



Australian Women Against Violence Alliance

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

Australian Women Against Violence Alliance
Submission on Family Law Amendment (Financial Agreements and Other Measures) Bill 2015

Thank-you for the opportunity to contribute a submission to the Senate inquiry into the Family Law Amendment (Financial Agreements and Other Measures) Bill 2015.

About the Australian Women Against Violence Alliance (AWAVA)

AWAVA is one of the five National Women's Alliances funded by the Australian Government to bring together women's organisations and individuals across Australia to share information, identify issues and their solutions, to respond to and prevent violence against women and their children. AWAVA's role is to ensure that women's voices and particularly marginalised women's voices are heard by Government, amplifying the work of its member organisations and Friends and Supporters.

AWAVA works towards this by harnessing the expertise of its members, consisting of specialist women's services from the responding to violence against women sector, and working closely with government. Its members include organisations from every state and territory in Australia and represent organisations working on diverse issues including domestic and family violence, sexual assault, feminist pedagogy and women with disabilities.

Summary

AWAVA supports the intention of the Bill to strengthen the Family Law Act, and particularly the intention of enabling the courts to offer better protection to victims of family violence.

We agree that there is merit in enabling family courts to dismiss an application where there is no reasonable prospect of success, but we share Women's Legal Service Queensland's concern about possible negative unforeseen consequences for victims of domestic and family violence.

More generally, in light of the serious concerns raised by Women's Legal Service Queensland in its submission, we have reservations about whether many of the proposed amendments will achieve the purpose of offering better protection to victims of family violence. Much more extensive change is needed in order to make the safety of women and children central to the operation of the family law system.

We note that AWAVA was one of many organisations that last year called on the Government to make changes to the family law system to protect vulnerable witnesses, in particular to prevent situations in which victims of violence are subjected to cross-examination by their abusers.¹

AWAVA supports Women's Legal Services Australia and the National Association of Community Legal Centres in calling for additional reforms including:

- court based family violence specialists identifying and managing risk at early stages
- legislative protections to stop direct cross-examination by perpetrators of abuse in family courts
- comprehensive training for all family law professionals, including the judiciary, on family violence and trauma informed practice; and
- improved access to legally assisted, specialist domestic violence mediation processes to assist in resolving cases before court.²

We also refer the committee to the relevant sections of AWAVA's submission to the recent Senate Inquiry into Domestic Violence in Australia, in which we detailed steps the Government could take to strengthen the legal system's treatment of domestic violence matters. Many of these are relevant to the current inquiry and are copied below.

Witness facilities and evidence sharing using technology

AWAVA recommends an increase of the use of remote witness facilities to enhance women's safety in family court proceedings. We also believe it would be useful to explore the creation of evidence standards for the sharing of evidence through technology when one party is remote.

Funding in the context of increasing demand and complexity

We stress that cuts to legal services need to be reversed, and additional funding provided to the range of services and supports that assist women involved in family law cases. These services and supports extend beyond legal services specifically and, in a violence situation, may include counselling, interpreter services, accommodation/housing, employment leave, temporary financial assistance, childcare and support with technology safety, among other things.

As the Interim Report of the Family Law Council (2015) pointed out, the family law system is dealing with a substantial increase in the number of cases in which complex needs, including protection from violence, are a factor.³ Not only the family courts themselves, but also the community legal assistance sector needs commensurate increases in resourcing and capacity-building to deal with increased complex demands. As community awareness and condemnation of domestic and family violence, sexual violence and child abuse continues to grow, demand on services is growing too.

¹ Open letter: 'Call to protect victims of domestic violence in family courts, 26 October 2015, [http://www.womenslegal.org.au/files/file/SIGNED%20OFF%20FINAL.AG%20LETTER%20FOR%20CIRCULATION%2025%20Oct%2016%20\(2\).pdf](http://www.womenslegal.org.au/files/file/SIGNED%20OFF%20FINAL.AG%20LETTER%20FOR%20CIRCULATION%2025%20Oct%2016%20(2).pdf)

² Women's Legal Services Australia and National Association of Community Legal Centres joint media release, 'Family law changes to improve outcomes for women and children', 27 Nov 2015, http://www.wlsa.org.au/media_releases/family_law_changes_to_improve_outcomes_for_women_and_children_-_27_nov_2015

³ Family Law Council, Interim Report to the Attorney-General, In response to the first two terms of reference on Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems, June 2015, <https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Documents/Family-Law-Council-Interim-Report-Family-Law-and-Child-Protection.pdf>

Governments cannot afford to fail to adequately fund organisations to meet these demands, when increases in help-seeking are predictable and in fact already occurring.

Extract: AWAVA's submission to the Senate Inquiry into Domestic Violence in Australia (2015)

Legal Services Policy

AWAVA recommends that the Commonwealth Government:

- 1) Recognises the need for adequate funding of all legal assistance services, including specialist women's legal services, and increases funding amounts to an adequate and sustainable level;
- 2) Removes any restrictions on legal assistance services using government funding to engage in law reform and policy work; and
- 3) Provides separate funding for civil and family law matters, in addition to adequate funding for criminal law matters, as recommended by Australia's Productivity Commission;

Legislative, Policy and Practice Reform

- 1) Remove the presumption of equal shared parental responsibility in family law matters involving children;
- 2) That the Australian and State and Territory Governments, where they have not already done so, introduce legislative protections to prevent vulnerable witnesses from being directly crossexamined by an alleged perpetrator of violence in domestic violence protection orders matters; and in family law matters;
- 3) Further implement outstanding recommendations in the Australian Law Reform Commission and NSW Law Reform Commission Family Violence—A National Legal Response (2010) (ALRC Report 1144) and Australian Law Reform Commission, Family Violence and Commonwealth Laws—Improving Legal Frameworks (2011) (ALRC Report 1175);
- 4) That there be ongoing training of judicial officers, legal practitioners, family report writers, court staff and police about the nature and dynamics of domestic and family violence;
- 5) Family Report Writers who provide evidence in family law proceedings must be accredited. They must have clinical experience in working with victims of domestic and family violence and be bound by standards and have an effective mechanism for complaints;
- 6) In circumstances of domestic and/or family violence, legal aid should not be withdrawn should a party wish to challenge the findings of a Family Report Writer; and
- 7) That a specialised domestic and family violence funding pathway in Legal Aid Commissions for family law matters be developed in conjunction with domestic and family violence experts to guide internal decision-making of merit of legal aid applications;

Thank-you once again for the opportunity to provide a submission for this inquiry. We would welcome the opportunity to discuss the issues further. For further information or to discuss the content of this submission, please contact Merrindahl Andrew, AWAVA Program Manager, or Julie Oberin, AWAVA Chair, by phoning

Yours faithfully,

Australian Women Against Violence Alliance (AWAVA)

Merrindahl Andrew
Program Manager