

Senate Legal and Constitutional Affairs
Legislation Committee Inquiry into the
Family Law Amendment Bill 2023

23 June 2023

Acknowledgement

Our advocacy approach

providing on the ground legal assistance and wraparound supports to women in the community. Our advocacy work is also informed by the lived experience of clients, many who are victim-survivors of domestic, family, and sexual violence, and who are often experiencing multiple forms of disadvantage.

We provide a unique, gendered and trauma-informed perspective on how the law is affecting women every day, and the barriers to safety, justice, and equality that women are experiencing through engagement with the legal system. Our primary concern when considering any proposed legislative amendments is whether the changes will make the legal system fairer and safer for children and adult victim-survivors of violence, who are predominantly women.

Contact us

For further information, please contact:

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Endorsements.....

51. Shoalcoast Community Legal Centre
52. o t = #
53. Single Mother Families Australia (formerly National Council of Single Mothers and their Children)
54. Stopping Family Violence
55. WACOSS
56. WESNET
57. Western NSW Community Legal Centre
58. Western Sydney Community Legal Centre
59. Western Sydney University Justice Clinic.
60. Western Sydney University School of Law
61. WEStjustice
62. t @ t = #
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64. Youth Law Australia
65. Zonta International District 22 Ltd

Summary of recommendations

We recommend the following amendments to the Bill:

Schedule 1: Parenting framework

1. The court must prioritise safety over all other best interests factors, similar to the current wording of section 60CC(2A)-of the Family Law Act 1975 (Cth). A provision be added which prioritises safety over all other best interests factors, similar to the current wording of section 60CC(2A)-of the Family Law Act 1975 (Cth).
2. Use the term "family violence, abuse, or neglect" in section 60CC(2A).
3. Include "family violence, abuse, or neglect" in section 60CC(2A).
4. Better recognise the cultural rights of First Nations children in section 60CC(3) and retaining current s60CC(6)(b) wording as follows:

(i)

25. Properly resourcing the front end of the family law system as a way of preventing and limiting systems abuse. This includes through greater access to family violence informed, trauma informed, culturally safe, child focused, lawyer-assisted family dispute resolution and early judicial

Schedule 1 – Parenting framework

8. Without the inclusion of this proposed amendment the draft provisions conceivably provide for all factors to be given equal weight. To date current s60CC(2A) which prioritises safety has been the most effective provision to ensure the safety of children and it strongly advocates that safety is considerations.
9. We note that proposed section 60CC(2)(e) in the Bill, which relates to the benefit of the child being

20. ... isolation from abuse and family violence perpetrated against ... Harm perpetrated against an adult victim-survivor also harms a child. There are significant impacts on children exposed to abuse and family violence.

21. We welcome recognition of this ...

when seeking orders by consent where there are no pending proceedings before the court, the court will still have information before it about allegations of family violence and risk.

42. When a Registrar reviews an application for consent orders, the Registrar can require one or both parties to undertake further steps in order to show the orders are appropriate based on individual circumstances. For example, the court may issue a requisition letter and request further information or an affidavit to justify or explain why certain orders are sought. This helps the court to understand the circumstances of the child and parties seeking consent orders and the appropriateness of the proposed orders.
43. Under the Act, there is no requirement that the court must consider whether consent orders being made for a child are actually safe for that child. While the court can require further information to inform itself as to t

49. The Act is not well understood in the community – misunderstandings about the presumption of ESPR results in parents agreeing to equal time where it is not in the best interests of the child, particularly in the context of family violence and abuse. The presumption encourages people to

per cent of matters before the Federal Circuit and Family Court of Australia involve family violence

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Family Court of Australia launches major family law reform to improve safety and support for children

50. The current provisions in the Act have created a well-entrenched misunderstanding in the community that both parents are entitled to equal time with their children, regardless of family violence and abuse and this misunderstanding leads to the making of unsafe arrangements, both for children and for victim-survivors.

55. To improve community understanding, it is vital that the Government properly resources an awareness and education campaign on the removal of the presumption and what this means for parenting arrangements/decision-making.

56. We recognise the need to retain section 65DAC of the Act to make clear how decisions are made if the court makes a shared parental responsibility order.

Reconsideration of final parenting orders (Rice & Asplund)

57. We support the inclusion of a provision to reflect the common law rule in _____ in the legislation.

58. We support the inclusion of the proposed list of considerations that courts may consider in determining whether final parenting orders should be reconsidered.

64. Proposed s70NBE(3) provides that the court must not make a costs order where the person had a reasonable excuse for non-compliance, and the court has made, or will make, a make-up time parenting order. Where orders have been breached for safety reasons, the result of this provision is that a parent may be forced to provide make-up time to avoid a costs order, thus putting themselves or the child at further safety risk.
65. Further, if the court makes an order for make-up time, in the absence of a finding of contravention as outlined at proposed s70NBA(1) note, this does not encourage carers to act protectively where
of children and adult victim-

Schedule 4 – Independent children’s lawyers

77. It is vital that an @ # 0

someone who c

Recommendation 13:

The Bill must be amended to provide that the victim-survivor does not need to prove they have suffered

the family law system

Schedule 7 –

- < understanding its gendered nature and dynamics, and unique experiences of family violence within Aboriginal and Torres Strait Islander communities, culturally and linguistically diverse communities, LGBTIQ communities and people with disability
- < screening and responding appropriately to disclosures, risk assessment, safety planning and how to keep safety at the centre of proposed arrangements
- < recognising harm perpetrated against an adult victim-survivor is harm against the child,
- < an awareness of perpetrator tactics and perpetrator ability to manipulate systems and to engage in systems abuse and image management

119. Responding to risk: risk

independently evaluated for its effectiveness, including evidence of improvements in the practice of professionals working in the family law system.

142. There must also be greater access to family violence-informed, culturally safe legal assistance services. It is also important to properly resource the front end of the family law system as a way of preventing and limiting systems abuse. This includes through greater access to family violence informed, trauma informed, culturally safe, child focused, lawyer-assisted family dispute resolution and early judicial determination of family violence.
143. When filing at Court it is important to try and identify systems abuse early and prevent its escalation. This could be progressed through including relevant questions in the risk screening and assessment process of the Lighthouse Project and through active case management of such matters.
144. Outstanding Family Law Council recommendations, including those related to workforce development strategies to ensure greater diversity across all professional roles in the family law system, including judicial officers, lawyers, family dispute resolution practitioners, family report

A greater focus on preventing systems abuse and identifying it early to limit harm, for example, through including relevant questions in the risk screening and assessment process of the Lighthouse Project and through active case management of such matters.

Recommendation 28:

Improving Aboriginal and Torres Strait Islander cultural safety, including through further consultation with Aboriginal and Torres Strait Islander people and Aboriginal and Torres Strait Islander organisations about the establishment of a Council of Elders in each family court registry.