



Committee Secretary
Senate Legal and Constitutional Affairs Legislation Committee
Via email: legcon.sen@aph.gov.au

6.2.18

Dear Committee Secretary,

***RE: Family Law Amendment (Family Violence and Other Measures) Bill 2017 &
Family Law Amendment (Parenting Management Hearings) Bill 2017***

Domestic Violence Victoria (DV Vic) is the peak body for specialist family violence services in Victoria and has broad membership of over 80 statewide and regional family violence. Our members also include community and women's health agencies, some local governments, and other community service agencies. DV Vic holds a central position in the Victorian coordinated family violence system and its governance structures, and is one of the key agencies with responsibility for providing family violence technical assistance, policy advice and advocacy to government and non-government partners.

Upon close examination of both family law amendment bills currently referred to the Senate Legal and Constitutional Affairs Legislation Committee, DV Vic confirms that it **strongly endorses the Women's Legal Services Australia submissions on these Bills**. In particular, DV Vic highlights the following feedback and recommendations.

Family Law Amendment (Family Violence and Other Measures) Bill 2017:

Overall, DV Vic supports all the amendments outlined in the Bill and finds them to be largely consistent with the recommendations of the Victorian Royal Commission into Family Violence (Royal Commission).

Removal of requirement that court must explain certain matters to a child

The Bill removes the requirement that a court must explain certain matters to a child, when it would not be in the child's best interests to receive the explanation. DV Vic supports this amendment in principle in relation to infants and very young children. However, DV Vic objects to it in relation to older children and young people, who consistently report that they feel disempowered in the context of family violence and frustrated by others speaking on their behalf. During the Victorian Royal Commission, children and young people were noted as saying their experiences of the family court were unpleasant, and that it was a space in which they felt ignored.¹

¹ State of Victoria, 2014.

It is our position that it is rarely not in the best interests of the child to receive an explanation from the court on matters related to parenting order decisions, and that excusing the court from this responsibility in certain circumstances will collude with the invisibility children feel in the family law and family violence context. Additionally, DV Vic believes this amendment is not consistent with views on the capacity of children and young people to process information, nor the principles related to the right to be heard and freedom of expression inherent to the *Convention on the Rights of the Child*.²

Further, we believe that the court provision to children of an explanation for their decisions is an important element of family court accountability where the court makes a decision that does not align with the child's wishes, and/or where the child might inaccurately 'blame' their mother for enforcing/restricting contact with the child's father. Overlooking this will serve to further undermine the relationship between women and children who are survivors of family violence.

Further, DV Vic notes that the amendment is based on the premise that there are times that sharing information related to family violence in the family court impacts on a child's ability to have a meaningful relationship with both parents, and that that there will be times that not explaining it will 'protect the child from physical or psychological harm³' as a result of family violence. DV Vic disputes both these premises. Perpetration of family violence and family court decisions that place children at further risk of family violence is what impacts on the child having a meaningful relationship with both parents, not whether decisions are explained to them.

Power of the family law courts to dismiss unmeritorious cases and proceedings that are frivolous, vexatious or an abuse of process.

DV Vic appreciates that the Bill attempts to address issues of concern relating to unmeritorious applications used by perpetrators of family violence to extend their perpetration of power and control via the family court. We note that the explanatory memorandum acknowledges the concerns expressed by the specialist family violence sector about the ability of the proposed amendments to achieve their intended outcomes. DV Vic advises that we remain concerned that there is no clarity in the proposed amendments or literature on how to identify proceedings that are unmeritorious, frivolous, vexatious or an abuse of process. Further, DV Vic is unconvinced that the amendments in their current form provide enough safeguards to protect survivors of violence from being penalised for bringing seemingly unmeritorious claims, and that in fact men who perpetrate family violence will successfully leverage this provision to undermine women's family court applications. We strongly recommend that this amendment be referred for further research and consultation as part of the Australian Law Reform Commission (ALRC) review of the *Family Law Act* (1975).

Family Law Amendment (Parenting Management Hearings) Bill 2017:

DV Vic believes there is merit in exploring an inquisitorial alternative to family court proceedings in relation to post-separation parenting disputes in the context of family violence. With the right combination of structures, we feel that an alternate mechanism could improve the experience and family law outcomes for

² United Nations, 1989.

³ Family Law Amendment (Family Violence and Other Measures) Bill 2017, Explanatory Memorandum, p.21

women and children who are survivors of family violence. Unfortunately, we are not confident that the proposed parenting management hearings will deliver this. We strongly recommend that this untested proposed mechanism be referred to the Australian Law Reform Commission for further consultation and research as part of the current, Federal government commissioned review of the family law system.

Alternative to the court process

We note with concern that the parenting management hearings model is described as a ‘new forum for resolving less complex family law disputes’.⁴ DV Vic feels that it has been consistently demonstrated in research and practice that family law proceedings involving family violence are highly complex, and recommends that the suitability of family violence cases for inclusion within parenting management hearings in the proposed format be seriously reconsidered – particularly in light of our concerns and objections in other areas.

Further, while DV Vic is pleased to see that the consent of both parties is required for a case to be heard at a parenting management hearing, and that the Panel will have the power to dismiss applications if consent was gained through intimidation or fear, we remain concerned that women will feel compelled to consent to a parenting management hearing due to the promise of it being a more ‘efficient, user-friendly and less adversarial’⁵ and ‘cost effective’⁶ process when compared to a court hearing, despite their fears and concerns for their safety and interests in this environment, and/or they will be coerced to do so by the perpetrator of family violence.

Comprehensive risk assessment and panel members

The explanatory memorandum refers to comprehensive risk assessment forming part of the intake process for all applications for a parenting management hearing. As highlighted in the WLSA submission, DV Vic feels strongly that the approach to risk assessment of family violence needs to be specialised and be expanded beyond the intake stage to be ongoing throughout the parenting management hearing process. Family violence risk is a dynamic construct that will fluctuate throughout family law proceedings, and which in fact can be exacerbated by legal proceedings. This will not be captured if risk assessment is constrained to the intake process, nor will emerging threats or coercion perpetrated by the user of family violence towards the survivor be detected. In addition, DV Vic calls for greater clarity about the risk assessment tool that will be used and who will be undertaking the risk assessments – their qualifications, knowledge, skills and cultural competence. We recommend that further evidence is provided to stakeholders of the plan for responding to the types and severity of risk that are identified during the risk assessment process, including the threshold of risk that must be reached before an application will not be heard at a parenting management hearing.

Finally, we believe that the potential for improved family law outcomes for survivors of violence from a multidisciplinary decision-making panel can only be realised if the panel members are *all* family violence literate and implement trauma-informed practice. Accordingly, each panel that sits must be guaranteed to

⁴ Family Law Amendment (Parenting Management Hearings) Bill 2017, Explanatory Memorandum, p.4.

⁵ *ibid*, p.1, p.4

⁶ *Ibid*.

consist of members that meet these criteria. Additionally, the panel members must be diverse and inclusive of members of marginalised communities, particularly Aboriginal and Torres Strait islander and refugee and migrant communities.

Legal representation during the hearings

DV Vic does not support in principle any measures that restrain access to legal representation for survivors of family violence participating in family law proceedings. This is based on our knowledge and understanding of the complexity of family law matters in the context of family violence, and the frequent disadvantage and (re)traumatisation women and children who are survivors of family violence experience during family law matters. DV Vic recommends that the amendment include provision for legal representation for all applications being heard at parenting management hearings where family violence is identified. At a minimum, DV Vic suggests expanded guidance on the grounds upon which legal representation during the hearings must be allowed in relation to family violence. Further, DV Vic recommends overall that adequate funding be made available to ensure that parenting management hearing matters will be covered by funded legal advice for eligible parties throughout the hearing process.

Thank you for your consideration of this submission. Please feel free to contact me to further discuss any of the points raised above. We look forward to participating in further consultation on the family law system throughout 2018, via the Federal government commissioned inquiry.

Kind regards,

Fiona McCormack
CEO