

**Family Law Reform Association NSW Inc**  
***Working for equality for all in family law matters***  
***Established 5<sup>th</sup> March, 1990.***

**A response to the Exposure Draft of The Family Law Amendment (Family Violence) Bill 2010 by Brian Fisher , a member of The Family Law Reform Association.**

The Family Law Reform Association

The Family Law Reform Association is a non gender based organisation, working since 1990 to give support and comfort to those who have had to endure the trials and tribulations of the Family Law system. Our current membership is 70% male / 30 % female. Typical issues confronting our members are :-

- a. Alienation of children from their non resident parent by :-**
- i) Frustrating contact between the non resident parent and the child by not making the child available (even where there are court orders for contact).
  - ii) Poisoning the mind of the child against the other parent.
  - iii) Moving the child to an area remote from the other parent or to a place unknown to them. (in contempt of The Court's orders or before The Court has made orders.)
  - iv) False or grossly exaggerated claims of family violence or associated conduct.
  - v) False claims of sexual activity with the child or of placing a child in an environment of moral risk.
  - vi) Abducting the child overseas (in contempt of The Court's orders or before The Court has made orders.)
- b. Unjust property orders which typically do not give due recognition to the respective contributions of the parties or other anomalies.**
- c. Unjust child support liabilities as a result of a variety of anomalies.**

The FLRA has always acknowledged the appalling reality of family violence and condemns it as well as any form of mistreatment of children. Nor does The FLRA seek to minimise the impact or reality of abuse within family structures. It is because of our serious concern for all forms of abuse that the genuine cases need to be promptly screened from those who make false or grossly exaggerated allegations as part of the power play against the other parent. Screening is not accomplished by the unquestioning acceptance (as by some who have wielded power in the system) of feminist mantras such as "a woman would never knowingly make such false accusations" or "if a woman makes an accusation she must be believed, full stop." Our experience of reality is often at variance to the entrenched ideological positions of some of the academics who are active in this area.

*This submission has been prepared by a member of our Association based on their personal Family Law experiences. The Family Law Reform Association endorses this submission being sent on its behalf.*

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## Preamble

Maintaining contact and a healthy relationship with one's children is the most precious and important priority for any half decent parent (which usually bestows secondary benefits of such contact with the extended family, including grandparents etc.). Despotic regimes which act in a variety of ways to separate a child from parent(s) are rightfully considered cruel and inhumane. Likewise, governments supposedly acting paternalistically or in good faith have acknowledged the resulting harm from such actions. e.g. the "stolen generation".

There is a marked contradiction between the level of concern for those defined as the "stolen generation" et al, and the large number of children who have been *wrongfully* alienated from a parent (typically the father) under the Family Law system. I have stressed the word *wrongfully* as, in both examples there are large numbers where removing the child was in the best interests due to violence, neglect or other abuse. However, there is a very significant proportion where the removal cannot be justified based on truth and fact. The Family Law system has, over the years, created a large, unpublicised, unrecognised, stolen generation of children who have been wrongfully or capriciously alienated from non resident parents. (most typically fathers). The numbers of this stolen generation will multiply under the proposed amendments.

In family law there is no special right for a non resident parent to have ongoing contact and a healthy relationship with their offspring. Equally, a child's right to have ongoing contact and a healthy relationship with both parents is to be made even more precarious under the proposed reforms of the Family Law Amendment ( Family Violence) Bill. The amendments will have the affect of diminishing the importance of a child's contact with both parents and all the secondary and societal benefits that result from such contact. A healthy degree of contact and an ongoing relationship between children and the non resident parent will become a privilege to be curtailed, postponed, minimised or terminated by The Court on the allegation of family violence by a party to the proceedings. In general, disallowing contact should only be used where there are real dangers to the parent or child in prescribing contact.

Whilst much has been made of the gender neutrality of the proposed Amendments, in reality the prevailing ideology of many feminist and legal academics has been that violence in all its forms, is overwhelmingly an offence by males against females. The success they have had in injecting this into the legal system ensures the negative consequences of the proposed Amendments will fall overwhelmingly on fathers.

Apart from the obvious power play to injure the other party by limiting, postponing, terminating or otherwise affecting their contact and influence with the child, the system has other inbuilt incentives for false or grossly exaggerated allegations not the least being the magnitude of child support liability and general property settlement considerations.

The combative nature of Family Court proceedings ensures that a significant proportion of the parties before it could be described as dysfunctional, vexatious, difficult, vindictive, devious or uncooperative. It is these and others who could be described in similar terms, who will most readily avail themselves of the weaponry contained within the proposed amendments. It can only be assumed that the architects of the proposed amendments believe such characteristics do not exist or are so rare that there is no requirement for the normal legal protections against untruthful and vexatious allegations.

Limited resources should be concentrated in early identification of the relatively few, but extreme situations of danger. Further consideration needs to be given to the potential to inflame some form of violence, where there was previously little or no real risk, by unjustly denying contact.

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Items of particular concern with the Exposure Draft Consultation paper

We have deep concerns for the entire draft document, including the requirement for both The Court and the parties' legal representatives to separately ask the parties if they consider there is any risk of family violence (in any its subjective, broadly defined forms).

**Item 9 Ssect 12E(3) & Item 3269ZQ(1)(aa).** We find it highly unusual for a Court to "proactively inquire" - in effect inviting the parties to make allegations against each other, particularly when this is additional to the obligations of the legal representatives. The temptation to gain advantage by making untrue or grossly exaggerated claims will be very real for many, especially as there will be little or no sanction if dishonesty is exposed. We note that a major architect of the proposed reforms preferred an assumption that family violence existed (as a starting point) in all cases before The Court. Whilst this extremist view has rightly been rejected, the combination of proposed provisions is close to having the same effect.

**Item 17 Ssect 60CC(2A)** This confirms it is the intention of the proposed Amendments to downgrade consideration of the benefits of a meaningful relationship with both parents where issues of harm are raised. No reasonable person would question the need to protect a child from harm should be the primary consideration when the risk of harm is real and what constitutes harm is objectively assessed. This will not be the case under the proposed Amendments with its wide, vague and unlimited definition of family violence and the ease and immunity of making such allegations.

**Item 3. Ssect 4(1)** The widening of the definition of "family violence", by removing the test of reasonableness and introducing a completely subjective test will open the floodgates for bitter litigation in this area. It represents a dangerous fettering of judicial discretion. Our members see it as yet another attack on the principle of shared parenting. Redefining violence so broadly that almost any form of tension between the parties could be characterised as "family violence". This could then be used to thwart contact by the other parent and the child. As all adversarial cases before The Court will create tension by definition, it is incumbent on The Court to be balanced and objective. Far from being actual physical or significant psychological abuse or reasonable fear of such, the definition of "family violence" is to be so widened as to include any behaviour that a complainant claims "causes them to feel threatened". With such a broad definition, so open to abuse, it is puzzling that frustrating or attempting to frustrate a healthy relationship or contact between the child and the other parent does not fall within the definition of "family violence". The impact on the other parent and the child from this type of conduct, can be at least as damaging as some of the behaviours declared as "violent".

**Subs 4(1AC)**, especially (c), (d) and (e), proposes an extraordinary extension to the circumstances of a child's exposure to family violence. Again, this is a serious invasion into the exercise of judicial discretion, and yet another attempt to limit sensible shared parenting orders. For example: The evidence before the judge is *"I had to comfort my daughter who had been present when my ex-husband yelled at my son."* The proposed amendments will force the judge to ignore the test of reasonableness and to make orders limiting the father's parenting of the children.

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**Items 18,19,20 Sctn. 60CC.** The dangers outlined above are further exacerbated by the removal of the "friendly parent provisions". This prevents The Court from giving consideration to the extent the parents have fulfilled their obligation to encourage a healthy relationship with the other parent. The Court should not be placed in this legislative "straightjacket". It is vital that The Court is able to examine all the issues central to the welfare of the child rather than having to operate wearing legislative "blinkers". Given that the parties before The Court are in dispute, standard legal principles require The Court be able to investigate all issues directly relevant to the merit or otherwise of the parties. Any attempt to fetter a court of Law in its relevant enquiries is generally condemned by the legal fraternity. Again, this provision reveals a diminished view of the positive effects of maintaining a healthy relationship between both parents and the child. Decades of studies have shown relatively poorer outcomes for children brought up in (typically) fatherless situations. Further, there appears no consideration has been given to the affect on the parent denied contact. Studies have shown grossly disproportionate levels of suicide and other mental illness in non contact parents.

**Item 37 Sctn. 117AB** The proposal to dispense with the existing meagre sanctions for those knowingly making false statements in proceedings can only give encouragement to those who would do so. The Family Court does not have criminal penalties for perjury despite false testimony having the potential to create enormous wrongs, injustice and damage. Partly because of this The Family Court is notorious as "The Liar's Castle." The mandatory provisions of s117AB for costs orders for some or all of another parties' costs or are not adequately supplanted by the discretionary provisions of s 117 alone. Given the thrust and sentiment of the proposed amendments, we believe s117 will be applied very rarely.

## Summary

We have the greatest concern for the entire thrust and content of the proposed amendments as set out in the Exposure Draft, Family Law Amendment (Family Violence) Bill of November 2010. However we are particularly alarmed at the combination of the last three items referred to above. A broad unrestricted definition of family violence coupled with a virtual immunity for knowingly making false statements in proceedings plus a freedom from any inquiry into the willingness of a parent to facilitate a continuing relationship between the child and the other parent. This combination constitutes a devastating trifecta in favour of those who have sought to undermine and overturn the 2006 reforms. The proposed amendments seek to force judicial officers to take into account considerations that are beyond common sense and human reasonableness. They represent a dangerous philosophy. Research and experience reveal that the present shared parenting legislation with all its protective elements is working well for children and parents. Our members see the proposals as insulting to those hard-working judges and magistrates who deal daily and wisely with serious relationship problems. Our members and those of other like-minded organisations will strongly oppose the proposed legislative amendments now and in the future

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### Impact on legal principles

We believe the proposed amendments offend several basic legal principles:

- a) The ambiguity and lack of certainty in the new, unlimited definition of “family violence”.
- b) The restrictions on the court’s ability to investigate the merit of the parties.
- c) The lack of any real sanction from knowingly making false statements in the proceedings.
- d) The court making proactive inquiry into the single issue of “family violence” additional to the parties legal representatives and the parties right to lodge appropriate forms.
- e) The presumption of guilt with contact likely to be affected unless an allegation of family violence can be disproved.
- f) The proposed amendments will force the judge to ignore the test of reasonableness.

### Lack of objective research

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

- a) Any significant upsurge in actual family violence, supported by police and medical records since the introduction of the 2006 Family Law reforms.
- b) Any significant upsurge in family violence which can be reasonably attributed to the introduction of the 2006 Family Law reforms.
- c) Any examples of comparable overseas jurisdictions which have operated under similar legislation and leading to a reduction in actual family violence.
- d) Any explanation of how an inevitable increase in tensions, legal costs and case time is likely to reduce incidents of family violence.
- e) Any explanation of how an inevitable increase in the number of cases where parental – child contact is unjustly affected, is likely to reduce incidents of family violence.
- f) Any studies on the affect on children of curtailing contact with a parent who has had a caring, loving relationship with the child but subjected to allegations by the other parent.
- g) Any studies on the impact on suicide rates and other mental issues in non contact parents, unjustly denied contact with their children.

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*Note: The points below relate to the very significant proportion of allegations made in the Family Court which are false or grossly exaggerated. Whilst some academics and others in the system may deny significant levels of false accusations, those who have had been parties in contested cases know otherwise. Both the writer and The F.L.R.A. support appropriate, balanced and proportionate measures to identify violent or high risk situations and to give such situations the highest priority and deal with them in an effective manner, giving consideration to principles of natural justice.*

**What The Family Law Amendment (Family Violence) Bill 2010 WILL DO :**

- 1) Greatly increase the number of claims by one parent of behaviour by the other parent which constitutes "family violence" within its new open ended definition.
- 2) Greatly increase the number of children whose relationship and contact with their non resident parent is terminated, postponed, reduced or otherwise curtailed due to false or grossly exaggerated claims of "family violence".
- 3) Greatly increase the workload of The Court and other organisations as claims are investigated and assessed.
- 4) Greatly increase the demand for supervised contact centres, already overburdened, costly and unavailable to most parents desperately needing such a service.
- 5) Greatly increase the amount of friction between the parties with contested issues before the court as one or both parties take advantage of system's multiple invitations to make allegations of "family violence" against the other.
- 6) Greatly increase the potential for actual violence between parties where previously there would have been little or none. This will inevitably occur as non resident parents (typically the male) find the system has stacked all the cards against them, dramatically affecting their contact and relationship with the children and all the associated consequences.
- 7) Greatly increase the level of suicide and deterioration of mental health for non resident parents (typically the male). Respected studies have shown that separated males are six (6) times more likely to suicide than attached males. Further, this rate was even higher amongst younger males. (more likely to have younger children ). Further still, the highest rates occurred during the divorce phase.
- 8) Greatly increase the time and cost in settling cases. This in itself, will create additional stresses and a feed back further aggravating the negative outcomes listed above.
- 9) Greatly increase the chances of success for the vexatious, manipulative, inflexible, vindictive, dishonest, devious or mentally unbalanced parent. Parents with these and similar attributes will readily take advantage of the "free kick" being offered by the proposed amendments. As the other parent's contact is curtailed, the accuser parent will then become the primary or sole parental role model for the children.
- 10) Faced with the prohibitive cost of pursuing a right of contact, and the associated psychiatric stress, many non resident parents will simply withdraw, leading to a great increase in the numbers of "stolen generation" children wrongfully alienated from a non resident parent (typically the father). This will amplify the well documented higher rates of negative outcomes for children brought up in fatherless environments.

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What The Family Law Amendment (Family Violence) Bill 2010 **WILL NOT DO** :

- 1) Reduce the level of serious and actual physical violence. Any success in thwarting potential or actual violent situations will be greatly overshadowed by the negatives listed above. In particular the increase in friction, inevitably resulting from an enhanced ability for accusations between parents, can only lead to an increase in violent reactions. A parent who otherwise would have little or no potential for violence may well break down and react violently if they have been falsely accused but find all the mechanisms of the family law system are stacked against them. No other branch of law is more stressful, emotionally charged and has greater personal impact than Family Law. This can only be amplified by the grossly unfair provisions of the proposed amendments creating intense emotions in the aggrieved party. The court will inevitably impose more stringent restrictions to compensate, further supercharging the tensions. Further, the greatly increased demand on The Court's resources will dilute its ability to identify genuine cases, instead be diverted to dealing with the increase in false and vexatious claims.

If minimising family violence is a true objective, we do not believe this will be achieved by creating mechanisms which will undoubtedly significantly increase the tensions, costs, pressure on limited resources of the court and associated organisations, case time etc. A far more productive approach would be to abandon the adversarial system for Family Law with a West European system allowing judicial officers a greater investigative role.

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The family law experience of the writer ( Brian Fisher )

Prior to my separation in 1993, I had no experience of the law and assumed that the system in Australia was fundamentally fair and just. My experience, particularly of Family Law shook me out of that naive assumption. I found an adversarial system where I could be subjected to totally false allegations in an ideological climate where I was basically considered to be guilty unless I could prove otherwise. The system was enormously costly and stressful with many legal sharks feeding off hapless individuals like myself. At first I thought I was just unlucky due to the extreme characteristics of my former spouse. However as I came in contact, with others going through the system, I found my legal nightmare was all too common, with some types of false allegations being considered almost standard.

My nightmare ended when, after the overseas abduction of my daughter in 1998, I was able to return her to Australia in 1999. Her mother abandoned the man she had married in Europe and moved to the United States. I have raised my daughter ever since. Now 19, she is about to commence year 3 of a twin degree in law and business at UTS.

My troubling experience with family law ended happily some 12 years ago and I have no wish to revisit it. However, I feel compelled to write this submission expressing my extreme concern of the proposed Family Law Amendment Bill based on my experience and those of many others I know of. I am compelled because I am convinced that if I were to have the same experiences under the proposed regime, my former wife would be able to successfully deny meaningful contact with my daughter who would thus be deprived of my role of providing stability but would instead be raised in an environment of lies, deceit, manipulation and fantasy.

I have put together a comprehensive summation of my family law experience between 1994 and 1999 which includes false allegations of a) assault, b) placing my daughter in moral danger, c) sexual interference of my daughter, then aged 4. I was also subjected to rorting to get increased child support , In 1998 my daughter was illegally abducted from Australia. etc etc.

I would very much like to put my real life experience before the reviewing committee and note that there are no current issues before The Family Court and my daughter is now 19. However I have concerns about possible defamation issues, so I have reserved that part unless I can be assured I would be immune from such actions.

Instead, I have attached an article in Grazia magazine dated September 27, 2010. The article was prompted by the discovery of the son of Ken Thompson in The Netherlands where he had been abducted by his mother. My daughter did the interview alone, with the photo shoot taking place the next day. I have never tried to coach, coax or otherwise put words in my daughter's mouth. Nor would she allow me to do so. Although she concedes we have all the issues and tensions of a parent and a late teenager, her memory and revelation of the mother's attempts to get her to lie and be part of her conspiracy should be sobering for those contending that allegations etc made in the Family Court are generally sound and truthful.

*Prepared by:*  
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*January 2011.*