

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

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Enquiry into Family Law

This enquiry has been implemented “to reverse the bias against fathers dealing with children after separation.” It is our contention that no such bias exists and the reverse is actually the reality. As Dr Michael Flood points out, “The biggest obstacle to fathers' involvement with their children after divorce is their lack of involvement during marriage.”¹

According to the study by Brown, T(ed), Frederico, M., Hewitt, L., and Sheehan, R. (1998) Violence in Families. The Management of Child Abuse Allegations in Custody and Access Disputes before the Family Court,² p 87:

“....the Family Court had become part of the child protection system...”

It is in effect, the only available avenue of child protection where there are issues of domestic violence and child abuse in the event of a divorce. The family court has become an arm of the child welfare system.

In a submission to the Australian Law Reform Commission's Review of the federal civil justice system, Justice Warnick, from the Brisbane registry, commented on the cases which proceed to trial and said:

“ I often feel that the Court these days in child matters is acting almost as an arm of the public child welfare system.”³

¹ Horin A. (2003), *Dads who care and share are a small minority*, The Age, December 1, at <http://www.theage.com.au/articles/2003/11/30/1070127270906.html>

² Brown, T(ed), Frederico, M., Hewitt, L., and Sheehan, R. (1998): Violence in Families. The Management of Child Abuse Allegations in Custody and Access Disputes before the Family Court, The Family Violence and Family Court Research Program, Monash University Clayton and the Catholic University Canberra

³ Australian Law Reform Commission, *Review of the Federal Civil Justice System*, DP 62 at para. 11.11.

The fact that Justice Warnick ‘often feels’ as if the court is an arm of the child welfare system and doesn’t recognize that it is an arm of child welfare system highlights the quandary and deficiency of the court’s basis for the cases where the separated parents are in court over child contact and residency issues. Safety for mothers and their children coming out of violent situations is further compromised because the court process is adversarial.

While men’s and father’s groups claim that allegations of family violence and child abuse are made purely for strategic purposes in the family court, consistently, the research does not support their assertion. This has been tracked internationally, and one important study in Canada showed that:

Results of this analysis show that neglect is the most common form of intentionally fabricated maltreatment, while anonymous reporters and non-custodial parents (usually fathers) most frequently prompt intentionally false reports. Of the intentionally false allegations of maltreatment tracked by the CIS-98, custodial parents (usually mothers) and victimized children were least likely to fabricate reports of abuse or neglect.⁴

Consequently, the father’s rights groups claim that the researchers are biased and use leading questions to obtain their results. It must be countered that these results are consistent both in Australia and worldwide.

The fact remains that when it comes to the claims of the father’s rights campaigners, it must be pointed out that the Family Law reforms since 1995 have had ongoing serious outcomes for children and their caregivers. As Graycar⁵ points out,

“In the context of divorce law reform, men have the ears of the politicians, the women and children do not.”

Dr Michael Flood⁶ has pointed out that,

“Dodgy methods and bogus statistics” “simplistic claims”, “broader problem with the rhetoric about fatherlessness”, “flawed methodology”, “public statements by some fathers’ advocates”, “confusion of correlation and causation”, “highly selective use of research evidence”, “Bogus statistics, with no factual basis, are used by some advocates for father’s rights in asserting their political agenda.”

The fact remains that this has created a situation in Australia where raising truthful incidents of violence and abuse in the context of the Family Court has and will continue

⁴ False Allegations of Abuse and Neglect When Parents Separate, Nico Trocmé, University of Toronto, Faculty of Social Work and Nick Bala, Queen’s University Law School, Re-Submitted to *Child Abuse & Neglect*, May 28, 2004.

⁵ Graycar R. (2000) Law Reform by Frozen Chook, *Melbourne University Law Review*, No. 29.

⁶ Flood M. (2003) *Fatherhood and Fatherlessness*, DP No. 59, The Australia Institute.

to result in as Charles Pragnell calls it, a “Perverse Reversal” of residence, formerly called custody, in cases where there is actual violence and abuse.

This has now been well documented by any mere perusal of the literature published by the Australian Institute of Family Studies, and literature by the major universities. It is the contention of many of our members that Australia’s embarrassment at the history of the “White Australia” racist policies of the past reveals that the masculine agenda has succeeded because this racism is also associated with sexism.

While the assertions by the men’s rights and father’s rights groups continue to be acted on, there is no safety for victims of family violence and child abuse.

The law has not recognized who these offenders are. They are primarily men who used violence on their personal relationships. These men also present themselves as aggrieved men, ‘victims of malicious women’ who want to ‘deny them their right and their children.’ [Case study kept confidential as per Committee resolution.]

It is a great irony that these same campaigners do nothing to address these situations or ones where a protective father has made allegations in the family court against the boyfriend of the mother. We know of two such cases where the father’s allegations are treated with the same lack of understanding and regard. In these two cases, the children continue to reside with mothers that have allowed their partners to abuse the children.

The situation is desperate.

Patricia Merkin,

on behalf of the national Coalition of Mothers Against Child abuse.