

Committee Secretary  
Senate Legal and Constitutional Committees  
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Canberra ACT 2600

## Men's Health Australia



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Dear Committee Secretary,

### **Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011 [Provisions]**

Men's Health Australia is Australia's primary source of information about the psychological and social wellbeing of men and boys.

We wish to express our grave concerns about the changes to the Family Law Act proposed in the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011 [Provisions].

We are strongly opposed to the Federal Government's proposal to remove many of the sensible provisions of the Family Law Act that were instituted in 2006 to bring a much needed balance between protecting families from violence and protecting parents from false allegations of violence. The proposal would also remove sensible provisions that have led to reduced levels of litigation in Australia, as well as somewhat reduced levels of parental alienation.

The sensible 2006 provisions also appear to have reduced levels of family violence because of changes such as the introduction of compulsory family dispute resolution. In NSW, child homicide has reduced by almost 50% since the introduction of the 2006 reforms. The NSW Child Death Team Annual Reports state that in 2005, twelve children aged between 0-17 died by fatal assault; in 2007, nine children died; while in 2009, just seven children died. These results indicate that the 2006 reforms have reduced the lethal danger to children.

The proposed 2011 changes will give an open license to parents – mostly mothers – who wish to fabricate allegations of violence and abuse as a legal strategy in family law proceedings. It will also facilitate the practice of parental alienation, whereby one parent – mostly mothers – alienates the child(ren) from the other parent. We have no doubt that the proposed changes will lead to increased rates of suicide, depression and self-medication in many separated fathers (and some mothers), and the potential damage to the lives of children denied access to one of their parents is unthinkable.

### **Men's Health Australia's position on violence and abuse**

Men's Health Australia says NO to all forms of family violence and abuse regardless of gender, geography, socio-economic status, age, ability, sexual preference, culture, race or religion. We say NO to the entire spectrum of abusive behaviour – physical violence, intimidation and threats; sexual, emotional, psychological, verbal and financial abuse; property damage and social isolation. We say NO to the use of false allegations – a serious form of family violence (legal-administrative abuse) used by one parent against the other parent. We say NO to the use of parental alienation – a form of family violence (social abuse) used by one parent against their child(ren) and the other parent. We say NO to all forms of child abuse, however serious in nature. All forms of abuse and violence have a devastating impact on the victims, their children, families and communities, and often the perpetrators.

### **Male victims of family violence**

Overall *at least one in three victims of family violence and abuse is male* (perhaps as many as one in two). See <http://www.oneinthree.com.au/overview/> for a comprehensive overview of recent statistics. The Australian Institute of Family Studies' evaluation of the 2006 family law reforms found that 39% of victims of physical hurt before separation were male; and 48% of victims of emotional abuse before or during separation were male. The Australian Institute of Criminology found that 48.7% of adult victims of family homicide in 2006-07 were male.

## **Key changes we are opposed to**

### **1. The Process**

Firstly, we would like to note our unhappiness and lack of confidence in the process used to develop the rollbacks to Family Law being proposed. By commissioning many studies on the issue of family violence and *not a single study on the issue of false allegations of violence and abuse*, the Government has made it clear that it has a predetermined agenda and is not interested in open enquiry. A new public inquiry into the entire Family Law industry, similar to that held in 2003, is absolutely essential if such a large proportion of the population – especially children – is to be affected by the proposed changes.

### **2. Rewarding parental alienation and encouraging entrenched conflict**

The practice by one parent of instigating and maintaining conflict to harm children's relationships with the other parent (parental alienation) has been only partly managed by "friendly parent" provisions in the past – there are recent cases where fathers still lose custody as a result of maternal alienation (see e.g. <http://www.heraldsun.com.au/news/national/fury-at-ruling-in-custody-battle/story-e6frf7l6-1225817724269>). The removal of these provisions, as proposed, will reward the parent who maliciously chooses to remove their previous partner from all aspects of their own lives through preventing any contact with their children. It will open up the use of entrenched conflict as a legal strategy. The proposed legislation appears to ignore the extensive research showing the benefits to children from having involved fathers.

### **3. Encouraging the use of false allegations**

Regrettably a common legal strategy in Family Law proceedings is to raise spurious allegations of violence or abuse. The proposed changes mean that there will be no penalties available for the court to discourage fabricated allegations of violence or abuse. It is absurd that this will be the only Australian Court unable to penalise those who deliberately lie in proceedings. The proposed changes encourage the use of hearsay and uncorroborated allegations by both parents and officers of government departments.

### **4. Facilitating and rewarding family violence**

The recent Australian *Intimate Partner Abuse of Men* study (available at <http://www.man.org.au/Portals/0/docs/Intimate%20Partner%20Abuse%20of%20Men%20Report.pdf>) identified a form of abuse which the researchers labelled *legal-administrative abuse*. Legal-administrative abuse involves a person using legitimate services in a way that abuses the rights of others. It refers to such issues as making false accusations in order to obtain a violence restraining order, denying a father access to his children, and undertaking vexatious actions in the Family Court or through the Child Support Agency. Abuse of such legitimate and otherwise essential legal and administrative processes could lead to children being prevented from having a meaningful relationship with the falsely accused parent. The proposed legislation – by removing the "friendly parent" provisions as well as the ability to award costs against a parent who has willingly made false allegations in Family Court – both facilitates and rewards the use of legal-administrative abuse by recalcitrant parents.

### **5. Failing to protect children from abuse and neglect**

The proposed changes define abuse, in relation to a child, as meaning "causing the child to suffer *serious* psychological harm" or "*serious* neglect of the child" [our emphasis]. We would argue that *any* psychological harm or neglect of children should be considered child abuse. Why does the government believe that only "serious" psychological abuse or neglect should be defined as child abuse, while physical assault and sexual abuse are defined as child abuse whatever their level of seriousness?

### **5. Abuse of AVOs**

The proposed expanded definition of Family Violence incorporates much normal conflict in separating families as well as the abusive behaviours of ongoing dominance or violence that must be addressed. It is unrealistic not to expect heightened emotions, and even raised voices and "put-downs", in most relationship breakdowns. There needs to be a distinction between this normal behaviour and the abuse of physical assault and emotional terrorism. An AVO is not subject to the test of evidence, and should not be accorded weight without investigation by the

Family Court into its nature and circumstances. Many people sign up to an AVO “without admissions” simply to get the process over with, not because they have done something that is threatening or harmful.

## **6. Increased litigation and costs for separating families (and taxpayers)**

The 2006 Family Law changes led to a 20% reduction in litigation, partly as a result of the public perception resulting from those changes that fathers did have rights to see and care for their children. It is widely believed that this led to mothers taking a more conciliatory approach to matters of child access, hence the reduction in litigation. Watering down the presumption of shared parenting in law, if not in practice, will encourage more litigation. The proposed widening of the definition of Family Violence to include much normal conflict in separating families will also lead to major increases in litigation as mediation is able to be bypassed in many cases where there is no serious ongoing violence and abuse, where mediation would actually be quite appropriate.

Finally, the best interests of children are not always at the forefront of the minds of a couple that is separating. The Family Court must be allowed to act in the best interests of children, which means where possible encouraging substantial contact with both parents. The proposed changes do not do this, and in fact seem designed to abet malicious litigants.

In conclusion, we urge the Federal Government to abandon the proposed changes to the Family Law Act and to commission an open and transparent public inquiry into the 2006 amendments, and any further changes that are needed to improve Family Law for Australian families.

Yours sincerely,

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Men's Health Australia