

To: The Senate Legal and Constitutional Committee

Re: Family Law Legislation Amendment (Domestic violence and Other Measures) Bill 2011

20 April 2011

Dear Committee Secretary,

The Family Law Act 1975 and the Amendments which came through in 2006 sought to prioritise the physical and psychological safety of children in families who are at risk of violence and abuse. We understand the Federal Government is intending to introduce amendments to the Family Law Act through this Inquiry as it has been found the Act did not give sufficient protection to victims of domestic violence. As a group of Domestic Violence Counsellors, we wish to provide the following feedback to the above Inquiry.

Over the years we have had sufficient time to observe the repercussions of inconsistent interpretation and application of the law. A primary role we have is to advocate on behalf of our clients with the systems they have to engage with after leaving an abusive relationship. Unfortunately it has shown us that instead of keeping the victims of violence safe it has, in fact, placed women and children from domestic violence more at risk.

The work we do has demonstrated that:

- Abusive behaviours in a domestic relationship often does not end with separation
- There is a high overlap between domestic violence and child abuse
- In extreme cases, domestic violence following separation is lethal as shown in the cases of Darcey Freeman (2009) and Ryan, Jarod and Ashley Fraser (2003).

It is important that the new amendments take into consideration the characteristics of perpetrators of domestic violence. In this instance, Bancroft L. & Silverman JG (2002) *The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics*, Sage Publications Inc. USA identified particular characteristics which involve:

- A need to be in control;
- A sense of entitlement;
- Selfishness and self-centredness common;
- Feelings of superiority;
- possessiveness;
- manipulation;
- externalisation of responsibility;
- denial;
- minimisation; and
- victim blaming

Based on their clinical experience, they identified common parenting characteristics of men who were violent towards their partners. These characteristics, which are further validated from other empirical evidence, suggest that men who were violent towards their partners were more likely to:

- have developmentally inappropriate behavioural expectations of children (Fox & Benson, 2004);
- generally be under-involved with their children and less physically affectionate but, at times (and unpredictably), to be powerfully present in the child's life, interacting with energy and humour and spending money freely;
- be authoritarian and rigid when involved in the disciplining of children, and self-report being more likely to use physical punishment and to "smack hard" (Fox & Benson, 2004);
- be self-centred and put their own wants above the needs of their children, or even believe that children exist to meet their fathers' needs (Fox & Benson, 2004; Mullender et al., 2002);
- behave in a manner that suggests they are resentful for their children being the centre of attention (Humphreys et al., 2008; Radford & Hester, 2006);
- undermine (in addition to being violent towards her) their children's mother by overruling her parenting decisions, ridiculing, belittling and insulting her in children's presence or to children, and telling children that their mother is a bad or unsafe parent (Humphreys, 2007; Holt et al., 2008; Radford & Hester, 2006);
- be manipulative with their children: for example, creating confusion about which family members are responsible for violence and encouraging children to blame themselves or their mother (Radford & Hester, 2006); and
- make statements and express emotions regarding their love and pride for their children and desire to be involved in their children's life, despite the confusing reality of their under-involvement (Rothman, Mandel, & Silverman, 2007).

Our own extensive casework highlights that men who perpetrate violence against their partners do not positively utilise the contact they have been granted through mediation or Family Court orders. In the 50/50 arrangement, the contact fathers have with their children are frequently used to control, monitor, harass and intimidate their previous partners. Children who come into therapy often report that their fathers deliberately try to destroy the relationship between children and their mothers by putdowns, lies and the use of the children as a go-between to coerce information about their mother from them. The term 'maternal alienation' is a well researched fact and occurs in a context of violence against women and children.

In our own casework experience, children can voice a desire to see their fathers (or non residency parent), but do not necessarily voice an overwhelming desire to live with that parent. In cases where domestic violence is an issue, we do not consider telling a child that they have to spend an equal amount of time with a parent who has perpetrated this behaviour, to be in the best interests of that child. Children's views are often not heard by the Family Courts and are in fact, sent into a very unsafe environment against their wishes. We would suggest that the on-going trauma of enforcing such an order would have a detrimental effect on that child's development.

Joint parental responsibility cannot work in situations where children are victims of domestic violence either directly or indirectly. The relationship between these parents is not amicable and it is impossible to hope that a cooperative approach can be undertaken by a parent whose character is driven by power and control. It is also important to note that very few men make attempts or seek assistance to change their abusive behaviour. Unfortunately men who are abusive will always minimize and deny their violence and/or blame others for it.

Another concerning matter that we have encountered is that women in domestic violence are being coerced into attending mediation by legal advisors and family dispute resolution practitioners to agree to conditions that were unsafe or inadequate for their children and themselves. Most were not exempted from mediation even after they disclosed abuse by their partner. These women also report the fact that their legal representatives are advising them not to disclose domestic violence as this would incite their partner into a more adversarial position which would then have negative outcomes for the woman.

We urge you to consider that:

1. The presumption of equal time in relation to parental responsibility is not a viable option for families who experience domestic violence.
2. Limiting not extending contact with a violent/abusive parent. The parent who abuses and is violent should be made to account for failing to fulfil their parental obligations.

3. Removal of the reference to 'false allegations' as women who are victims of domestic violence are already vulnerable by nature, so for them to be told that should their claims of domestic violence be considered 'false allegations' and that they will be penalized will perpetuate their victimization and discourage disclosures of violence and abuse.
4. The Bill should bring back the term 'domestic violence' as it has its own set of dynamics that differ to the generalized term 'family violence'.
5. Ensure the application of the Law is consistent and responsible on all levels of government;
6. Implement a public educational campaign about the new provisions to correct the present misunderstandings in the general community.
7. The safety of women and children must be seen as a priority over the consideration of the need for a child to have a meaningful relationship with both parents.

We urge you to ensure that these concerns are dealt with before the bill is amended. The 'best interests of the child' is a principle to be upheld by a society that is moral and progressive as our future lies with our children.

Yours faithfully

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