item 25—repeal of Note 1

25.1 This item would remove Note 1. Note 1 would no longer be necessary given the proposed repeal of subsection 60CC(3) of the Family Law Act as proposed by item 18.

Item 26—amendment to Note 2

26.1 Note 2 would be renamed as 'Note'. This is a consequential amendment.

Can existing impracticable order s be revisited without the parties having to go back to court?

Item 27—New paragraph 67A(ca)—What Division 8, Part VII deals with—Revised provision

Description of amendment

After section 67A(c) of the Family Law Act insert a new paragraph 67A(ca)

Proposed provision

67A What this Division does

67A This Division deals with:

(a) the liability of a father to contribute towards child bearing expenses if he is not married to the child's mother (Subdivision B); and

(b) orders for the location and recovery of children (Subdivision C); and

(c) the reporting of allegations of child abuse (Subdivision D); and

(ca) reporting of allegations of family violence (Subdivision DA); and

(d) other orders about children (Subdivision E).

27.1 Section 67A of the Family Law Act outlines the matters that are addressed in Division 8 of Part VII of that Act matters relate to children such as child maintenance, location and recovery of children and reporting of allegations of child abuse. Item 27 would amend section 67A of the Act to inform the reader that Division 8 also contains provisions introduced by item 29 relating to the reporting of family violence.

Much more weight must be given to whether the mother (for example) has taken the child to try and protect them from abuse.

Item 28—New note to subsection 67ZA(3)—Suspicion of abuse—Revised provision (note only)

Description of amendment

After section 67ZA(3) of the Family Law Act add a new note to deal to confirm mandatory reporting requirements

Proposed provision

67ZA Where member of the Court personnel, family counsellor, family dispute resolution practitioner or arbitrator suspects child abuse etc.

(1) This section applies to a person in the course of performing duties or functions, or exercising powers, as:

(a) the Registrar or a Deputy Registrar of a Registry of the Family Court of Australia; or

(b) the Registrar or a Deputy Registrar of the Family Court of Western Australia; or

(c) a Registrar of the Federal Magistrates Court; or

(d) a family consultant; or

(e) a family counsellor; or

(f) a family dispute resolution practitioner; or

(g) an arbitrator; or

(h) a lawyer independently representing a child's interests.

(2) If the person has reasonable grounds for suspecting that a child has been abused, or is at risk of being abused, the person must, as soon as practicable, notify a prescribed child welfare authority of his or her suspicion and the basis for the suspicion.

(3) If the person has reasonable grounds for suspecting that a child:

(a) has been ill treated, or is at risk of being ill treated; or

(b) has been exposed or subjected, or is at risk of being exposed or subjected, to behaviour which psychologically harms the child;

the person may notify a prescribed child welfare authority of his or her suspicion and the basis for the suspicion.

Note: The obligation under subsection (2) to notify a prescribed child welfare authority of a suspicion that a child has been abused or is at risk of being abused must be complied with, regardless of whether this subsection also applies to the same situation.

28.1 Item 28 responds to the scenario where the facts of a case may trigger multiple reporting obligations. The note confirms that a person who is authorised to report ill-treatment under subsection 67ZA(3) of the Family Law Act is not excused from mandatory reporting obligations which arise under subsection 67ZA(2) of the Act where that person has reasonable grounds for suspecting that a child has been abused or is at risk of being abused.

Item 29—Subdivision D of Division 8 of Part VII—Allegations of family violence—New provision

Description of amendment

Insert a new provision in the Family Law Act that requires parties alleging family violence to bring it to the attention of the court

Proposed provision

Subdivision DA—Allegations of family violence

67ZBA Where party to proceedings makes allegation of family violence

(1) This section applies if a party to proceedings under this Part alleges:

(a) there has been family violence by one of the parties to the proceedings; or

(b) there is a risk of family violence by one of the parties to the proceedings.

(2) The party making the allegation must file a notice in the prescribed form in the court hearing the proceedings, and serve a true copy of the notice upon the party referred to in paragraph (1)(a) or (b).

(3) If the alleged family violence (or risk of family violence) is abuse of a child (or a risk of abuse of a child):

(a) the party making the allegation must either file and serve a notice under subsection (2) of this section or under subsection 67Z(2) (but does not have to file and serve a notice under both those subsections); and

(b) if the notice is filed under subsection (2) of this subsection, the Registry Manager must deal with the notice as if it had been filed under subsection 67Z(2).

(4) In this section:

prescribed form means the form prescribed by the applicable Rules of Court.

29.1 Item 29 would insert new section 67ZBA into the Family Law Act to require parties to proceedings who allege that there has been or is a risk of family violence to file a notice of family violence with the court. It is anticipated that the existing Form 4 Notice of Child Abuse or Family Violence which is prescribed for the purposes of paragraph 60K(1)(d) would be prescribed also for proposed section 67ZBA.

29.2 The Family Law Council noted that there is currently no requirement in the Family Law Act to report family violence, and that the Family Law Rules which provide for a similar rule are not followed by legal practitioners or litigants other than in cases of sexual abuse or serious physical abuse of a child. This provision would act as a clear flag to parties and their representatives that the court must be told about family violence.

29.3 Section 67Z of the Family Law Act provides for a similar requirement in relation to allegations of child abuse and was used as a guide for this provision.

We endorse this and reiterate that contraventions which do not involve violence or abuse (and we define abuse as preventing the child from being with the parent they want to be with) should not be subject to penalties.

Item 30—Note in section 68N—Purposes of Division 11—Repealed provision (note only)

Description of amendment

Repeal the note in section 68N of the Family Law Act

Proposed provision

68N Purposes of this Division

The purposes of this Division are:

(a) to resolve inconsistencies between:

(i) family violence orders; and

(ii) certain orders, injunctions and arrangements made under this Act that provide for a child to spend time with a person or require or authorise a person to spend time with a child; and

(aa) to ensure that orders, injunctions and arrangements of the kind referred to in subparagraph (a)(ii) do not expose people to family violence; and

(b) to achieve the objects and principles in section 60B.

~~Note: Other provisions dealing with family violence and family violence orders are section 4 (definitions), paragraphs 60B(1)(b) and 60CC(2)(i) and (j), sections 60CF and 60CG, subsection 60I(9), section 60K, subsection 61DA(2), paragraph 65F(2)(b) and section 65P.~~

30.1 Item 30 would repeal the note at the end of section 68N of the Family Law Act which signposts other provisions dealing with family violence. This note is unnecessary and risks becoming unwieldy with the addition of new family violence provisions. The outline of Part VII at section 60C already provides guidance to the reader about provisions relating to family violence.

Item 31—New paragraph 69ZN(5)(a)—Principles for child related proceedings—Revised provision

Description of amendment

Remove paragraph 69ZN(5)(a) of the Family Law Act and insert a new paragraph 69ZN(5)(a)

Proposed provision

69ZN Principles for conducting child-related proceedings

Application of the principles

(1) The court must give effect to the principles in this section:

(a) in performing duties and exercising powers (whether under this Division or otherwise) in relation to child-related proceedings; and

(b) in making other decisions about the conduct of child-related proceedings.

**Failure to do so does not invalidate the proceedings or any order made in them.

(2) Regard is to be had to the principles in interpreting this Division.

So how is it enforced to protect children if ** applies?

Principle 3

69ZN (5) The third principle is that the proceedings are to be conducted in a way that will safeguard:

(a) ~~the child concerned against family violence, child abuse and child neglect; and~~

(a) the child concerned from being subjected to, or exposed to, abuse, neglect or family violence; and

(b) the parties to the proceedings against family violence.

31.1 Item 31 would amend paragraph 69ZN(5)(a) of the Family Law Act to provide consistency in terminology throughout Part VII. There is no change to the intent of the provision.

Item 32—New paragraph 69ZQ(1)(aa)—General duties of the court—New provision

Description of amendment

Before paragraph 69ZQ(1)(a) of the Family Law Act insert new paragraph 69ZQ(1)(aa) requiring the court to ask questions about abuse, neglect and family violence

Proposed provision

(1) In giving effect to the principles in section 69ZN, the court must:

(aa) ask each party to the proceedings:

(i) whether the party considers that the child concerned has been, or is at risk of being, subjected to, or exposed to, abuse, neglect or family violence; and

(ii) whether the party considers that he or she, or another party to the proceedings, has been, or is at risk of being, subjected to family violence; and

(a) decide which of the issues in the proceedings require full investigation and hearing and which may be disposed of summarily; and

(b) decide the order in which the issues are to be decided; and

(c) give directions or make orders about the timing of steps that are to be taken in the proceedings; and

(d) in deciding whether a particular step is to be taken—consider whether the likely benefits of taking the step justify the costs of taking it; and

(e) make appropriate use of technology; and

(f) if the court considers it appropriate—encourage the parties to use family dispute resolution or family counselling; and

(g) deal with as many aspects of the matter as it can on a single occasion; and

(h) deal with the matter, where appropriate, without requiring the parties' physical attendance in court.

(aa) and (a) plus other clauses: Most of this would work better if a panel was doing the assessing.

32.1 Item 32 would impose a new duty on the court to actively inquire into the existence of abuse or family violence. Imposition of this duty would implement the family courts' obligation under subsection 68ZN(5) to conduct proceedings in a way that will safeguard the child and the parties to the proceedings from harm. The duty does not currently extend to requiring the court to proactively inquire about other information which might be useful evidence from people or agencies other than parties to the proceedings.

32.2 The family courts have general powers to order expert evidence, including evidence from child welfare authorities, and may seek additional information from persons or agencies not party to the proceedings where the court determines this is appropriate.

Item 33—New Note at the end of subsection 91B(2)—Intervention by child welfare office—New provision (note only)

Description of amendment

Insert a new note at the end of section 91B to reference new subsection 117(4A)

Proposed provision

91B Intervention by child welfare officer

(1) In any proceedings under this Act that affect, or may affect, the welfare of a child, the court may request the intervention in the proceedings of an officer of a State, of a Territory or of the Commonwealth, being the officer who is responsible for the administration of the laws of the State or Territory in which the proceedings are being heard that relate to child welfare.

(2) Where the court has, under subsection (1), requested an officer to intervene in proceedings:

(a) the officer may intervene in those proceedings; and

(b) where the officer so intervenes, the officer shall be deemed to be a party to the proceedings with all the rights, duties and liabilities of a party.

Note: If an officer intervenes in proceedings and acts in good faith in relation to the proceedings, an order for costs, or for security for costs, cannot be made under subsection 117(2) against the officer: see subsection 117(4A).

33.1 Item 33 would insert a new note under section 91B of the Family Law Act. The purpose of this note would be to alert the reader to the immunity for costs provision where the intervention occurs at the request of the court and officer acts in good faith. This note would provide a signpost to proposed subsection 117(4A) of the Family Law Act discussed in item 36.

Item 34, 35 and 36—Subsection 117AB costs—New provision and revisions

Description of amendments

In subsection 117(1) remove the words '117AB,'

In subsection 117(2) remove the words 'and (5)' and insert the words ', (4A) and (5)'

After subsection 117(4) insert new subsection 117(4A) providing a cost immunity for certain officers

Revised provision

117 Costs

(1) Subject to subsection (2), subsection 70NFB(1) and sections 117AA, ~~117AB,~~ 117AC and 118, each party to proceedings under this Act shall bear his or her own costs.

(2) If, in proceedings under this Act, the court is of opinion that there are circumstances that justify it in doing so, the court may, subject to subsections (2A), (4), (4A) and (5) ~~and (5)~~ the applicable Rules of Court, make such order as to costs and security for costs, whether by way of interlocutory order or otherwise, as the court considers just.

(2A) In considering what order (if any) should be made under subsection (2), the court shall have regard to:

(a) the financial circumstances of each of the parties to the proceedings;

(b) whether any party to the proceedings is in receipt of assistance by way of legal aid and, if so, the terms of the grant of that assistance to that party;

(c) the conduct of the parties to the proceedings in relation to the proceedings including, without limiting the generality of the foregoing, the conduct of the parties in relation to pleadings, particulars, discovery, inspection, directions to answer questions, admissions of facts, production of documents and similar matters;

(d) whether the proceedings were necessitated by the failure of a party to the proceedings to comply with previous orders of the court;

(e) whether any party to the proceedings has been wholly unsuccessful in the proceedings;

(f) whether either party to the proceedings has made an offer in writing to the other party to the proceedings to settle the proceedings and the terms of any such offer; and

(g) such other matters as the court considers relevant…

(4A) If:

(a) under section 91B, an officer intervenes in proceedings; and

(b) the officer acts in good faith in relation to the proceedings;

the court must not make an order under subsection (2) of this section, because of the intervention, against the officer, or against an entity (including the Commonwealth or a State or Territory) by or on behalf of whom the officer was engaged or employed.

(5) In considering what order (if any) should be made under subsection (2) in proceedings in which an independent children's lawyer has been appointed, the court must disregard the fact that the independent children's lawyer is funded under a legal aid scheme or service established under a Commonwealth, State or Territory law or approved by the Attorney-General.

The cost of proceedings in family law have broken many families and mothers in particular. {see note below]

Item 34—remove reference to section 117AB
34.1 Item 34 is a consequential change that would arise because of the repeal of section 117AB of the Family Law Act proposed by item 37. Accordingly, the reference to section 117AB in subsection 117(1) should also be removed.
Item 35—insert reference to new subsection 117(4AB)
35.1 Item 35 is a consequential amendment which would insert a reference to the new subsection 117(4A) introduced by item 36 which introduces a new cost immunity for certain officers.
Item 36—provide cost immunity to certain officers
36.1 Item 36 would introduce a cost immunity for State and Territory child welfare authorities, and their officers, who intervene in family law proceedings following a request by the court and act in good faith throughout the proceedings. Intervention by state and territory child welfare authorities can be essential for the family courts to have comprehensive information about violence and abuse affecting the child. It can also provide the family courts additional options to protect the child from harm when determining parenting orders.

If the safety, wellbeing and best interests of the child are at stake, Australia must find a better way of dealing with these processes which determine a child's future. The current system is skewed towards rewarding the parent who has the most money and other resources, who has the most stamina, often the one who cares least about the child's but a lot about their own interests, the one who seeks revenge and wants to do the other party down. Meanwhile for them the child passes unnoticed into a dark place of fear, apprehension, incomprehension and longing to see the parent they love and are not allowed to contact even by phone or email.

This is horrible abuse and it is in too many cases condoned and even encouraged by the court system.

Some parents have given up because they feel their child is being torn apart by the continuing legal battles and the inhumane court orders which force them to say goodbye and go to a place and a parent they don't want to know about.

Item 37—Section 117AB—False allegations and statements—Repealed provision

Description of amendment

Remove section 117AB which deals with false allegations or statements made in proceedings

Repealed provision

117AB Costs where false allegation or statement made

(1) This section applies if:

(a) proceedings under this Act are brought before a court; and

(b) the court is satisfied that a party to the proceedings knowingly made a false allegation or statement in the proceedings.

(2) The court must order that party to pay some or all of the costs of another party, or other parties, to the proceedings.

37.1 Item 37 would repeal existing section 117AB of the Family Law Act.

37.2 Section 117AB requires the court to make a mandatory cost order where it is satisfied that parties have knowingly made a false allegation or statement in the proceedings. Recent reports suggest that section 117AB has operated as a disincentive to disclosing family violence. Vulnerable parents may choose to not raise legitimate safety concerns for themselves and their children due to fear they will be subject to a costs order if they cannot substantiate the claims. Section 117 of the Family Law Act would remain. This provision allows family courts to make cost orders in response to false statements in appropriate cases.

Repeal!