

NON-CUSTODIAL PARENTS PARTY (EQUAL PARENTING)

Australian Law Reform Commission,

Dear Sir,

Submission: Family Violence - Improving Legal Frameworks

We thank you for the opportunity to allow us to make a submission to your Inquiry.

No one supports anyone that is guilty of a crime of violence, domestic or otherwise.

However we find that unfortunately we oppose most of the proposed recommendations made in your Consultation paper.

For example, we particularly oppose recommendation 8.2 (page 368 of the ALRC Consultation Paper “Family Violence - Improving Legal Frameworks”).

Recommendation 8.2 proposes that information about existing protection orders should be included on a mandatory basis. This is when making of any application to the Family Court of Australia and to the state Family Court of WA (and presumably also to the Federal Magistrates’ Court and the lower State courts, that also both deal in family law matters)

This recommendation, if adopted by the ALRC, would not solve our family law problems. It would simply help legitimise the current unofficial system of making false allegations for financial gain.

We note that the ALRC heading on this section is on page 360. It is titled “*Limited Practical Impact of Family Violence Allegations*”. This seems to wrongly infer that the impact of family violence allegations is not significant. This could not be further from the truth.

This significance becomes particularly apparent when one refers to Section 66CC of the *Family Law Act*. Extracts from the relevant subsections of Section 66CC are provided in the Appendix to this submission.

There is a direct and significant link between an application for a family violence order* (*AVO, protection order, restraining order or intervention order in various states) and the contact and residence arrangements later made for children of separated families.

As a result of Section 66CC, an easily-made family violence allegation will give one parent, normally the mother, a significant advantage. This is particularly in terms of custody.

Sole custody then brings with it significant financial gains. These financial gains include increased social security payments, child support payments and property settlement and superannuation payouts.

For example,

Social Security Payments

Once residency of the child is above 65 per cent of the number of nights for one parent, family tax benefit payments cease to the other parent.

Child Support.

Once residency of the child is above 86 per cent of the number of nights for one parent, child support liability for the other parent immediately steps up by a factor of three to four times the previous amount.

Property and superannuation

Once significant residency is obtained, this will normally equate to the gain of an extra ten (10) per cent of the property and superannuation asset pool per child.

The procedure to obtain sole custody (or close to sole custody) of the children and “win” these financial benefits is as follows.

1. An application for a family violence order is made in the local court or at the local police station.
2. The police with their limited resources will usually not investigate the allegations. As a result, the allegations will usually remain unproved during later court proceedings.
3. When the matter comes to court, the police prosecutor will then pressure the alleged offender to accept a family violence order "without admission". This is a trap.
4. Once an order for a family violence order has been made, the initiating parent will then make an application for residence and contact orders in the Family Court.
5. Under section 68CC of the Family Law Act, any issues of violence will be sufficient reason to restrict contact by the Family Court.
6. This then establishes effective sole custody of the children for the custodial parent. This goes hand in hand with the above increased social security and child support payments and the larger property settlement and superannuation payouts.

As stated above, we abhor incidents of genuine domestic violence. The perpetrators of these incidents, once proven to be guilty, should be dealt with by the due process of law.

However the temptation to mis-use a family violence order is very often too great for some parents.

We believe that children from separated families should have the right of contact with both parents.

Our legislators are doing nothing about this problem - that is with regard to the implementation of a rebuttable presumption of equal time shared parenting into the Family Law legislation.

Yours faithfully,

John Flanagan,
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<http://www.ncpp.xisle.info>
1 June 2010.

Appendix

Extract from the Family Law Act 1975

60CC How a court determines what is in a child's best interests

Determining child's best interests

- (1) Subject to subsection (5), in determining what is in the child's best interests, the court must consider the matters set out in subsections (2) and (3).

Primary considerations

- (2) The primary considerations are:
- (a) the benefit to the child of having a meaningful relationship with both of the child's parents; and
 - (b) the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.

Additional considerations

- (3) Additional considerations are:

- (j) any family violence involving the child or a member of the child's family;
- (k) any family violence order that applies to the child or a member of the child's family, if:
 - (i) the order is a final order; or
 - (ii) the making of the order was contested by a person;

