



AASW

Australian Association
of Social Workers

*Submission to the Senate Legal and
Constitutional Affairs Legislation Committee
Re: Family Law Amendment (Family
Violence and Other Measures) Bill 2017*

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INTRODUCTION

Who we are

The Australian Association of Social Workers (AASW) is the professional body representing more than 10,000 social workers throughout Australia. We set the benchmark for professional education and practice in social work, and advocate on matters of human rights, social inclusion, and discrimination.

The social work profession

Social work is a tertiary-qualified profession, recognised internationally, that pursues social justice and human rights, and supports individuals, families and communities to improve their wellbeing. Social workers aim to enhance the quality of life of every member of society and empower them to develop their full potential. Principles of social justice, human rights, collective responsibility and respect for diversity are central to the profession, and are underpinned by theories of social work, social sciences, humanities and Indigenous knowledges. Professional social workers consider the relationship between biological, psychological, social, and cultural factors and how they influence a person's health, wellbeing and development. Social workers work with individuals, families, groups and communities. They maintain a dual focus on improving human wellbeing, and identifying and addressing any external issues (known as systemic or structural issues) that detract from wellbeing, such as inequality, injustice and discrimination.

Our submission

Everyone has the right to live free from fear and violence in all aspects of their private life and in public. Social workers are deeply committed to challenging family violence at both an individual and systemic level, with the aim of preventing it and minimising its profound, long-lasting impacts. They understand that addressing and challenging violence against women will benefit society as a whole. Accordingly, the social work profession has a critical role in addressing and responding to family violence at an individual and structural level, regardless of the context of practice.

The AASW has continuously argued for significant reform of Family Law legislation, processes and procedures to be more sensitive to and reflective of the complexities of family violence. The AASW commends the Australian Government's recognition that family violence is unacceptable and welcomes this opportunity to make a submission.

RESPONSE

1. Removal of the 21-day time limit on changing family law orders in family violence proceedings

- 1.1 In the past, inconsistencies and conflicts between court requirements and processes have created opportunities for perpetrators to exploit. Court processes have been used to abuse and control in contested custody cases, creating systems abuse. Therefore, the AASW

supports the measures in this bill that streamline the court processes and ensure that court orders which protect family violence survivors are not overturned by decisions in other courts.

Recommendation:

The AASW recommends that this measure proceed.

- 1.2 Identifying family violence and knowing how to intervene is a complex task that requires significant understanding and skill from all judicial staff. Greater training in family violence for all advocates and court staff is of the utmost importance. This extends to all private practitioners working for Legal Aid services representing the survivors of family violence and those representing the children.

Recommendation:

The AASW strongly recommends that all court staff be educated on the complexity of family violence. This training should be continuous; and should be developed and implemented by highly qualified professionals, such as accredited social workers with significant knowledge and experience in understanding the various factors that contribute to family violence.

2. Criminalisation of breaches of personal protection injunctions

- 2.1 The AASW welcomes this acknowledgement that violence against women is not a private matter, but a public crime and that its continued existence is a public responsibility. Governments need to adopt a zero-tolerance position regarding this crime. This requires that the sanctions for breaches of personal protection orders are immediate and severe. Our members' experience is that court orders are effective in modifying the behaviour of perpetrators under three conditions:
 - when they have a positive public image they wish to protect
 - when they have respect for the law
 - when they are scared of the authorities or police.

Each of these would be reinforced by such processes as criminal penalties that this legislation provides for (and would be further strengthened by the capacity to publicise the breaches). Even if none of these circumstances are present, the value of this measure will be that the police are able to intervene and other institutions or jurisdictions will be able to refer to this as the basis for further action.

Recommendation:

The AASW recommends that this measure proceed.

3. Enabling dismissal of applications without merit

- 3.1 In the past, perpetrators of family violence have used court processes to abuse and control their partners in many ways. The inability of the legal system to intervene has perpetuated this systemic form of abuse. Therefore, the AASW welcomes the measure that allows for vexatious and trivial applications to the court to be dismissed.

Recommendation:

The AASW recommends that this measure proceed.

- 3.2 Nevertheless, many survivors of family violence will still be required to participate in lengthy legal proceedings. This measure must not be used as an opportunity to limit the funding that is available to support women through these processes. Limited financial aid and Legal Aid resources often lead to women representing themselves against perpetrators who frequently have greater economic resources and therefore access to legal representation. In other cases, if a perpetrator of violence has already registered for Legal Aid, the woman against whom he has committed the assaults cannot also be represented. Even if survivors can access legal aid, the low levels of funding restricts the amount available to the extent that it is difficult for victims to access adequate representation. The lack of adequate legal support is not only discriminatory, but further entrenches the violence and abuse that victims are trying to escape.

Recommendation:

The AASW calls on the government to guarantee future long-term funding for legal aid services and ensure that all women who have experienced family violence receive adequate legal representation.

4. Dispensing with explanations to children

- 4.1 The courts must promote the best interests of children, taking into account the developmental requirements appropriate to their age and particular circumstances. Therefore, the AASW supports the proposal that the courts be empowered to ensure that communication with children be in their best interests and developmentally appropriate. Such a decision should be informed by a developmental assessment made by an appropriately qualified professional.

Recommendation:

The AASW recommends that this measure proceed with the added requirement that such decisions be based on developmental assessments by qualified professionals.

5. Repeal of subsection implying obligation to perform marital services

- 5.1 A fundamental cause of violence against women is the gender inequality that is manifest across all aspects of a woman's life. Women experience a range of disadvantages, including lower incomes, poor health and wellbeing outcomes because of structural discrimination based on their gender. This discrimination has been widely documented in a range of structural settings, such as the unequal economic, social and political power between men and women. To end violence against women, government has a responsibility to address all instances of that inequality, including this remnant of a discriminatory and exploitative belief system. The AASW supports the repeal of this section of the Act.

Recommendation:

The AASW welcomes this change and strongly recommends that this measure proceed.

CONCLUSION

Government has continuing responsibility to address discrimination and violence in all forms. To address the larger structural issues that contribute to family violence, governments need to adequately fund primary, secondary and tertiary programs across a range of settings. This will ensure that the work of preventing violence against women is integrated into all levels of society. Governments also need to adequately fund the service system that responds to women and children who experience violence, including family violence services, sexual assault services, health services, judiciary, law enforcement, men's behaviour change programs, and housing services. Integral to this is ensuring that every woman who makes a complaint of domestic violence is given the professional assistance of an accredited social worker. Above all, there is a significant need for governments to show leadership regarding the educational, behavioural and attitudinal change that is desperately needed to address this national emergency.

Submitted by and on behalf of the Australian Association of Social Workers Pty Ltd



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