

The Executive Director
Australian Law Reform Commission
GPO Box 3708
Sydney
NSW 2001

cwlth_family_violence@alrc.gov.au

Dear Sir/Madam

ALRC Discussion Paper of August 2011 on “Family Violence – Commonwealth Laws”

The LFAA provides the following comments on the ALRC’s Discussion Paper of August 2011 entitled “Family Violence – Commonwealth Laws”.

General

The ALRC has based its analysis of “family violence” on the definition proposed by the Government in the Family Violence Bill 2011.

There are three fundamental flaws in this definition.

First, it is based on subjective states of mind (being “fearful”) which may not reflect objective reality.

Secondly, it fails to include one of the most serious forms of child abuse, namely denial of access by the child to one of his/her parents.

Thirdly, it assumes that in any family violence situation there is *a* victim and *a* perpetrator, and family violence is predominantly (or “overwhelmingly”) perpetrated by men. The first of these two claims ignores the fact that most family violence amounts to mutual brawling, and the second is refuted by the results of virtually every serious social-scientific study carried out in the English-speaking world in the last twenty years.

For a summary of the relevant research, see Attachments *pb1149* (pages 2 to 22) and *pb1371* (pages 7 to 9) to this submission. The following is an extract from those Attachments showing a comparison of estimates for the ACT on the extent of domestic violence experienced over a twelve month period. The basis of the estimates is clearly explained there in detail (which see).

Details	Men as victims	Women as victims	Total victims	Proportion of total adult population (%)
Victims of physical abuse -				
Based on 100 leading social-scientific studies(a) (A)	33,800	23,400	57,200	22.00
Straus, 2005 (A)	27,350	25,170	52,520	20.20
Headey, Scott, and de Vaus, 1999 (A)	7,400	4,800	12,200	4.7
Personal Safety Survey, Australia(b) (B)	340	1,180	1,520	0.58
ACT Police, 2003-04(c) (B)	184	736	920	0.35
Access Economics report (C)	840	5,700	6,540	2.52
Incidents brought to the attention of the police(d) (B)-				
Total	n.a.	n.a.	2,800	1.08
Distinct persons making contact	n.a.	n.a.	1,400	0.54
Injuries brought to the attention of the police(e) (B)-				
Minor	n.a.	n.a.	540	0.21
Requiring medical attention	n.a.	n.a.	150	0.06
Hospitalisation	n.a.	n.a.	6	0.00
Offences detected/action taken by police (d) (B)-				
Offences detected, total	190	710	900	0.35
Common assault or ABH	70	250	320	0.12
Offences, spouse against spouse/ex-spouse	100	360	460	0.18
Common assault or ABH, spouse against spouse/ex-spouse(e)	50	180	330	0.09
Arrests	85	280	365	0.14

Protection orders issued (f) -				
Interim	160	640	800	0.31
Final	80	320	400	0.15
Court proceedings -				
Prosecutions	40	460	500	0.19
Convictions	35	395	430	0.16

(a) Assuming that 50% of the studies relate to a 12-month period, and the remaining studies relate, for victims, to the period since attaining adulthood.

(b) Inter-spousal violence only (current and/or former partners).

(c) Derived estimate of number of distinct persons.

(d) Includes children (about 10% of the total).

(e) Assuming that ratio of spouse/ex-spouse to total is the same as for total offences.

(f) In NSW, 27% of protection orders are granted to men.

The current Family Violence Bill 2011 will not reduce family violence, especially when the increase in single-parent families resulting from the legislation is taken into account.

The new definition of family violence, combined with the removal of the judicial test of a “reasonable person” and provisions designed to punish deliberate false accusations, will materially add to tensions, frustrations, and family violence.

Denial of access has been effectively ignored in the ALRC Paper. Currently, if access is denied for a sufficiently long period, the CSA will base care time for child support purposes on actual care time - even though that care time is being enforced by one parent in contempt of court orders. Failure to address this issue has created family tension around the level of financial support being provided to the child-support payee.

The measurement of “capacity to pay” is a further major area of dissatisfaction with the administration of the CSA, because of lack of reference to timely tax return information for one of the parties (typically the payee).

The measurement of “capacity to earn” is also a major area of dissatisfaction, because of the absence of an even-handed gender approach by staff in following up on information about capacity. The way in which the CSA deals with parents is in itself a major contributor to raising tensions and animosity in separations and associated family abuse.

Chapter 3: Common interpretive framework

Proposals 3.1 to 3.9.

The definition proposed for “family violence” is not a suitable standard to be included in legislation and/or departmental "guides" relating to legislation and administrative practice (see above).

Chapter 4: Screening, information sharing, and privacy

Proposal 4.3. Screening by government agencies for family violence to be conducted through a wide variety of different media "formats". The effect of this proposal will be to encourage persons to make claims about family violence whether or not they are true. Hence there are both pluses and minuses in the proposal. The proposed arrangements would only work fairly and effectively if the full range of media identified is made available to both sexes - which it is not at the present time.

Proposal 4.4. Cultural factors to be taken into account. OK.

Proposal 4.5. Agency employees to receive regular and consistent training and support, including resource manuals and information cards. This training should avoid gender profiling of males, evidently designed to encourage a presumption that in any conflict situation the male will be the cause (or principal cause) of the problem.

Proposal 4.6. Scope of training to include the nature, features, and dynamics of family violence.

The description of these matters should not be based, as it currently is, on a gender-ideological approach. This approach flies in the face of the facts (see above), and is blatantly sexist and unacceptable.

Proposal 4.7. Monitoring and evaluation of processes for screening to be conducted regularly and the outcomes to be made public. Monitoring will only be as good as the validity of the conceptual model of family violence, including its nature, features and dynamics. See comments on Proposal 4.6 above.

Proposal 4.8. The Child Support Guide, the Family Assistance Guide, the guide to social security law, and Centrelink customer service advisors, etc. to give all customers information about how family violence may be relevant to the child support, family assistance, social security, and Job Services Australia systems. This information should avoid gender profiling.

Proposal 4.9. A protocol to be developed to ensure that disclosure of family violence prompts a case management response and case information to be treated as highly confidential. Such a protocol has the potential to be a two-edged sword. The dangers involved in encouraging what may in effect be secret denunciations should not be underestimated.

Proposal 4.10. There to be a compulsory reference to Centrelink social workers where disclosure of family violence has occurred.

Proposal 4.11. "Safety concern flags" to be introduced. See above comment about secret denunciations.

Proposal 4.12. Flag information to be shared. See above comment.

Proposal 4.13. "Regular and consistent" training to be conducted on how to share information in relation to safety concern flags. See above comments.

Proposal 4.14. The Department of Human Services and other relevant departments and agencies to consider issues, including appropriate privacy safeguards with respect to the

personal information of individual customers who have disclosed family violence in the context of their information sharing arrangements. The interests need to be taken into account of persons accused of perpetrating family "violence" who have not in fact had been guilty of such behaviour.

Proposal 4.15. The Department of Human Services and other relevant departments and agencies to develop policies and statements relating to family violence and child protection, to ensure consistency in service responses. See comments above.

Chapter 9: Child support - frameworks, assessment, and collection

Proposal 9.1. The Child Support Guide to be amended to include the proposed definition of "family violence" in Proposal 3.1, together with a claim that "family violence is predominantly committed by men".

The inclusion of the above claim amounts to illegal gender profiling of males.

Proposal 9.2. The Child Support Agency to screen for family violence where a payee makes certain requests or elections.

Proposal 9.3. The Child Support Agency in the above cases to also refer payees to Centrelink.

Proposal 9.4. The Child Support Agency to screen for family violence before making contact with a party against whom it is proposed to initiate action.

Proposal 9.5. The Child Support Agency to consider concerns and risks of family violence before initiating action against a party - see above.

Proposal 9.6. The Child Support Agency to screen for family violence prior to requiring a payee to collect privately.

Proposals 9.2 to 9.6 above will all require careful safeguards.

Chapter 10: Child support-agreements, personal information, informal carers

Proposal 10.3. To examine what reforms, if any, are necessary to improve the safety of victims of family violence who are child support payers. This should be taken seriously.

Proposals 10.4 to 10.7. These propose, inter alia, that the existing limitation on the child support eligibility of carers who are neither parents nor legal guardians should be repealed. These provisions, if adopted, need to be handled with care.

Chapter 11: Child support and family assistance - intersections and alignments

Proposal 11.1. This proposes that existing legislation should be amended to provide that a person who receives more than the base rate of Family Tax Benefit per day may be exempted from the requirement to take "reasonable maintenance action" on specified grounds, including family violence. This appears to be appropriate.

Proposals 11.2 and 11.3. These propose that the Family Assistance Guide should be amended to provide additional information regarding the duration and processes for determining exemptions. This appears to be appropriate.

Chapter 12: Family assistance

Proposal 12.1. It is proposed that the Family Assistance Guide should be amended to include the proposed definition of “family violence” in Proposal 3 .1, together with a claim that “family violence is predominantly committed by men”. This would create the same problem as that identified in proposal 9.1. The gender profiling involved is sexist and unacceptable.

This submission is supported by both the Shared Parenting Council of Australia and Dads in Distress.

Barry Williams
President
Lone Fathers Association (Australia) Inc.

Tel (02) 6239 4650

30 September 2011