



**Australian
Human Rights
Commission**

**National Children's Commissioner
Anne Hollonds**

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

legcon.sen@aph.gov.au

2 June 2023

Submission to the Legal and Constitutional Affairs Legislation Committee on the Family Law Amendment (Information Sharing) Bill 2023

Thank you for the opportunity to make a submission on the Family Law Amendment (Information Sharing) Bill 2023 (the Bill).

This brief submission is made in my capacity as National Children's Commissioner (NCC), and therefore focuses solely on the rights and needs of children. I draw your attention to previous submissions to inquiries and reviews on the family law system made by the Australian Human Rights Commission (Commission), including:

- submission by the Commission to the Australian Law Reform Commission (ALRC) Review of the Family Law System, Issues Paper, in 2018¹
- submission by the former NCC to the Joint Select Committee on Australia's Family Law System in 2019²
- submission to the Attorney-General's Department on the Exposure Draft of the Family Law Amendment Bill 2023.³

I welcome the proposed Bill which aims to operationalise key aspects of the National Strategic Framework for Information Sharing and strengthen the sharing of information relating to family violence, child abuse and neglect between the family law courts and state and territory child protection systems, police, and firearm authorities.

One of the key children's rights concerns raised in the Commission's previous submissions is the importance of a child's safety and wellbeing. As emphasised in the Explanatory Memorandum to the Bill, child safety and wellbeing is a commonly raised issue in family law parenting proceedings. It is also a central concern for children and young people.⁴

Under the Family Law Act, family law courts are required make the 'best interests' of the child a paramount consideration in family law proceedings. Protecting the child from family violence, abuse, neglect or other harm is a key factor to be considered. However, to consider this factor, the family court relies on information from state and territory child protection and other agencies. While arrangements exist for the courts to request such information, I understand these processes can be lengthy, expensive, and complex, which increases the risk to children.

By enhancing information sharing across the family law and child protection systems, as proposed in this Bill, it is hoped that the family law courts will be better placed to consider comprehensively and holistically what is in the child's best interests, based on information relating to a child's individual needs and circumstances.

The *UN Convention on the Rights of the Child* (CRC), ratified by Australia in 1990, sets out children's right to be safe and protected from violence, abuse, and neglect:

- Article 19 requires Australia to take all appropriate legislative, administrative, social, and educational measures to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment, or exploitation, including sexual abuse, while in the care of parents, legal guardians or any other person who has the care of the child.
- Article 34 requires Australia to protect the child from all forms of sexual exploitation and sexual abuse.

The CRC also emphasises the importance of making decisions that are in the best interests of a child and, in the context of family separation, how child abuse and neglect are factors to be considered when determining those best interests:

- Article 3, one of four Guiding Principles that underpins the CRC, requires that in all actions concerning children, the best interests of the child shall be a primary consideration of courts of law, private and public welfare institutions, administrative authorities, or legislative bodies.
- Article 9 requires that a child not be separated from their parents against their will, except when competent authorities determine it is necessary for the best interests of the child, such as to protect a child from abuse or neglect, or where parents are living separately and a decision needs to be made about where they live.

Hence, a consideration of a child's best interests relies on an understanding of an individual child's circumstances, including the risk of child abuse and neglect. This is highlighted by the UN Committee on the Rights of the Child:

The concept of the child's best interests is complex, and its content must be determined on a case-by-case basis. It is through the interpretation and implementation of article 3, paragraph 1, in line with the other provisions of the Convention, that the legislator, judge, administrative, social, or educational authority will be able to clarify the concept and make concrete use thereof. Accordingly, the concept of the child's best interests is flexible and adaptable. It should be adjusted and defined on an individual basis, according to the specific situation of the child or children concerned, taking into consideration their personal context, situation and needs. For individual decisions, the child's best interests must be assessed and determined in light of the specific circumstances of the particular child.⁵

As such, the proposed measures in the Bill, including the necessary information sharing safeguards aimed to protect family sensitive information, are congruent to the obligations under the CRC.

The CRC also contemplates a child's right to participation as being especially relevant to judicial and administrative proceedings, such as those involving family law. Article 12 specifically states that opportunities to be heard must be provided 'in any judicial and administrative proceedings affecting the child'.

Further, article 9, referred to above, states that all interested parties shall be given an opportunity to participate in the proceedings and make their views known. Children are parties with a keen interest in the outcome of such proceedings.

The right to participate is not only about providing a child with the opportunity to express their views, but these views must also be taken into account and given due weight according to the child's age and maturity.

Indeed, the UN Committee considers the seeking of a child's views as an important procedural safeguard to guarantee the implementation of the child's best interests.

A vital element of the process is communicating with children to facilitate meaningful child participation and identify their best interests. Such communication should include informing children about the process and possible sustainable solutions and services, as well as collecting information from children and seeking their views.⁶

Hearing the views of children is considered so essential that it is described as a 'mandatory' step in a consideration of a child's best interests.⁷

Australian Human Rights Commission
National Children's Commissioner
Anne Hollonds

The UN Committee has also stated that children should be given feedback about how their views have been considered in the decisions made:

States parties are encouraged to introduce legislative measures requiring decision makers in judicial or administrative proceedings to explain the extent of the consideration given to the views of the child and the consequences for the child.⁸

Children's right to information is also guaranteed under articles 13 and 17 of the CRC.

If the Bill is successfully passed and enacted, I support the Federal Government's intention to review the reforms to ensure that the measures are successful in addressing the safety and wellbeing of families and, most importantly, their children from risk of harm.

Once again, thank you for the opportunity to make a submission to this critical area of law reform.

Yours sincerely

Anne Hollonds
National Children's Commissioner

¹ Australian Human Rights Commission, Submission No 217 to the Australian Law Reform Commission, *Review of the Family Law System—Issues Paper* (15 May 2018) <https://www.alrc.gov.au/inquiry/review-of-the-family-law-system/submissions-7/>.

² Australian Human Rights Commission, Submission No 91 to the Joint Select Committee on Australia's Family Law System (2019), https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Family_Law_System/FamilyLaw/Submissions.

³ Australian Human Rights Commission, Submission to the Attorney-General's Department on the exposure draft of the Family Law Amendment Bill 2023 https://consultations.ag.gov.au/families-and-marriage/family-law-amendment-bill/consultation/published_select_respondent.

⁴ Australian Human Rights Commission, *Children's Rights Report 2019–In Their Own Right, Children's Rights in Australia* (2019) 60–66; Australian Human Rights Commission, *Keeping kids safe and well—Your voices* (2022).

⁵ UN Committee on the Rights of the Child, *General Comment No.14 on the rights of the child to have his or her best interests taken as a primary consideration*, UN Doc CRC/C/GC/14 (29 May 2013) [32].

⁶ Committee on the Rights of the Child, *General Comment No 14 (2013) on the rights of the child to have his or her best interests taken as a primary consideration (art. 3, para.1)*, UN Doc CRC/C/GC/14 (29 May 2013) [89].

⁷ Committee on the Rights of the Child, *General Comment No.12: The right of the child to be heard*, 51st session, UN Doc CRC/C/GC/12 (1 July 2009) [70].

⁸ Committee on the Rights of the Child, *General Comment No.12: The right of the child to be heard*, 51st session, UN Doc CRC/C/GC/12 (1 July 2009) [33].