

Initiatives for Women in Need (IWIn)
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13th July 2018

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

Dear Committee Secretary,

On behalf of Initiatives for Women in Need (IWIn), we would like to wholeheartedly welcome the Family Law Amendment (Family Violence and Cross examination of Parties) Bill 2018.

Response to the Bill:

It has been stated that the incidence of direct cross-examination of victims of family violence is rare. Research by the Australian Institute of Family Studies found that there were 173 final hearings in the federal family law courts over two years between 2015 and 2017, involving allegations of family violence where one or both parties were self-represented; this is still too large a number to ignore and more importantly, leaves the system with flaws that can have knock on effects in the long term.

From the point of view of Initiatives for Women in Need (IWIn), there are nuances of culture specific matters that often prevent victims of family violence hesitate to come forward and report such incidents and crimes, the current Family Law Act 1975 must be changed to protect the victims of family violence to directly cross-examine or be cross-examined by perpetrators of violence during family law proceedings.

Not only is the current situation a continuation of violence in another form to subject a victim to the direct engagement with the perpetrator(s) in an open setting either to directly cross - examine or be cross-examined, but it has many ramifications.

The mental health of the victim can be seriously affected by such a circumstance and is also a serious deterrent for victims to come forward in the first place, knowing that they may be subjected to such a

scenario. Many victims of family violence shy away for reporting and in CALD community; this number is far higher (ACSSA Wrap No. 9 – February 2011).

The harassment perceived, real or not, experienced by the victim would destabilise the testimony to the extent of jeopardising the proceedings by making the cross examination invalid or worse, inaccurate and leads to a gross miscarriage of justice due to procedural reasons. In scenarios where reporting on family violence itself stands against so many of the ingrained cultural values of self and community, this is a travesty of justice.

We recognise the need for fair play and the need for evidence. The Bill's recommendation of using a legal representative in these circumstances is very welcome. Conflict of Interest must be taken into account in these situations as more often than not, legal representation is sought from among the community and the perpetrator may be closely aligned to the legal representatives. We also recommend that the use of video links may be used.

Particularly due to the pressures faced by victims from their communities in CALD, it is further recommended that all court proceedings are carefully monitored in terms of attendees present, the alleged perpetrator shielded from view when possible and adequate support personnel be available for the victim (and for the perpetrator). Culturally sensitive counselling to both parties before, during and after the proceedings would be highly recommended as very often, the definition of violence and or rights itself is not well recognised or understood.

Additionally, we also ask that the Commonwealth carefully examines the situation of those falling through the cracks; i.e. those not eligible for legal aid but also not in a position to get legal representation. While the bill refers to legal representation being available for those not in a position to get legal aid, it is not clear and indeed, there are statistics that inform us that there is a sizeable number that do fall into this category (Kaye, Wangmann, Booth --- "Preventing personal cross-examination of parties in Family Law proceedings involving family violence" [2017] Australian Journal of Family Law 94).

In the end, we also believe that this Bill will enable greater consistencies across jurisdictions. We understand that in many states, jurisdiction on certain related issues is handled differently already. We understand that in Victoria for example, the perpetrator cannot directly cross-examine the victim in a protection order case, but in the family court under Commonwealth law they can do so (Professor Heather Douglas & team, National Domestic and Family Violence Bench Book, 2016)

Context for our response to the Bill:

Domestic violence in the Culturally and Linguistically Diverse (CALD) community: In Australia, domestic, family and sexual violence affects all women regardless of their age, cultural background, educational status and socio-economic status. According to the latest Personal Safety Survey conducted by the Australian Bureau of Statistics, 2.2 million women have experienced violence by someone who is known to them (for example a family member or partner) over the course of their lifetime. At least one woman is killed each week at the hands of a current or former partner in Australia in their home.

The underlying drivers of violence for all women come down to a few common issues: gender inequality, power imbalances, and expectations and attitudes about their role and position in their workplaces, households and communities. However, the experiences of multicultural women have their own nuances. According to *Hearing her voice: report from the kitchen table conversations with culturally and linguistically diverse women on violence against women and their children (2015)*, women from multicultural backgrounds may experience more complex forms of violence or find it difficult to leave a violent relationship because of cultural biases, norms and attitudes; fear of being ostracised and social isolation; the existence of multiple perpetrators (in the case of joint families); financial and/or visa dependence; language barriers; and fear of losing children and family.

In collectivist cultures, often seen in Asian households, the preservation of the family and community is often valued over the safety and needs of individuals. This means that maintaining family privacy and 'keeping the family together' become barriers to women ending a violent relationship. If a woman chooses to leave her partner or exert her financial independence by seeking employment, there may be a lack of support from the community and her spouse as they may feel that it is the role of the man to be 'in charge of the finances' and the woman. The woman may feel compelled to stay with her partner for fear of being ostracised, becoming socially isolated by her community, bringing shame upon her family and even losing access to her children.

Furthermore, in certain cultures family, domestic and sexual violence may also be 'normalised' or not considered a crime within a relationship or marriage. Men may also believe that they gain the right to exert control over their spouses once they are married. According to a 2013 UN Report, 55 per cent of Indian women perceived violence as a normal part of their marriage, and 77 per cent of Indian men felt that their masculinity was undermined if their spouses did not listen to them. These beliefs are often carried with immigrant families when they migrate to Australia.

Our symposiums and panel discussions have provided us with evidence of this situation time and again.

According to a recent report by AMES Australia and VicHealth, multicultural communities require tailored approaches and need to be given priority in efforts to prevent violence against women and

their children. In some cultures and languages, there is no direct translation or agreed definition of domestic violence or sexual violence within a marriage, which makes communicating these issues more challenging. Multicultural women may be geographically isolated from support services, or prevented from attending them because their spouses, families and communities do not permit them to travel on their own. Some may not be as familiar with the English language, hindering them from obtaining information about their rights in Australia, and appropriate support services.

The issues and barriers for multicultural women in the ACT are no different than for other women in Australia. However, violence is nonetheless concerning in our community. Recent statistics have showed that South Asian perpetrators represent one of the highest groups in Canberra's residential perpetrator programs and a large portion of women in Canberra shelters are from multicultural backgrounds. Organisations such as IWiN are close to the community and therefore have the power and potential to build trust with and work closely with members to reshape their attitudes and behaviours and connect them to relevant supports.

About IWiN and our credentials to make this submission:

Initiatives for Women in Need (IWiN) is a volunteer led organisation that was established in 2013 to support and advocate for CALD women and children coming from disadvantaged backgrounds and families experiencing domestic, family and sexual violence. IWiN aims to educate, empower and enrich the lives of these women and children. Consequently, IWiN has been working relentlessly to raise awareness of the impacts of domestic, family and sexual violence, particularly in culturally and linguistically diverse communities in the ACT and nationally through seminars, panel discussions, workshops, e-newsletters and policy advocacy. Over time, IWiN's scope had expanded to include advocacy and research on other broader social justice issues affecting culturally and linguistically diverse women and their families.

Due to IWiN volunteers' extensive policy and research experience in a range of government, research, education, community services and not-for-profit organisations in Australia and overseas, they have been able to actively advocate, create awareness, provide informal and formal support to CALD families through a range of activities and programs. Several volunteers have post graduate qualifications and worked on issues related to women's safety and wellbeing in government and research settings. IWiN has also presented a policy framework to assess the effectiveness of ACT's domestic violence services for the migrant South Asian community at the First National Conference on Stop Domestic Violence (December 2015). IWiN Committee members have a broad understanding of culture sensitive actions and are engaged with ACT's multicultural community associations, non-government organisations, businesses and financial institutions to bring change and awareness. We collaborate with key community organisations like Canberra Multicultural Community Forum Inc. & the ACT Multicultural Council Inc. and actively supported by Federation of Indian Associations of ACT Inc and India Australia Association of Canberra.

Some examples of our activities are:

- IWiN submission to the Australian Government's Foreign Policy White Paper (Department of Foreign Affairs, February 2017) on the positive contributions of skilled female migrants to Australian society to lobby for the Government to recognise their overseas qualifications and experiences as required for enhanced employment opportunities;
- IWiN convenes Women's Professional Network meetings to bring ACT women together to discuss issues affecting their wellbeing - such as, family violence, discriminations at work, sexual harassments, work-life balance, personal growth etc.;
- IWiN runs a Youth Leadership Program (YLP) to build up youth capability on social policy advocacy (such as, gender equality, multiculturalism) and develop their leadership skills in policy, research, social media and IT, and project management
- IWiN consulted multicultural women on the adequacy of the Australian aged care sector to deliver services to multicultural people and subsequently prepared a submission to the Federal Department of Health and Ageing to inform the development of the Department's Diversity Framework. IWiN also

prepared a submission to the Department of Foreign Affairs Foreign Policy White Paper. This submission acknowledged the positive contributions of skilled female migrants to Australian society and lobbied for the Government to recognise their qualifications and provide them with adequate education and employment opportunities.

Each year, IWiN hosts three large scale events to support community members to better understand and respond domestic, family and sexual violence and reshape attitudes, beliefs and behaviours that contribute to this violence including gender inequality and power imbalances in relationships.

These events include an International Women's Day forum, Orange Day which coincides with the International Day of Elimination of Violence Against Women and a Symposium which focusses on a specific topic related to women's issues, rights and empowerment. In 2016 the topic was on gender inequality, in 2017 it was on women working in counterterrorism to encourage women to step into roles that are conventionally held by men and in 2018, IWiN is focusing on flexible work and its impact on family and organisations.

Thanking you for the opportunity to submit our recommendations. IWiN will be happy to assist actions supporting this bill in an advisory capacity or other related ways, as required. Please do not hesitate to contact the undersigned if you need any assistance or any clarification.

Sincerely,

Initiatives for Women in Need

Email:

Dr Madhumita Iyengar, Chair

Ms Shubhra Aurita Roy, Secretary

Ms Suhasini Sumithra, Committee Member