

**INQUIRY INTO IMPACT OF THE *FAMILY LAW*
AMENDMENT (SHARED PARENTAL RESPONSIBILITY)
ACT 2006 (CTH)**

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Standing Committee on Law and Justice
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Dear Secretary

Committee's Inquiry into the impact of the Family Law Amendment (Shared Parental Responsibility) Act2006 (Cth

Please find attached my submission on behalf of the members and clients of VOCAL, The Victims of Crime Assistance League Inc, a NSW charity which deals with people – men, women and children – who are threatened or harmed by crime and similar issues, anywhere in the state and beyond. We assist people to deal with what ever arises either personally, systemically and legally as a consequence of their experience.

We would be agreeable to providing additional oral evidence.

Regards,

Robyn Cotterell-Jones

Our organisation serves men, women and children who are affected by crime, by threats, by similar tragedies etc and as those affected people become engaged in the various legal and bureaucratic processes that follow crime. Men seeking help about Family Court matters, or as victims of Domestic Violence from our service are outnumbered by women and children seeking help by a ratio of approx 50 -1.

Since July 2006, there has been an explosion of cases of where women who have had sufficient Domestic Violence to cause them to leave their relationships with the child's father, only to find that state and federal systems are often ignorant about Domestic Violence, about how it affects children and about child abuse, including sexual abuse by natural parents. The state system of child protection is a disgrace.

The conflict for these women, usually quite ignorant of legal process, can be illustrated by the opposing position found in federally funded 'Say no to Violence' media campaign, the work of federally funded 'Partnerships against Domestic

Violence, the systemic changes occurring in many state legal and bureaucratic spheres to make Apprehended Violence Orders work that on the one hand, suggest to women that they have the right to live in safety, compared with what happens when they get into the Federal Magistrates or Family Court systems.

These women only then learn, through the recent Family Court changes, that if they leave the relationship, they can then expect to hand their child over to the person whose anger and violence they couldn't manage or live with, and now those children without their mother's protection. There are many cases I have PERSONALLY WITNESSED in that court where the behaviour of solicitors, barristers and judges is disgraceful, abusive, ignorant and cruel. It is disgusting and I am disgusted.

I say that if the intention was to stop women being able to leave violent men, then taking away their right to keep their children safe was an excellent strategy. One that returns women and children to chattels as they were in the not-too-distant past.

Our charity has the foundational role of advocating for systemic change. I use the real experiences of clients to show what needs to change. That has resulted in something I will not tolerate - judicial bullying of my clients. When it happens I will expose it. It seems the court objects to being exposed.

One of my clients was told by a (female) judge 'Oh, holding a knife to a pregnant woman's throat – is that REALLY violence?' I complained to the Chief Justice. The judge is no longer on the case. The next judge told the mother she was ordered NOT TO attend my service, and was not to report any further reports of sexual abuse by her children. I wrote an article that was published (see under) and I personally wrote to the judge about his findings in several cases. I wrote to state and federal politicians to about our failings for children. When the mother returned to court this latest time, the new judge SCREAMED at her 'How do we know you won't go running to Robyn Cotterell-Jones at VOCAL?' Wow!

You know what? I still find their abuse of vulnerable clients to be bullying and abusive. If you were they client, so would you.

I have no time to prepare a full submission having just returned from leave. So I'll just outline some of the many issues I have encountered concerning this inquiry since I returned, five days ago.

On Monday, a Spanish background Catholic woman with a good scholastic record, a nurse, rang to report that she had married a man who was later diagnosed with a Conduct Disorder, with Autistic content. He was generally quiet, sort of phased out, then he would erupt, break things, assault her, assault and terrorise the children. They had four children, all with various disabilities ranging from ADD and ODD, to Autism, to gross motor disabilities. She is Catholic. No right to refuse to bear children. They separated. She cared for the children.

Her now 13 year old repeatedly assaulted her. He had engaged in criminal behaviour, been banned from school, etc. Years of problems. She rang DOCS for help. They promised help, arrived and took the 13 year old. It's his birthday today. She can't see

him. The next day they took her young daughters, saying they were well cared for, but that the mother might have a mental disorder and might harm the children.

She is now fighting DOCS, her husband and the aggrieved older daughter who is now 21 and has told DOCS she'll take the children. Her husband and the daughter promised payback when she had to stop caring for them because of their violence promoting disabilities, eventually.

The matter is now also in the Family Court. Asking DOCS for help after 20 years of being a carer for multiple disabled people at home got her the 'mentally ill' tag. How do you think this will pan out in Family Court under the new rules? I suggest she's more likely to be given supervised access a few times a year.

It's common to call women under pressure 'mentally ill'.

On Tuesday, the mother of a another client reported about a Family Court proceeding. A client whose case I have also used as an example of this idiotic system is at risk of losing her girls **because she uses my service**. The Family Court REFER people to my group for women, yet she too is instructed to stay away.

The Family Court, Sydney Registry admitted they have little understanding of Domestic Violence as recently as 2005. The Family Law strategy still has no mention of financial abuse – the glue that holds DV together. I say the Family Court sees DV as an aspect of conflict. I say they do not want to understand what it is, how dangerous it is, that the assault – including the sexual assault of children of the relationship – can and will continue long after separation. I say the judges are criminally ignorant, and arrogantly cruel in the way these cases are dealt with.

It all boils down, as law always does, to the difference between legislation, opinion, power, and price of representation. They are neither the same nor consistent.

The courts are guilty of promoting unsafe contact, they are facilitating violence against women and children. We have seen it with our own eyes.

MEDIATORS

There are cases where mediators bully women who have endured violence by their ex, and these women are too afraid to make a complaint.

There are cases where mediators witness admissions, violent and abusive behaviour but do not inform the court - it is difficult for private violence to be based in evidence and in a situation like this, the court sanctions another opportunity to abuse is complete confidence. The parties were made sign non-disclosure agreements in this case.

FAMILY REPORT WRITERS

Too many Family Court Report Writers are not to be trusted by women escaping violence whose children report being abused. Yesterday the PATERNAL grandmother of the children rang to complain that:

She was barred by law from seeing what the Writer had said, even though she had been interviewed and:

When SHE BROKE THE LAW by reading it anyway, she found that her disclosures about both her son's violence and his drug use over years had been excluded completely and that the Writer had described him as a wonderful father with no issues.

In another court that would be called perjury. We call it facilitating abuse.

LOUSY LEGAL REPRESENTATION

I have seen solicitors fail to lodge documents, then allow the mother to be abused, harangued and punished by the judge for the consequences of their professional failure to fail to follow instructions from the client. Legal Aid cases are bad enough, but when clients pay for the 'privilege' there is something wrong.

PAS

I know that others will write about PAS – Parental Alienation Syndrome, a peculiar syndrome that allows that women who report the child's natural father for sexual abuse as reported to them by the child, are in fact guilty of 'alienating that child'. Father's who blame mothers for the break-up, call them sluts, and have sex with their own children are not alienators, and alarmingly, this syndrome is given such weight, it becomes more important that the mother's proven record in raising happy, healthy, successful children. The PAS labeled mother can look forward to being reduced to supervised visitation a few times a year for the crime of protecting her children from paternal, incest, rape, sodomy, pornographic exploitation – unless the matter has reached and been successful in the state criminal system. Kids don't fare to well in that system – but I haven't time to tell you about how that makes things impossible at the Family Court level. The question is, why are we making children live with people who assault and abuse them? To save the father's having to give child support to the wicked mother who dared leave?

I am well aware that not all mothers are squeaky clean. Some are violent, abusive, drug addicted. They do not seek our assistance.

However, the Family Court is all too often ignoring the crucial importance of continuing the relationship with a primary caregiver, to 'make up' for the decent dads who did not see their children. They are throwing the baby out with the bathwater.

I am well aware this submission is not neatly set out as you might have preferred. I am trying to type it as I have been talking five times today to a woman on the brink of suicide because of Family Court matters. She foolishly reported what her child told her about abuse by his druggie, being investigated for pornography father. She wasn't believed. Her heart is breaking for her son. He is nearly three. Just the right age for paedophilic pornography. He's off to Daddy's again. She is forbidden to report any further disclosures, or get counseling or medical care. He is THREE. She finds it difficult to comprehend.

I hope someone reads this submission and understands why violated women cannot always provide what the court requires of them, in the same way that this submission could have been better. My client is more important. As their children's safety ought to be protected by the court.

I say well done to the decent fathers who love and keep safe their children who may have benefited from changes in legislation. I rely on them to raise decent, safe children. They are not my caseload.

Here are my relevant “Opinion Pieces”

Opinion Piece

‘Get VOCAL about Kids in Distress’.

For 17 years The Victims of Crime Assistance League Inc NSW, and our Victim Support Team in Newcastle, have lobbied for a fair go for victims. I wish VOCAL received a charity dollar for every time a victim’s right (NSW Charter of Victims Rights 1996) was ignored.

Still today, each individual victim must deal with a unique scenario and sequence of agencies, individuals and processes. The stream of complaints of people harmed by crime, the way they were treated, misused and abused, whether their cases actually reached court or not, is unceasing.

It’s bad enough when the victim is an adult, with independent means, a supportive family and an attitude to resilience. Consider a child. Absolutely reliant on adults for protection and support. Then there’s the unpalatable reality of child sexual assault. There isn’t room here to list the ways ‘The system’ fails child victims. The Government has been somewhat successful in tinkering around the edges of some important issues to fix little bits like providing CCTV to the few kids who ever get to court as victims. But there is so much more.

When I refer to a court, I mean to include all practitioners who work in and to that court. I mean judges, magistrates, lawyers, barristers, children’s representatives, report writers, police, child protection workers etc and what I want is systemic change that responds to children in planned, age and developmentally appropriate ways, at every stage.

I want one set of Child Protection standards that are nationally consistent for all courts. At the moment we have a form of Rafferty’s Rules and it disgusts me because it is abusive of people who ask the courts for justice.

I particularly want national guidelines for parents whose child discloses what sounds like sexual abuse by a family member or otherwise. In the meantime I warn protective parents to beware - they could lose their children, and it could cost them a king’s ransom for trying to protect their children. Children have no voice – even when they speak they are interpreted, not heard. Practitioners are not required to use current, agreed, child development norms or child focused language.

Child victims in criminal cases fail because they are children. They cannot comprehend or withstand the deliberately abusive and manipulative cross-examinations dished out by expert advocates or the mysteries of the law in practice. It’s time ‘innocent until proven guilty’ was openly tested in a way that is fair both to the accused and to the victim, especially children.

Judges in all courts need to have redefined job descriptions – ones that encourage them to manage their courts, stop abusive legal practices, direct cases of legal incompetence, and focus on all the evidence in current knowledge about preventing poor outcomes for abused children. They have no right to retrospectively impose their own narrow, privileged belief systems on people coming before them. They must stop discrediting the law they are paid to uphold by condoning and participating in systems abuse of litigants. If the Governments have no apparent power to control unaccountable judges, the Government must annually dictate what is acceptable child rearing practice so the parents have a chance.

The NSW child protection system must stop abrogating its child protection obligations if a case is also in the Family Court. The kids live in this state, they are our responsibility.

There's a saying. 'Hurt children hurt others'. Look around. Are you seeing angry, hurt children and youth? Ask drug counselors, mental health workers, prison psychologists, etc how many people who have severe disabilities to fit in and take a productive role in society have a history of sexual abuse as a child? Every day another person tells me how they were hurt twice – by the crime and again by 'The System'.

I can't 'do nothing'. I have called a Public Forum for 7.30 pm 12th September 2006, at Cummings Room, Newcastle Town Hall. People can rise above their own personal tragedy and get beyond the gender war. I want to plant political seeds, and begin to weave a net of like minded creative people. I believe in the power of the people.

Bryce Courtney wrote: in Family Frying Pan

"There is a time in the history of almost every nation when those who are in power are so removed from the common people that they have no sense of their suffering and finally, their anger. They are oblivious to the foment around them and cannot see the signs of their own demise, which in retrospect will have been obvious."

Where will you, or your children be?

Opinion Piece "Domestic Violence"

Domestic Violence is a worsening blight on civilization. Every day I meet victims who didn't know what 'It' was or who complain that services and the law don't comprehend, care or respond properly and may make the problem worse. Has nothing really changed since I was savagely bashed 14 years ago?

DV is a multi-faceted form of abuse and/or violence embedded in a relationship, for the purpose of controlling it. My first step would be to challenge the ever-growing myriad of names and processes that divide and hide the enormity of it. There's the different forms of abuse, Violence Against Women, Family Violence, Relationship Violence, Sibling Rivalry, Bullying, Violence against parents, Elder Abuse, Child Abuse, Child Sexual Assault, Incest, Fraud, Embezzlement, Kidnapping, Assaults of

various levels, Sexual Assault, Theft, Stalking, Attempted Murder, Murder. To name a few.

Each often artificial category has its own rules, strategies, projects, limitations, exclusions, shortfalls in funding, biases, legal processes, practitioners, costs and organisations etc. To name a few.

Ask 'Who benefits?' Is it the victims? If it isn't, then there's your answer to why It's getting worse.

Although Domestic abuse, violence and murder fill our media, *we* like to believe that '*those* people are not like us'. Where abuse and violence exist in a relationship, the thinking goes something like '*Our* loved ones have bad tempers, control all the money, make ridiculous rules that we have to obey and cheat on us, but they'd never *really* hurt us, they love us. When they 'lose it' we will repeatedly make excuses for them. We don't easily throw away everything we've worked hard for together – just because they aren't perfect. They aren't violent criminals – not the person we love'. We try hard to obey their rules, they say they won't hit us again and they're sorry. We want to believe them. What if they really *do* stop the violence this time? How can we tell when they really mean it if they say 'I will kill you if you leave?'

Information like 'bashed my last partner', 'prefer sex with children' 'am a Narcissist / psychopath / have serious addictions', 'scream at my victim for hours, smash things, threaten to kill their animals' tend to be hidden until it is considered 'safe' for the abuser to begin. Privacy laws help conceal past behaviour.

Abusers abuse because they feel inadequate. It's about 'entitlement'. 'I am entitled. I *will* keep what I have AND I *will* get what I want!' They use strategies that bind, blind and silence their partner. A flaw you disclosed in trust, such as 'feel fat, drank too much, had a bad day at work, was mean, let the child down or was sexually assaulted as a child etc' will be thrown back you. By blaming your vulnerabilities so you feel hurt and betrayed, their behaviour disappears. The abuser is redefining reality to 'their way'. Fighting back with logic or facts will often make the situation worse, the level of violence increase. From this point the abuser rarely accepts responsibility for their behaviour. The victim increasingly focuses on keeping their partner happy. If the abuser isn't happy, then nobody is. Demands will constantly change eroding the victim's right and ability to make their own choices.

The abuser can now break whatever relationship rules they choose. Their spiel is 'I am not happy and it's your fault. Try harder. Then I might stay with you, although I deserve better and there are plenty of others out there for me, but who would want you?'

Often charming and successful in public, the abuser often publicly 'rewards' the victim with enough 'good stuff' to make them re-engage with the relationship. Reminiscing, new plans, mutual investments, buying gifts of 'love', the children's welfare. 'So much to lose if you walk away. Besides, I'll fight you every step of the way if you leave.' If the victim leaves, the abuser will try hard to get them back by offering rewards, promises, love, consequences, costs etc. I'll never hit you again..... Funny how victims who don't bet will gamble with their lives.

Apprehended Violence Orders, the Criminal legal system, and cases in Family Court leave a lot to be desired **if the focus is on stopping the violence**. I have repeatedly observed powerful people who should know better ignore their own policies to denigrate and demean victims who must use them or their services.

That's systems abuse and it must stop.

Opinion Piece "The risk of crime"

I haven't met a victim of crime whose political beliefs protected them and it doesn't help them to know they are just one of many similar 'cases'.

Are we more at risk of crime today? As historians, statisticians and politicians debate we see evidence of social decline every day. Discipline is gone, morals have decayed, bullying is a bi-product of 'Me first!'. 'Don't get involved' is the new credo. Police no longer have a visible prevention role. A citizen who asks for protection will be told 'Wait until something happens, then call us, then prove it' or we can't help you'. Who let that happen? Who planted these seeds of discontent?

Australian beliefs cling to warm and fuzzy truisms like 'justice' and 'a fair go', 'all men being equal under the law' and 'do the crime do the time'. It's not until there's a problem that we experience the law 'in practice' and it's not until you're a victim that you realise that Criminal Law is about the rights of an accused, not you. Each time the system fails 'the good guy' those seeds of anger and discontent are fertilized.

Complaining to a bureaucracy or oversight body about injustice generally takes you on a long and often frightening journey to nowhere. Gone is the idea of service to the public – instead we support butt-coverers who protect their political masters from knowing what we mere mortals are telling them. Ignoring the voice and the needs of the people is not very democratic, is it?

Take Domestic Violence with its minimized annual cost of 8 billion Australian dollars, yet victims, perpetrators and the community still fail to recognize 'it'. DV school starts at home; parents model it, sibling rivalry and conflict grow the skills, teen-dating violence uses the strategies and elder abuse all demonstrate the same type of violence – where one party consistently uses dominance, coercion or violence to get their own way. It may include sexual violence, financial control and abuse, psychological warfare, threats, violence, assaults and murder. We like to hide DV with other names – like 'incest' when a parent or sibling rapes a child, or 'child neglect' but all are part of the collective of violence hidden within DV. Some cases pour in alcohol, drugs, mental illness, intellectual dysfunction and disability to complicate the picture. But not in nice homes like ours, right?

A child exposed to DV may have difficulty fitting in, fail to learn, make bad friends, misbehave and struggle to get control over others. You'll find them in pre-schools, and at every stage of school, until they drop out and find something more rewarding to do. Abused children often become homeless, use violence, rage against society and in relationships and our systems minimize and excuse violent acts. Each time a violent perpetrator avoids consequences, society loses.

People always ask ‘Why don’t they leave?’ making the victim ‘to blame’. The stark reality is that homelessness and poverty often awaits the victim who leaves and from then on they have little power in a world which requires cash. I predict that the Family Court’s current determination to place the right to know both parents over the right of a child to be safe will produce future class-action litigants - just like in the USA.

Thirty years on, there still is no crime called ‘ Domestic Violence’ in crimes legislation. The lived history of the victim’s experience is not allowed to be told to a court of ‘justice’. Thus victims are frequently re-victimised by the only system they can ask for help. DV is 65% of police workload yet the police DV response is part-time and fragmented, response varies with where you live. What police and other services do, or fail to do, impacts on DV cases at every stage. Responding to crime is big business but the victims’ needs are not central. If federal and state law doesn’t comprehend DV, why would the rest of society? For every victim we fail there will be a price and the seeds of discontent will flourish.

Television promotes glamour, riches, violence, infidelity and soft pornography, with sordid pornography in easy computer reach. Pornography is the training tool of young men and sex offenders alike. Illegal drugs are cheaper than alcohol in a society where ‘getting out of it’ is regarded as entertainment and that’s another legal excuse for violence. Who can make it stop? Who will be the last victim of violence?

Regards

Robyn Cotterell-Jones
For The Victims Of Crime Assistance League Inc NSW