

16 March 2020

Joint Select Committee on Australia's Family Law System  
Department of the Senate | Parliament House, Canberra

Dear Committee Members,

Mr Smith and I would like to make additional comments to complete the evidence that the Committee would be interested to hear.

**Mr Smith comments:**

*On Thursday 12 Mar 2020, during my evidence I attempted to make a point about the relevance of DVO's in parenting proceedings that go to hearing. Senator Waters cut me short, making it suggestive that what I had said was in agreement with Professor Parkinson. With great respect, had I been allowed to continue, I would have added that it is not quite as simple as that. While it is correct to say in most instances where contested children's matters proceed to hearing the fact of there being DVO's may not have very much effect on the outcome, the issue of their existence is much more nuanced as far as their overall impact is concerned.*

*In the first place, obtaining these orders can have a profound effect on the 'ratcheting-up' process in parenting litigation. That is to say, at the commencement of proceedings, (leading to the first return date) a perception is created in the minds of court experts, counsellors and judges that actual violence could be at play where the allegations haven't even been tested.*

*Secondly, if the expert reports are adverse to the party concerned, often on account of these being framed with such allegations/DVO's in mind, lawyers will often say to their client, "everything is against you, walking away for now is better. Later the kids will come back to you."*

*So to that extent it's not merely a question of statistics or opinions by nonpractising experts about the role played in trial litigation by the existence of DVO's and making the observations made in my evidence as being equivalent to Professor Parkinson's and others.*

*A telling point also emerges in this discussion. It is my practical experience that in the trial situation, allegations of domestic violence recede in importance because under testing in cross-examination, they are so often found to be unsubstantiated or as Mrs Price observed in evidence yesterday, the product of verbal arguments where each side demonstrates that she and he can give as good as they got.*

**Anthony Smith**

**Susan Price comments:**

I also wanted to add further comment for the Committee's consideration in response to questions asked by Senator Waters. I felt she was being presumptuous in her commentary and more interested in scoring points than listening to what I could contribute to the topic.

She asked a question:

*"Did you ask the women?"* when referring to domestic violence allegations, or words to that effect.

As we were discussing men who were victims of domestic violence, I naturally thought her question referred to whether I had spoken to the ex-partners of these men and answered “no”. *She immediately jumped to a presumption, accusing me of believing the men, but not the women*

A more comprehensive answer would have been appropriate in explaining our position in greater detail:

*“No, we do not contact the ex-partners, that is left to the solicitors and the courts. It is not our role, neither would we expect that women’s domestic violence services would contact the men who are ex- partners of the women they counsel and assist. However, a third of our calls come from women, mothers, sisters, new partners or perhaps a work colleague, desperately worried about the man they know, who is possibly suicidal.”*

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In response to Senator Waters particularly dismissive attitude about my expressed belief that some women do lie/exaggerate to gain a domestic violence order and her comment *“I don’t accept your assertions”* I would like to thank Senator Waters for directing us to Professor Parkinson’s comments on his submission to the ALRC.

*Professor Parkinson writes in an article **How widespread are false allegations of abuse?** published in News Weekly on June 25, 2011:*

*“Sydney University’s **Professor Patrick Parkinson AM**, who specialises in family law and child protection, warned in a recent submission to a Senate inquiry that some of the Government’s proposed changes will hinder rather than help the Family Court in assessing false allegations of abuse. Here is part of his submission.*

*There is now a very widespread view in the community that some family violence orders are sought for tactical or collateral reasons to do with family law disputes. People have become very cynical about them.*

*A national survey conducted in 2009, with over 12,500 respondents, found that 49 per cent of respondents agreed with the proposition that “women going through custody battles often make up or exaggerate claims of domestic violence in order to improve their case”, and only 28 per cent disagreed. While it might be expected that men would be inclined to believe this, 42 per cent of women did so as well.*

*The view that some family violence order applications are unjustified appears to be shared by state magistrates in New South Wales and Queensland. Hickey and Cumines, in a survey of 68 NSW magistrates concerning apprehended violence orders (AVOs), found that 90 per cent agreed that some AVOs were sought as a tactic to aid their case in order to deprive a former partner of contact with the children.*

*About a third of those who thought AVOs were used tactically indicated that it did not occur “often”, but one in six believed it occurred “all the time”. A similar survey of 38 Queensland magistrates found that 74 per cent agreed with the proposition that protection orders are used in Family Court proceedings as a tactic to aid a parent’s case and to deprive their partner of contact with their children.*

*In research that our research team recently published on the views of 40 family lawyers in NSW, almost all solicitors thought that tactical applications for AVOs occurred, with the majority considering it happened often.*

*In another study based upon interviews with 181 parents who have been*

*involved in family law disputes, we found a strong perception from respondents to family violence orders (both women and men) that their former partners sought a family violence order in order to help win their family law case.*

The Men's Rights Agency submission also referenced the views of several judges and the research into New South Wales and Queensland Magistrates' opinions, detailed on pages 15 – 16.

Finally, Senator Waters claimed that Professor Parkinson indicated that *Family violence orders have absolutely no evidential value in the vast majority of cases. This is because, in the vast majority of cases, they are consented to without admissions.*

Unfortunately, Professor Parkinson's previous beliefs from 2011 may have changed because the legislation was passed and domestic/family violence orders have to be taken into account.

It is not correct to assume that because *"in the vast majority of cases, they are consented to without admission"* they have no affect. It is the perception created by the issuing of a domestic/family violence order that causes the damage. We agree, many orders are *"consented to without admission"*, as Professor Parkinson notes, but the respondent is listed by the police as a DV perpetrator and could easily be subjected to a breach of orders should he/she approach the applicant or their children in any way. This becomes a criminal breach and further breaches could land a person in goal.

He/she may lose their job when the Blue card (working with children approval) is cancelled, they may be refused entry into certain countries as happened recently with a father going to Canada for a holiday. He was turned around and sent back to Australia at the airport. A police officer is relegated to desk duties because they cannot have a weapon in their possession. Now volunteer firemen may not be able to access a Blue Card if they have a domestic violence order against them!

When an applicant mother is the holder of a domestic violence order she can 'shop it around'... to the school to stop the father collecting or seeing his children, she can tell the community, his friends and business associates that he is in receipt of a domestic violence order. She can very quickly ruin his reputation. When attending the Family Court she can let them know that she is afraid of her ex partner. He will be accompanied by a security guard when on the court premises. Information from fathers who have been subjected to this treatment explain that the judge appears to have a predetermined view that he is an angry man and a danger to his family.

The knowledge of the existence of a domestic/family violence order, no matter whether it was accepted without admission or not is circulated to all parties participating in the adjudication of a case, i.e. family report writers, independent children's lawyers, psychiatrists, psychologists. It cannot help but have an effect on people's attitude towards the recipient.

Finally, Professor Parkinson does acknowledge, whether it is true or not, that family violence orders are used tactically in family court, "*The fact is*

*that the perception is out there and it is held by state magistrates and family lawyers, as well as by the wider community. The retention of this provision in the Family Law Act simply fuels the suspicion that family violence orders are being misused. This is damaging to the credibility of the family violence order system and the courts.*

Kind regards

Sue Price

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