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**Family Law Legislation Amendment (Family Violence and Other Measures)
Bill 2011 [Provisions]**

Committee Secretary
Senate Legal and Constitutional Committees
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Email: legcon.sen@aph.gov.au

To Whom It May Concern:

Please find attached the WEAVE (inc) submission to the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011 [Provisions]

We are writing to express our support for the changes to the *Family Law Act* proposed in the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011 [Provisions]

We strongly support the Federal Government's moves to provide better protections for people who have experienced family violence within the family law system and believe that the proposed amendments are essential to place safety and protection of children and family members at the forefront of the *Family Law Act*.

We urge you and the Federal Government to act now in response to the evidence-based research you have commissioned in the past 18 months and the

promises you have made to address the serious problem of family violence in the family law system. We strongly recommend you pass this Bill expeditiously with our suggested amendments.

WEAVE (Inc) would be available to provide oral evidence or offer any other information as requested.

Yours sincerely,

Marie Hume
Secretary
WEAVE Inc.

WEAVE (Inc)

Women Everywhere Advocating Violence Elimination Inc (Australia)

Women Everywhere Advocating Violence Elimination Inc (WEAVE Inc), formed in 2009, is a National Women's Alliance that aims to eliminate gendered violence (including sexual assault, domestic violence, stalking, sexual exploitation and trafficking). As a non-partisan coalition WEAVE Inc brings together groupings that have sometimes worked separately from one another, such as sexual assault services, women's health services, women's legal services, domestic and family violence services, and organisations working against trafficking. In drawing together key stakeholders that make up the 'violence against women sector' as well as survivors, and activist and interest groups, WEAVE embeds a wealth and diversity of experience and expertise within a single body.

WEAVE Inc Vision

To ensure that all women and children are able to live free from all forms of violence and abuse.

WEAVE Inc Values and Principles

HUMAN RIGHTS

WEAVE Inc employs a human rights framework that recognises that gendered violence is one of the most serious and widespread violations of fundamental human rights, in particular, the right not to be treated in an inhuman and degrading way, the rights to respect, physical, sexual and psychological integrity.

FEMINIST FRAMEWORK

WEAVE Inc works within a feminist framework that recognises that gendered violence is both a consequence and cause of gender inequity, embedded deeply within all levels of our society, and that efforts to end such violence must be accountable to women and promote women's empowerment and gender equality.

EQUITY, DIVERSITY & INCLUSIVITY

WEAVE Inc is committed to representing and working respectfully with the diversity of women in Australia. WEAVE Inc recognises, and seeks to advocate and lobby for, the particular and urgent needs of Indigenous women, women from immigrant, refugee and/or non-English speaking backgrounds, women with disabilities, as well as the challenges faced by young women, older women and women in rural and remote areas.

WEAVE Objectives

- (a) To provide leadership and advocacy at state and national levels in relation to all aspects of gendered violence.
- (b) To bring together in a single body the key stakeholders concerned with all aspects of gendered violence in order to access and disseminate the wealth and diversity of knowledge within the sector as a whole.
- (c) To contribute to and monitor policies, legislation and programs which impact on women and children experiencing gendered violence.
- (d) To promote and prioritise equity of access to services for all women including Aboriginal women, Torres Strait Islander women, women from immigrant, refugee and/or non-English speaking background, women in rural and isolated areas, older women, young women and women with disabilities.
- (e) To promote greater community awareness of gendered violence and its personal and social consequences using community development and educational strategies.
- (f) To build and promote alliances and collaborative relationships with other key stakeholders and networks.
- (g) To promote, further develop and disseminate 'cutting edge' knowledge of gendered violence arising from practice, research, community and activism.
- (h) To connect with international developments in advocacy, research and practice concerning gendered violence.

Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011 [Provisions]

1. Prioritizing the Safety of Children

Recommendation 1:

It is fundamental that the key focus of Family Law should be ensuring the safety of women and children from ongoing violence and abuse and that such safety should be the essential factor in decision making.

2. Convention on the Rights of the Child

Recommendation 2:

It is important that the Australian Government's ratification of the United Nations' Convention on the Rights of the Child is confirmed in the *Family Law Act* and as such that the *Family Law Act* develops and undertakes all actions and policies to promote the best interests of the child, including the child's fundamental right to freedom from abuse and violence.

3. Prioritizing safety in the two primary considerations

It is clearly apparent from both the research and experiences of women within the family law system that the two primary considerations are in tension with each other and greater attention has been given to the benefit of a child having meaningful involvement with each parent. This has led to decisions in the family law arena which have placed both women and children at risk of continued harm.

WEAVE Inc is of the view that in fact there should not be two primary considerations. Giving one primary consideration more weight than the other may continue the confusion and tension that currently exists with having two primary considerations. The proposed amendments in fact create an additional third tier of best interests that increases the existing complexity involved in judicial decision making.

Recommendations 3:

Option 1

WEAVE Inc believes that there should be no primary considerations.

There should be one list of factors for consideration, where the safety of children is listed as the first consideration and given priority.

The meaningful relationship could then be listed as one of the many factors.

In addition the courts should weigh up all of the factors in the list depending on the circumstances of each individual case.

Option 2

If the primary considerations are to be retained, there should only be one primary consideration that is about the safety of children. It is our view that the need to protect the child from physical or psychological harm and from being subjected to, or exposed to, abuse, neglect or family violence should be the one and only primary consideration.

Option 3

If neither of those options are accepted, the third option is to support the change proposed in the 2010 Bill giving weight to safety in the two primary considerations and the wording of the proposed section 60CC(2A) should read as:

In all cases greater weight should be given to issues of prioritizing the safety of children.

In addition to the recognition of the *Convention on the Rights of the Child*, the best interest of the child factors contained in section 60CC should also contain reference to the importance of the primary carer relationship. In cases where children have been exposed to family violence, the impact of this violence and their additional vulnerabilities makes it essential that the importance of the primary carer in those circumstances is taken into account.

4. Redefining 'Family Violence'

The current definition of family violence is too narrow. The experiences of women within the family law system reflects the difficulties of this narrow definition and has meant that many women face complications in complying with such a definition. The requirement of the current definition, that victims have a 'reasonable fear' has introduced a concept that is extremely difficult to argue. It is important that the definition be broadened to recognise the complexities and diversities of controlling and abusive behaviours which constitute domestic violence.

Recommendation 4:

WEAVE Inc is therefore supportive of a new definition being incorporated into the *Family Law Act*.

We are particularly pleased with the recognition of the significance of coercion and control by perpetrators, as well as victim's fear and that it does not limit the kind of behaviour that can constitute domestic violence.

Recommendation 5:

WEAVE Inc also recommends that the *Family Law Act* recognise and give effect to an understanding that family violence is not only defined by abusive, isolated incidents but a pattern of power and control that is integral to the dynamics of the family relationships. Family violence is a pattern of behaviour over time used by perpetrators as a tool to gain and maintain power and control over their victims. The definition of family violence within the *Family Law Act* should be able to capture and recognise the unequal power differential in gendered family violence and the pattern of control and coercion which constitutes gendered violence.

Recommendation 6:

At the same time any definition must not raise the burden of proof for women and children who are already vulnerable.

The broader definition of family violence proposed could enable perpetrators of violence to mutualise circumstances of family violence by portraying a victim's resistance to violence as intimidation, harassment/torment or other conduct that is now included in the broader definition. It is imperative that the broader definition does not have unintended consequences for victims of violence and their children.

Recommendation 7:

The concept of the predominant aggressor should be recognised in the *Family Law Act*.

However, the definition in the Bill does not include 'Exposure to family violence' as a form of family violence.

5. "Child abuse" and "exposure to violence" is a form of family violence

By retaining separate definitions of "family violence" and "child abuse", the 2011 Bill does not recognise that "child abuse", including "exposure to family violence", as itself a form of "family violence. As the ALRC/LRC Report states:

Child abuse is an element of family violence and family violence may be an important factor in child neglect. For the victims it is therefore difficult to separate these experiences.

The Family Law Act distinguishes between 'family violence' and abuse of a child. The same conduct in relation to a child however, may constitute both family violence and child abuse.

Further, family violence towards a parent may affect the ability of the victim to parent effectively

“Child abuse”, particularly “exposure to family violence,” should be included within the definition of “family violence”. This is the approach taken by the ALRC/LRC recommended definition, but has not been picked up in the 2011 Bill definition.

Recommendation 8:

WEAVE Inc recommends that specialised assessment processes should be developed at each stage of the family law system so that in-depth assessments can be carried out. This would enable the complexities of family violence to be properly explored and the on-going emotional, physical and psychological safety of women and children can be assured.

6. Identifying 'Abuse' of a Child

WEAVE Inc agrees that the current definition of child abuse within the Family Law Act is insufficient in identifying the forms of abuse that children experience in the family.

However we have concerns that the list of examples of what constitutes “exposure to family violence” is narrowly limited to specific incidents or events of physical violence inflicted on a family member. It is likely that the list of specific examples of being exposed to family violence will be used to restrict the meaning of “experiences the effects of family violence”.

Importantly, the proposed definition of exposure to family violence does not recognise the broader impact on children just from living in a family environment where their parent is the victim of family violence, in all its forms (as identified in the proposed new definition of family violence). Research shows quite clearly that children exposed to family violence suffer a range of traumatic experiences and such trauma needs to be taken into account in family law proceedings. This is a glaring inconsistency and gap in the proposed changes.

Women who are victims of family violence must not be held responsible for not being able to remove children from the violence. The proposed definition of exposure should make it clear that it means exposure by the person who perpetrates family violence (to avoid unintended consequences that a victim of violence has exposed the child to violence).

Recommendation 9:

WEAVE Inc recommends that the *Family Law Act* make it clear that women victims are not further penalised.

WEAVE Inc recommends that the definition of “exposure” to family violence include a specific reference to all the forms of family violence as defined in the 2010 Bill.

The impact on the capacity of a caregiver to parent, who is victim of family violence (e.g. because of post traumatic stress and the other impacts of family violence), is not addressed in the proposed changes.

Recommendation 10:

It is imperative that the complex and far-reaching impact of family violence on a caregiver and the children is addressed in the considerations of the ‘best interests’ factors, particularly the primary considerations. A failure to do this will lessen the impact of the broadening of the definition of family violence and child abuse and will not achieve the Federal Government’s aim of improving the safety of children and not tolerating family violence and child abuse.

It is also important to acknowledge that children’s exposure to family violence and child abuse cannot be isolated from the experience of family violence on their caregivers.

Protection of children’s caregivers who are victims must also be a priority and not artificially treated as a distinct issue from protection of their children, with different outcomes.

Recommendation 11:

Consideration therefore should also be given to the recovery of women and children from such abusive behaviour and court orders should reflect what would best meet the needs of women and children in their recovery process.

The 2010 Bill does not rectify the complexity of the *Family Law Act* having definitions of “family violence” and “child abuse”. The lack of clarity and inconsistency in this terminology and meanings continues in the proposed changes. As the ALRC/LRC Report states:

Child abuse is an element of family violence and family violence may be an important factor in child neglect. For the victims it is therefore difficult to separate these experiences.

The Family Law Act distinguishes between 'family violence' and abuse of a child. The same conduct in relation to a child however, may constitute both family violence and child abuse.

Further, family violence towards a parent may affect the ability of the victim to parent effectively (ALRC Report, Vol 2, p. 895).

7. Strengthening Adviser Obligations

The current provisions of adviser obligations are detrimental to the protection of women and children. All too frequently allegations of abuse raised by women have been either dismissed or diminished by advisers with far greater emphasis placed on maintaining parental relationships. Placing greater emphasis on the benefit of the child having a meaningful relationship with both parents has meant that many women and children have faced risk of further harm and death. The highest priority must be given to the safety of women and children.

Recommendation 12:

WEAVE Inc highly recommends that adviser obligations should require them to prioritise the safety of women and children from violence and abuse.

8. Bringing Evidence of Violence and Abuse to Court

WEAVE Inc agrees with the recommendation that will require parties to proceedings who allege family violence to file a Notice of Child Abuse or Family Violence with the court.

It is also important that the court be required to act promptly in such cases.

However currently the Family Law system does not have effective systems to respond competently with allegations of family violence.

We note that Professor Chisholm (2009) has recommended that the Government should consider amending s60K so that a risk identification and assessment is conducted "*...rather than providing the filing of a document that will require the courts to take particular action*" (Chisholm, 2009, p. 80). Without specialist domestic violence risk identification and assessment the filing of a notice is not likely to be effective.

The Family Law Council also recommends adequate screening and assessment for family violence throughout the family law system and that "*...a consistent framework for screening and risk assessment be developed in accordance with*

principles adopted in the common knowledge base” (Family Law Council, 2009, p. 43).

The Family Law Council's report on *Family Law and Child Protection* (2002) also argues that the current system does not adequately address the issue of child protection within the Family Court proceedings and has recommended the establishment of a national child protection system within the Family Court.

Recommendation 13:

It is extremely important that procedures be established within the family law system which allows for specialist domestic violence assessment practices to take place immediately upon Notices of Child Abuse or Family Violence being filed with the Court.

9. Family Violence Orders

The 2011 Bill would amend section 60CC(3)(k) to require the court to consider any family violence order that applies to the child or a member of the child's family, and not just final or contested orders (as is the case currently).

Recommendation 14:

WEAVE supports this change. Family courts should consider orders that have been granted through a legal process to protect the lives of people who have experienced violence.

10. Requiring parties to disclose involvement of child welfare authorities

It is essential that full information about child protection notifications, assessments and proceedings be made available to the family law system in order for consideration to be given to such reports.

However the suggested change in disclosure of involvement by child welfare authorities does not go far enough in addressing the problems between the state and federal systems. States and territories should be required to detail whether any active investigation of a report has taken place and the nature of the investigation. WEAVE Inc. is aware that many Family Court Form 4 reports do not meet the state department's triage criteria for investigation (at risk of immediate harm) as the child is often in the care of the protective parent, with a family court hearing pending. The outcome is that there is no investigation at all, but the family court is notified that the report was 'unsubstantiated' without revealing that there was no process of investigation and therefore no possibility of substantiation. Where an investigation has taken place and the abuse is substantiated and the child protection system has recommended restrictions on

contact, decision-makers should be required to make orders consistent with the child protection recommendation, or otherwise provide detailed reasons why they have chosen to diverge from those recommendations. Previously judges have chosen to ignore child protection recommendations on the basis that the alleged perpetrator had not been subject to a natural justice process. This would not be possible of the judge were to begin from the priority of the safety of the child and her/his family.

Recommendation 15:

Firstly there should be an obligation on State Child Protective Services to provide any files and reports to the Family Court.

We are also aware that legal representatives of children do not always provide such information to the Court.

Recommendation 16:

There should be an obligation for Children’s Representatives to also make such reports available to the Court.

In 2002, the Family Law Council first highlighted the significant problems between the two tiered system of state child protection authorities and the federal family law system.

AIFS (Moloney et al, 2007) report draws attention to the problems in the intersection of state and federal legal systems. Lawyers and family relationship sector professionals find child protection systems difficult to engage with when there are concerns about risks to children (p.15). This has been a longstanding problem.

AIFS (Moloney et al, 2007) report states: *"However, it has been noted that when State and Territory authorities become aware that a matter is proceeding in the federal family court, the case is not investigated, or if it is, only to a preliminary stage"* (p. 75).

The Family Law Council (2009) has also recommended the need for improved collaboration across state/territory child protection agencies and family court.

Laing (2010) has also highlighted the need for improved responses from state-level agencies:

- Not defer investigations because of family court
- Police – proactive policies of investigation, evidence gathering and ongoing protection of women and children.

The Family Law Council (2009) recommends improved coordination and collaboration between state and territory child protection agencies and the federal *Family Law Act*, including:

- transportability of state family violence injunctive orders;
- establishment of a national register of family violence orders;
- establishment of a network database which records family violence orders;
- a residual family court power to require state child protection agencies to become parties to family law court proceedings about children (p.58).

Recommendation 17:

Weave Inc recommends that an inquiry be established into the viability of a national child protection unit or that the Federal Government provide support and funding to state child protection systems to conduct specific investigations in family law cases where allegations of violence and abuse have been made.

11. Removing Disincentives to Disclosing Violence

The 'friendly parent' provision has caused considerable problems for women and children in their ability to raise allegations of family violence, fearing the negative consequences of being labelled an 'unfriendly parent'. There are numerous incidences where women have lost residence of their children to an abusive parent as a result of this provision.

Chisholm (2009) recommends that the 'friendly parent' provision should be amended "...so it recognizes that parents sometimes need to take action to protect children from risk" (p. 7).

"...it seems that the friendly parent provision, s60CC (3) (c)...has had the undesirable consequence in some cases of discouraging parents affected by violence from disclosing violence to the family court" (p. 103).

Recommendation 18:

WEAVE Inc strongly agrees that the 'friendly parent' provision should be removed from the *Family Law Act*.

12. Cost orders

The legislative requirement to make costs orders against a party found to have "knowingly made a false allegation or statement in proceedings" (SPR Act 2006 s 117AB) has, according to some professionals, also discouraged parents from raising concerns about violence (Moloney et al, 2007).

Chisholm (2009) recommends that s117AB be repealed and s117 be amended to make reference to the giving of knowingly false evidence. He states that this section "...may give the impression that the legislature has accepted the view that women's evidence about men's violence is inherently unreliable. In my view there is no satisfactory evidence that this so, or that allegations of violence are more likely to be knowingly false than denials of violence, or, indeed more likely to be knowingly false than any other type of evidence" (Chisholm, 2009, p. 117).

"The cliché that violence is 'easy to allege' is in my opinion misleading. It fails to recognise the serious inhibitions people often have about publicly disclosing the fact that they have been in a violent or abusive relationship and the variety of reasons why they might be reluctant to do so in family law proceedings" (Chisholm, 2009, p. 118).

Recommendation 19:

WEAVE Inc is therefore strongly supportive of the removal of the mandatory cost order provision in section 117AB of the *Family Law Act*.

13. Courts must ask about family violence and abuse

It is imperative that in making this proposed change that highly trained specialists in domestic violence and child abuse be employed by the Family Law system in assessing risk to women and children.

The AIFS study highlighted that the application of the presumption in interim hearings on the basis of little evidence was seen as problematic (Moloney et al, 2007 p.20).

Once an interim order has been made, it can be difficult to change at final hearing.

"The result will be that the interim decision, made on inadequate material, will in effect determine the final outcome" (Chisholm, 2009, p. 82).

"There is a temptation for the judicial officer to make orders that the children should spend equal time with each parent. Such orders may appear to have the advantage of being fair as between the parents, preserving the opportunity for each parent to argue at the final hearing that the child should mainly live with

them. But such orders might impose an equal sharing arrangement on children where this is not in their interest.

The problem is that this approach leads to decisions which have more to do with preserving the rights of parents than doing what is in the best interests for the children.” (Chisholm, 2009, p. 82).

Chisholm (2009) argues that it is impossible for interim court hearings to give adequate attention to violence issues.

This will require additional judicial and other resources. Chisholm (2009) has recommended (Recommendation 2.6):

“That the government consider providing family courts with the additional resources necessary to ensure that adequate attention can be given to children’s cases in interim hearings, especially cases involving allegations of family violence” (Chisholm, 2009).

Recommendation 20:

WEAVE Inc would emphasise the importance of highly trained specialists in domestic violence and child abuse being used by the Court to determine domestic violence and child abuse and in identifying past experiences of abuse and violence and future risk to both women and children.

There is a need for a considerably improved capacity in courts to solicit or provide high-quality assessments that will assist them to make safe, timely and child-focused decisions, especially at the interim stage.

ADDITIONAL RECOMMENDATIONS FOR LEGISLATIVE CHANGE

14. Shared Care and Family Law Legislation

Professor Chisholm has recommended (Recommendation 3.4) that the government gives consideration to amending s60CC to provide, in substance, as follows:

In considering what parenting orders to make, the court must not assume that any particular parenting arrangement is more likely than others to be in the child’s best interests, but should seek to identify the arrangements that are most likely to advance the child’s best interests in the circumstances of each case (Chisholm, 2009, p. 13).

“...this legislative nudge towards equal time is linked in a complex way to provisions about parental decision-making (‘responsibility’). There is a presumption that equal shared parental responsibility will benefit children; this will presumably make it more likely that the court will make

an order to that effect; and when it does, or is about to do so, the court must consider equal time, or substantial and significant time” (Chisholm, 2009 p. 125).

“It would separate decisions about parental responsibility from provisions about living arrangements. Second it would revise the formulations of the considerations relevant to determining the child’s best interests so that they are more clearly based on promoting the child’s interests rather than accommodating notions of parental rights. Instead of requiring the court to consider any particular arrangement (with the danger it would become the default position) the Act would say that there should be no default position or presumption” (Chisholm, 2009, p. 131).

Chisholm (2009) also recommends (Recommendation 3.3):

That the government give consideration to retaining the present provisions relating to parental responsibility (s 61B, 61C and 61DA), but amending the Act so that the guidelines for determining arrangements for the care of children (s 60CC) are independent of the provisions dealing with parental responsibility, and amending s61DA so that it creates a presumption in favour of each parent having ‘parental responsibility’.

Family Law Council (2009) also notes that:

“...consideration should be given to reassessing the premise in s60CC (2) that the two primary considerations – having a meaningful relationship with both parents and the need to protect from harm, are of equal importance. It is the Council’s view that the public’s misperceptions as to how these equally important considerations can impact on time spent with a parent has contributed significantly to decisions taken by parents which may not be in the best interests of the child. A consideration may be that child safety is prioritised over other factors” (p.84).

“Council believes consideration should be given to amending Division 6 of Part VII of the Act to require the Court to consider whether making an order for equal shared parental responsibility is “reasonably practicable”. This would require the Courts to have regard to at least:

- (a) the parties’ capacity and/or willingness to communicate cooperatively;*
- (b) the extent of any family violence;*
- (c) the impact such an order would have on a child.*

Recommendation 21:

WEAVE Inc recommends that Section 60CC of the *Family Law Act* be amended. There should be no presumption of Equal Shared Parental Responsibility. While the presumption is meant to be rebutted by

family violence the issue is that family violence may not be given its due weight to negate the presumption, especially at an interim stage.

If Equal Shared Parental Responsibility presumption remains it should not apply at any interim stage if the matters cannot be properly determined.

15. Equal Time or Substantial and Significant Time

Section 65DAA states that if Equal Shared Parental Responsibility is ordered, then the court is mandated to consider equal time or substantial and significant time if it is in the best interests of the child and it is workable.

Even though the law states that Equal Shared Parental Responsibility only relates to parental responsibility (decision making about long term matters) and does not include a presumption about the amount of time spent with the child, it has been misinterpreted by the community as relating to time and the starting point of negotiations as being equal time.

Recommendation 22:

WEAVE Inc recommends that the word 'equal' is inappropriate when determining what arrangements are best for children, including decision-making under parental responsibility. We recommend the term "shared parental responsibility" be used and that there be no link between shared parental responsibility and the time children spend with their parents. Further, the legislative emphasis on equal time, and significant and substantial time, contributes to the silencing of victims of violence.

Recommendation 23:

WEAVE Inc also recommends that the provisions in relation to equal time and substantial and significant time be repealed. The judiciary, advisers and family dispute resolution practitioners should only need to consider what arrangements are best for children based on an assessment of the best interests factors in the circumstances of individual cases.

Recommendation 24: Weave Inc support Professor Chisholm's

recommendation that the best interests factors include the following provision:

In considering what parenting orders to make, the court must not assume that any particular parenting arrangement is more likely than others to be in the child's best interests, but should seek to identify the arrangements that are most likely to advance the child's best interests in the circumstances of each case (Chisholm, 2009, p. 13).

Additionally, if shared time remains, this should not apply in matters involving very young children (e.g. under 3) or matters involving high parental conflict or family violence, unless there are exceptional circumstances.

16. Pre-post separation parenting

The AIFS (Moloney et al, 2007) study found that "...there was a close link between post-separation care time arrangements and respondents' reports about the other parent's level of involvement in the child's everyday activities prior to separation. The greater the level of pre-separation involvement, the greater, on average, the amount of care time post-separation" (p. 10).

Recommendation 25:

Weave Inc recommends that there needs to be legislative change requiring the Court to take into account continuity of care for children pre and post separation.

17. Family Reports

WEAVE Inc is concerned that in many instances family reports/assessments result in settlements of children's matter in the Federal Magistrates Court and the Family Court. This means that the matter is not examined through a legal process and under judicial review. According to Chisholm, "*This means that factual issues, such as allegations of family violence and child abuse are not tested in the court*" (2009 p.18).

Weave Inc supports Chisholm's view that there is a need for a "*...considerably improved capacity in courts to solicit or provide high-quality assessments that will assist them to make safe, timely and child-focused decisions, especially at the interim stage*" (2009 p. 26).

Recommendation 26:

WEAVE Inc supports the recommendation made by Chisholm regarding the need for high quality assessments by specialists in domestic violence and child abuse.

The current system for choosing Family Report writers is that Independent Children's Lawyers are able to nominate the family report provider. It is our experience that Independent Children's Lawyers will frequently choose their favourite provider, thus leading to potential corruption.

Recommendation 27:

The selection of family report providers be removed from Independent Children's and work on a roster basis or other non personal selection.

18. Training and Education

Education across the family law system for all professionals including the judiciary in family violence dynamics and child development is necessary. Weave Inc recommends comprehensive and ongoing education and training for judicial officers, legal practitioners, children's representatives, mediators, counsellors and those involved in preparing family assessments for family court, and child protection services in areas such as:

- Relationship and interconnectivities between domestic violence and child abuse.
- Effects of domestic violence and trauma on women and children
- Effects of domestic violence on relationship between women and their children, and impacts on parenting capacity
- Links between child abuse, domestic violence and separation and divorce

- Conditions that promote recovery from trauma for women and children
- Dynamics of sexual and domestic violence perpetrators
- Risks and forms of post separation violence
- Assessment of claims of change in perpetrator of abuse

The Family Law Council (2009) wants this training and education to be based on a "common knowledge base":

- Revise the booklet "Best Practice Guidelines for Lawyers doing Family Law Work" to incorporate detailed information on family violence.
- Good practice guidelines, models and tools.
- Guidelines for good practice for lawyers
- A framework for expert assessments, precedent orders and judicial bench books
- Expert panel and reference group endorse content of education and training on family violence for those involved in the system

Chisholm (2009) in Recommendation 4.3 states

"That the Government, the family law courts, and other agencies and bodies forming part of the family law system consider ways in which those working in the family law system might be better educated in relation to issues of family violence."

Of note is Chisholm's recommendation that experience and knowledge of family violence to be taken into account when considering the appointment of persons to significant positions in organisations forming part of the family law system.

19. Legal Aid

Access to legal aid for parties in cases involving violence or risk of violence is a major issue.

Recommendation 28:

Weave Inc recommends:

- **An increase in funding for legal aid in family law matters.**
- **Legal Aid funding be made available to cases involving allegations of domestic violence and child abuse.**
- **Legal Aid guidelines should be amended to remove the requirement for a "dispute about a substantial issue" in cases where a history of domestic violence or child abuse is alleged.**
- **Mediation conferences not be a mandated requirement for cases involving allegations of domestic violence and child abuse and advise parents of their rights to exclusion from such conferences.**

In calling for additional resources for the family law system, Chisholm (2009) notes that important decisions are often based on "*inadequate and untested evidence*".

"Children would undoubtedly be much safer if through legal aid or otherwise the parties and the children were properly represented" (p.84).

He argues that parties may agree to a consent order which does not necessarily comply with what is in the child's best interests and that one reason for this is because legal aid has been withdrawn.

Recommendation 4.1

"That the government consider the desirability of providing additional funding in relation to the family law system, including funding that would support the work of contact centres, family dispute resolution services, legal aid and family consultants in reducing the risk of family violence. (Chisholm 2009).

And Recommendation 4.5

"That in the funding and administration of legal aid, careful consideration should be given to the serious implications of parties, and especially children, being legally represented" (Chisholm, 2009).

Recommendation 29:

WEAVE Inc endorses Recommendation 4.1 and 4.5 of the Chisholm Report.

20. Independent serious injury and death review and compensation process

Recommendation 30:

WEAVE (Inc) recommends the introduction of an independent serious injury and death review and compensation process for children and other family members who suffer demonstrable harm or are killed by a person with whom they have been ordered to have contact under the *Family Law Act*. Parents face coercive police powers and imprisonment for failing to comply with a Family Court order and there are significant cost, time and knowledge barriers to successfully appealing orders which would endanger a person.

21. Domestic and Family Death Reviews

Recommendation 31:

Weave Inc also calls upon the Federal Government to support and fund the establishment of Domestic and Family Death Review bodies in each state and territory to undertake investigative reviews into domestic and family homicides to identify issues for reform and gaps in the system and imperatives for change.

References

Bagshaw, D., Brown, T. , Wendt, S., Campbell, A., McInnes, E., Tinning, B., Batagol, B., Sifris, A., Tyson, D., Baker, J., Fernandez Arias, P. (2010) *Family Violence and Family Law in Australia: The Experiences and Views of Children and Adults from Families who Separated Post-1995 and Post-2006*, Attorney-General's Department, Canberra.

Chisholm, R. (2009) *Family Courts Violence Review*, Canberra, Attorney General's Department.

Family Law Council (2002) *Family Law and Child Protection*, Canberra, AGPS.

Family Law Council (2009) *Improving Responses to Family Violence in the Family Law System*, Canberra, Australian Government Attorney-General's Department.

[Laing, Lesley](#) (2010) *No Way to Live : Women's Experiences of Negotiating the Family Law System in the Context of Domestic Violence*, [South Eastern Sydney Illawarra Area Health Service](#). [NSW Health](#); [St George Domestic Violence Committee](#); [University of Sydney](#); [Benevolent Society of New South Wales](#)

McIntosh, J., Smyth, B., & Kelaher, M. (2010) 'Overnight Care Patterns and Psycho-emotional Development in Infants and Young Children' in J. McIntosh, B. Smyth, M. Kelaher, Y. Wells & C. Long, *Post-Separation Parenting Arrangements and Developmental Outcomes for Infants and Children: Collected Reports*, Melbourne, Family Transitions.

Moloney, L., Smyth, B., et al (2007) *Allegations of Family Violence and Child Abuse in Family Law Children's Proceedings: A Pre-reform Exploratory Study. (Research Report No. 15)*. Melbourne, Australian Institute of Family Studies.