



Women's Domestic Violence
Court Advocacy Service Network Inc

Submission to the Senate Committee on Legal and
Constitutional Affairs in support of

***Family Law Legislation Amendment (Family Violence and
Other Measures) Bill, 2011.***

By email: legcon.sen@aph.gov.au
Committee Secretary
Senate Legal and Constitutional Committees
PO Box 6100
Parliament House
Canberra ACT 2600

29 April 2011

Dear Committee Secretary,

Re: *Family Law Legislation Amendment (Family Violence and Other Measures) Bill, 2011.*

The Women's Domestic Violence Court Advocacy Service Network Inc. (WDVCAS Network) supports many of the changes to the *Family Law Act* proposed in the *Family Law Legislation Amendment (Family Violence and Other Measures) Bill, 2011*.

The WDVCAS Network also recommends that additional changes be made.

About the Women's Domestic Violence Court Advocacy Service Network Inc. (WDVCAS Network)

Established in 1996, the WDVCAS Network is the peak body for women and their children experiencing domestic violence who require legal protection from the courts. The membership of the WDVCAS Network comprises representatives from twenty-eight individual Women's Domestic Violence Court Advocacy Services (WDVCASs) that operate in 108 Local Courts throughout metropolitan, regional and rural New South Wales.

In the 2009-2010 period, the twenty-eight WDVCASs provided services to female clients in 56,770 domestic and family violence related matters. 18,060 of these clients had children under the age of sixteen. Referrals were made for family law advice in 1,462 service events.

The purpose of each WDVCAS is to assist and advocate for women and their children to obtain legal protection from the courts through Apprehended Domestic Violence Court Orders. In addition to this, WDVCASs assist clients to access support services for legal advice pertaining to family law, as well as referrals for accommodation and counselling. Some WDVCASs also have specialist workers to help Aboriginal women, and women from culturally and linguistically diverse backgrounds.

Through the extensive experience of the membership, the WDVCAS Network advocates on behalf of clients to improve service delivery for women and their children experiencing domestic violence; collaborates and consults with relevant government agencies and community organisations and formulates recommendations for legal and social policy.

With the WDVCAS Network's ongoing experience and commitment to advocating on behalf of women and their children experiencing domestic violence, the organisation is well placed to comment on the *Family Law Legislation Amendment (Family Violence and Other Measures) Bill, 2011*.



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The WDVCAS Network strongly supports the following proposals within the *Family Law Legislation Amendment (Family Violence and Other Measures) Bill, 2011*:

A Broadened definition of 'family violence'

The WDVCAS Network strongly supports the broadening of the definition of 'family violence.'

Broadening the definition will provide legislative guidance to courts to recognise that domestic and family violence includes not only physical or sexual abuse to a person or a member of the person's family. Coercion, control, intimidation, harassment, the denial of financial autonomy and support, as well as threatening behaviours such as a threat to commit suicide or self-harm belong within this definition.

The WDVCAS Network also supports the expansion of the categories of people to be considered as family members.

However, the WDVCAS Network recommends that sub-section 4(1) must stipulate that the examples provided are not exhaustive. Domestic and family violence can include covert patterns of behaviour enacted over time to exert control over the victim. There will always be some insidious behaviours that cannot be contained by any definition, and improved legislation must reflect this.

Providing a broader definition and understanding of child abuse that includes exposure to family violence

The WDVCAS Network strongly supports the broadening of the definition and understanding of child abuse that includes exposure to violence.

In addition, 'child abuse,' and particularly 'exposure to family violence,' should be included in the definition of 'family violence,' as recommended by the ALRC/LRC.

Removing the objective test of reasonableness

The WDVCAS Network supports removing the objective test of reasonableness within the current definition of 'family violence' within sub-section 4(1).

As noted in the ALRC report *Family Violence- A National Legal Response*, the test of reasonableness is inappropriate when applied to people experiencing domestic or family violence.¹ A subjective test based on the victim's actual state of mind is more appropriate.

¹ ALRC/NSW LRC, *Family Violence- A National Legal Response (Report 114)*, p. 278.

Removing the 'facilitation' aspects of the 'friendly parent' provision

The WDV CAS Network supports the removal of the 'friendly parent' provisions.

It is our view that the former provision, which required the Family Court to consider the willingness and ability of each of the child's parents to facilitate and encourage a close and continuing relationship between the child and the other parent, has frequently discouraged parent victims from making appropriate disclosures of domestic and family violence.

The safety of a child must not be compromised because his/her parent fears being seen by the court as an 'unfriendly parent.' Parents need to be able to take action to protect their child/children from risk. No parent should be forced to consent to unsafe arrangements for their child. The primary caregiver must be granted protection by the law in order to protect the safety of children.

Removing the costs order provision

The WDV CAS Network supports the removal of the costs order provision.

Network clients have reported that they have been reluctant or unwilling to disclose family or domestic violence because they think that they will be unable to meet the burden of a costs order being levied against them.

Section 117 of the *Family Law Act, 1975* (Cth) is sufficient to address the matter of costs orders, without the inclusion of section 117AB.

Prioritising family violence when considering what is in the best interests of the child

The WDV CAS Network supports the view that family violence must be prioritised when considering what is in the best interests of the child.

Living with family violence is never in the best interests of the child. Shared care should only be supported where this arrangement is safe for the child.

Removing the requirement for family violence orders to have been made final or contested

The WDV CAS Network supports the removal of the requirement for courts to take into consideration only those family violence orders that are final or contested.

We support the view that all courts should have regard for any family violence order made, including interim and non-contested orders.

Local Court Magistrates should be enabled to make final orders in family violence matters. Concurrent or pending Family Court matters should not inhibit this process.

Additional recommendation- Provide education and training on family violence

The WDV CAS Network recommends the inclusion of new provisions to require judicial officers, family law practitioners and other advisors within the family law system to undertake comprehensive and regular specific training aimed at increasing their awareness of the nature and dynamics of domestic violence.

Numerous WDV CAS Network clients have stated that they have encountered professionals connected with the family law system who fail to understand the everyday realities of having to deal with domestic violence, and who on the basis of limited understanding, question the validity of their claims.

We make this recommendation on the basis of recommendations already contained within several reports, including the ALRC/NSWLRC report,² Professor Chisholm's *Family Courts Violence Review*,³ *Time for Action: The National Council's Plan for Australia to Reduce Violence Against Women and their Children 2009-2021*,⁴ and the *Family Court of Australia's Family Violence Strategy*.⁵

² ALRC/NSWLRC, *Family Violence*, Chapter 31.

³ Richard Chisholm, *Family Courts Violence Review*, Attorney-General's Department, 2010, part 4.

⁴ *Time for Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children 2009-2021*, Department of Families, Housing, Community Services and Indigenous Affairs, 2009.

⁵ Family Court of Australia, *Family Violence Strategy 2004-2005*, 2005, page 10.



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Conclusion

The WDVCAS Network recommends that you support the amendments suggested in this letter and encourage expeditious passage of the *Family Law Legislation Amendment (Family Violence and Other Measures) Bill, 2011*.

The WDVCAS Network also requests that you consider our recommendation that new provisions should require judicial officers, family law practitioners and other professionals within the family law system to undertake specific training in domestic and family violence.

The WDVCAS Network looks forward to the implementation of the *Family Law Legislation Amendment (Family Violence and Other Measures) Bill, 2011*. We welcome the making of a safer and fairer family law system.

Yours sincerely,

Dr Angela Argent
Executive Officer
On behalf of the WDVCAS Network Inc.