



Submission to Federal Government:

Family Law Amendment (Federal Family Violence Orders) Bill 2021

Acknowledgment of Country

No to Violence acknowledges First Nations Peoples across these lands; the Traditional Custodians of the lands and waters. We pay respect to all Elders, past, present and emerging. We acknowledge a deep connection with country which has existed over 60,000 years. We acknowledge that sovereignty was never ceded, and this was and always will be First Nation's land





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About No to Violence

No to Violence (NTV) is the Australia's largest peak body for organisations and individuals working with men to end family violence. We are guided by the values of accountability, gender equity, leadership, change, and respect.

NTV provides support and advocacy for the work of specialist men's family violence interventions carried out by organisations and individuals. We also provides a range of training for the specialist men's family violence workforce.

We are a leading national voice and plays a central role in the development of evidence, policy, and advocacy to support the work of specialist men's family violence nationally.

Family Advocacy and Support Service (FASS)

No to Violence is a funded provider of the Family Advocacy and Support Service (FASS). This program provides a proactive response to engaging with families involved in family law proceedings who are affected by family violence.

The service aims to increase the focus on risk assessment and safety planning for all family members to ensure safe, responsive and appropriate outcomes. In the period of July 2019 to December 2019, NTV's FASS staff provided services to 215 clients who were alleged to have used family violence, including counselling, safety planning, referrals, risk assessment and advocacy.

NTV is highly supportive of this program and expanding the areas and jurisdictions.

NTV's members:

NTV works closely our membership which is made up of specialist men's family violence services. This system includes individual-based perpetrator interventions including case management, specialist fathering programs and court-based supports. Increasingly, the specialist men's family violence service system is in contact and engaging with men who are about to enter, or are already involved in, family law proceedings.

Working at the intersection of family violence and family law, the men's family violence service system provides:

- Comprehensive family violence risk and holistic needs assessments;
- Specialist support and intervention to address the use of family violence;
- Referrals to legal services for information, advice and representation;
- Referrals to family, drug and alcohol, mental health and other health and social services for additional support and assistance; and
- Family violence advice and education in the community.

Summary of recommendations:

1. That the family law system must have a solid understanding of the ways in which systemic abuse can be perpetrated, as well as specific skills to avoid collusion when engaging with alleged perpetrators.
2. Family and domestic violence must be understood and responded to based on evidence amassed over decades about its prevalence as a gendered issue.
3. That the current Safe & Together training protocol for Federal Circuit Court and Family Court staff is revaluated within the context of issuing federal family violence orders and expanded where additional training needs are identified.
4. Develop a national information sharing framework that is underpinned by the principles of safety and empowerment, an understanding of family violence, and in line with the parameters established through the Australian Law Reform Committee's review and final report in 2019.

Discussion:

Embed evidence based understanding of violence to avoid abuse of systems by perpetrators

At its best, the introduction of a federal family violence order would provide an opportunity to intervene and respond to perpetrators of violence in a family law setting. At its worse, it could be an opportunity for perpetrators to use systems abuse against victim survivors.

An evaluation of the 2012 Family Violence Amendments to the *Family Law Act* 1975 (Cth) also found that family law court proceeding are often used by perpetrators as a way of continuing to harass a victim of family violence¹. Perpetrators may justify their actions by saying 'they just to see their children' while using this as a tactic of abuse².

It is the experience of NTV and its members that the current design of the family law system already affords men who use family and domestic violence opportunities to inflict further distress on victim/survivors. As the *Small Claims, Large Battles* report elucidates, negotiations and legal proceedings may be drawn out intentionally in an attempt to cause further distress or in a misguided attempt to reunite with a former partner³. Tactics employed to draw out proceedings include failing to disclose pertinent financial information, unreasonable offers, and failures to communicate either

¹ Kaspiew, R., Carson, R., Dunstan, J., Qu, L., Horsfall, B., De Maio, J. A., Moore, S., Moloney, L., Coulson, M., & Tayton, S. (2015). Evaluation of the 2012 family violence amendments. Australian Institute of Family Studies (AIFS).

² Laing, L. (2010). No way to live: Women's experiences of negotiating the family law system in the context of domestic violence. University of Sydney & Benevolent Society.

³ Women's Legal Services Victoria (2018) *Small Claims, Large Battles: Achieving economic equality in the family law system* Available from:
<https://womenslegal.org.au/files/file/WLSV%20Small%20Claims%2C%20Large%20Battles%20Research%20Report%202018.pdf>

with judicial officers or former partners. In some cases, it was apparent that parties who had the means of obtaining legal representation did not do so in order to delay or subvert proceedings.

Our concern with the Bill is that misidentification may occur as a result of vexatious claims or misuse of family violence protection order by perpetrators of IPV, known as “systems abuse”⁴. This kind of abuse has been systematically assessed in New South Wales⁵ and can be defined as a perpetrator’s intentional misuse of judicial processes to avoid responsibility for their own behaviour as well as in an attempt to further coerce and control a victim.

Recommendations:

1. That the family law system must have a solid understanding of the ways in which systemic abuse can be perpetrated, as well as specific skills to avoid collusion when engaging with alleged perpetrators.
2. Family violence must be understood and responded to based on the evidence amassed over decades about its prevalence as a gendered issue.

Family Violence training for family law professionals is needed

NTV and its members continue to observe inconsistencies with identifying and understanding family violence among family law professionals, resulting in unsafe environments and harmful decisions being made. To ensure the introduction of federal family violence orders offers stronger protections for victim-survivors of family violence, the Courts must be adequately trained and supported to engage with family violence matters.

Recent inquiries and reports have noted the importance of training and professional development in building the capacity of legal professionals to understand risk and respond to family violence. The Victorian Royal Commission into Family Violence⁶, for example, made several recommendations regarding the competency requirements amongst legal and non-legal staff working within judicial systems and community services on matters of family law, child protection, and family violence.

Additionally, understanding and responding to men’s family violence, including the assessment of men’s safe parenting practice in this context, is complex. Professionals who come into contact with male perpetrators through the integrated family violence, child protection and family law systems should also have the appropriate skills to work with them safely.

No to Violence welcomes the recent announcement that the Family Court and Federal Circuit Court will have family violence training through the Safe & Together Model. This model is well recognised and respected by many family violence experts in Australia.

⁴ Reeves, E. (2017). Victoria’s Family Violence Intervention Order System: The Misidentification of Women as Primary Aggressors. (Honours), Monash University, Melbourne.

⁵ Wangmann, J. M. (2009). “She said...” “He said...”: Cross applications in NSW apprehended domestic violence order proceedings. (Doctor of Philosophy), The University of Sydney, Sydney. (4701)

⁶ Royal Commission into Family Violence. (2016). Report and recommendations.

However, additional training will likely be required to sufficiently prepare the Courts to address the complex and highly specialised nature of family violence matters. In particular, a focus around perpetrator risk and identification of predominant aggressors of violence are skills which we **consider important when presiding over family law cases where family and domestic violence may be present.**

Recommendation:

3. That the requirements for training Federal Circuit Court and Family Court staff is considered within the context of issuing federal family violence orders and expanded where additional training needs are identified.

The need for simplified and integrated court system response

No to Violence welcomes the intention of the government to simplify court process for clients and to reduce delays, confusion and prolonged exposure to or risks of family violence.

The need for an integrated and simplified court system response has been explored since the 1990s and resulted in significant law reform⁷, however there is more work to be done.

Families often do not know or understand what they are required to do, which process to follow at what point in time, and who to speak with for the most relevant information for their situation. Adding to the complexity of these situations is the fact that many families are involved in proceedings in multiple jurisdictions, which increases the risk of inconsistent orders being made. This is exacerbated by inadequate communication between courts, family violence organisations, family services, and other statutory bodies. As has been comprehensively explored in Victoria's Royal Commission into Family Violence⁸, lack of information-sharing can lead to the continuation of violence and in some tragic cases, fatalities.

NTV's experience of providing FASS at Melbourne and Dandenong courts, it is often the relationships between individual professionals that ensures information sharing, coordination of services and referrals for support occur for families, rather than established processes that assist families to navigate through the system.

NTV is concerned that the Bill will exacerbate the amount of confusion for clients in Family Court resulting in an experience that is overwhelming and frustrating. NTV suggests a better option would be to improve information sharing practices between the family law system and state and territory child protection systems, and family and domestic violence jurisdictions. Improved collaboration and information sharing presents an opportunity to bridge gaps increase risk assessment and simplify and join multiple matters.

NTV endorses the recommendation made by the Australian Law Reform Commission (2019) in considering ways to improve collaboration, coordination and information sharing within the family law system:

⁷ Victorian Law Reform Commission (2008) Civil Justice Review: Report, Victorian Law Reform Commission

⁸ Royal Commission into Family Violence. (2016). Report and recommendations.

ALRC (2019) Recommendation 2: The Australian Government should work with state and territory governments to develop and implement a national information sharing framework to guide the sharing of information about the safety, welfare, and wellbeing of families and children between the family law, family violence, and child protection systems. The framework should include:

- *the legal framework for sharing information;*
- *relevant federal, state, and territory court documents;*
- *child protection records;*
- *police records;*
- *experts' reports; and*
- *other relevant information*

Recommendation:

4. Develop a national information sharing framework that is underpinned by the principles of safety and empowerment, an understanding of family violence, and in line with the parameters established through the Australian Law Reform Committee's review and final report in 2019.

Bibliography

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