

# Submission:

## Inquiry into the *Family Law*

### *Amendment (Parenting*

### *Management Hearings) Bill 2017*

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## Introduction

**safe steps** thanks the Legal and Constitutional Affairs Legislation Committee (The Committee) for the opportunity to provide feedback in relation to the proposed Parenting Management Hearings model and commends the Federal Government's commitment to reforming the family law system for those affected by family violence.

## About safe steps

**safe steps** Family Violence Response Centre is Victoria's 24 hour, 7 day per week statewide first response service for women (including women who identify as female or transfeminine), young people and children experiencing family violence. **safe steps** provides a critical service, including intervention, support, accommodation, advocacy and referral throughout Victoria and nationally.

Our work includes referring women who have experienced family violence and are involved in current Magistrates or Family Court proceedings with legal and social support services via the Family Advocacy and Support Service (FASS). We connect women with a specialist **safe steps** social worker who can accompany them and ensure they are safe while at court, and offer emotional support.

**safe steps** is committed to ensuring all women and children are able to live free from abuse - our ultimate goal is the elimination of family violence. We acknowledge that family violence is inherently gendered in nature, with the overwhelming majority of family violence perpetrated by men, against women. On this basis, in this submission we refer to the victim-survivor as female and to the perpetrator as male.

Our contributions to policy and legislative reform are evidenced-based, informed by a feminist framework and prioritise the safety and wellbeing of women, young people and children.

## Summary of recommendations

In preparing our submission, **safe steps** sought feedback from our FASS worker regarding the experiences our clients have had in the Family Court and reviewed the submission of Women's Legal Services Australia (WLSA) to this Inquiry, to better understand the legal context and likely operation of the proposed model.

As the national network of community legal centres specialising in women's legal issues, including family law, child protection and the legal issues arising from relationship breakdown and violence against women, we consider that WLSA is well-placed to assess to what extent the proposed Parenting Management Panel model meets the needs of women experiencing family violence. As such, **safe steps** endorses all of the recommendations put forward by WLSA in its submission. We view these as necessary preconditions to the proposed Bill's introduction into Parliament to ensure that the safety of women, young people and children who have experienced family violence is protected.

Below are some additional recommendations and commentary that we consider relevant to the inquiry.

## Parenting Management Hearings in the context of the broader family law review

**safe steps** commends the Commonwealth Government on its commitment to reforming the family law system to better meet the needs of families and address family violence and child abuse. We note that the proposed *Parenting Management Hearings Bill* is being proposed alongside the *Family Violence and Other Measures Bill*, which aims to implement recommendations from a number of recent reports and inquiries about the need for changes to the *Family Law Act 1975* and the family law system. We also welcome the comprehensive review of the family law system that is being conducted by the Australian Law Reform Commission (ALRC).

In particular, it is positive to see proposals which provide less adversarial options for families. This is important given the prevalence of family violence in many separation disputes and the potential for the existing court system to re-traumatise victim-survivors. However, **safe steps** supports WLSA's view that, as the current proposal to establish a Parenting Management Hearings Panel represents a significant change to the current system and has the potential to impact the safety of women and children, it is crucial that the model is based on a strong base of evidence and that there has been appropriate input from experts in family violence.

The explanatory memorandum states that:

- the new initiative would implement a 2017-18 Federal Budget measure that aims to “support families to resolve their family law disputes as quickly as possible, while adequately managing risks”.
- the hearings will be fair, just, economical, informal and prompt; and that the best interests of the child will be the paramount consideration.
- the intention of the proposed model is to create “safe outcomes for families” and that the Panel will be “equipped to identify and respond safely and effectively to family violence”.

**safe steps** believes that the ability of the Parenting Management Hearings model to successfully achieve the above aims would be improved if further research and thought were given to the model prior to its introduction.

**safe steps** has concerns that the Panel model as it is currently devised may not be an appropriate approach for disputes involving family violence, particularly where parties are self-represented. The practical operation may pose unforeseen risks to victim-survivors, given that there is:

- no evidence of the model having been tested or successfully implemented elsewhere;
- a significant degree of discretion afforded to Panel members as decision-makers; and
- a lack of detail about Panel processes.

**safe steps** considers that it would be prudent to await the findings of the ALRC review before significantly altering the structure of the national family law system, particularly as a number of the terms of reference of the ALRC inquiry are relevant to the proposed model. Therefore, we agree with WLSA that the Bill should be delayed and the model first considered by the ALRC as part of its review into the family law system.

## Commentary: issues of particular relevance for women, young people and children in the proposed model

### Risk assessment

**safe steps** agrees with WLSA that it is crucial for risk assessment in relation to family violence to be conducted for all applications to the Panel, and to be ongoing and not limited to intake. This will help to safeguard the ongoing safety of victim-survivors participating in Panel hearings and to ensure that the Panel is fully informed about the context of the dispute.

To allow for a “comprehensive intake and risk assessment process”, as stated in the Explanatory Memorandum, **safe steps** recommends that the Panel utilise a recognised risk assessment framework – ideally one which is consistent with current tools used by domestic violence practitioners. We draw the Committee’s attention to Recommendation 2 of the *Parliamentary inquiry into a better family law system to support and protect those affected by family violence* final report regarding development of a national family violence risk assessment tool. **safe steps** recommends that the Federal Government implement this recommendation and, once the tool is developed, mandate its use in all relevant intake and risk assessment processes within the family law system – including by Panels if they are implemented.

### Legal representation

In broad terms, **safe steps** supports the Government’s intention to provide a more flexible and less adversarial avenue for litigants to resolve parenting disputes. The inability of the common law adversarial legal system to deal sensitively and effectively with victim-survivors of family violence, sexual abuse and other vulnerable parties is well-documented.<sup>1</sup> In spite of the Government’s innovative attempt to address these issues, the proposed model fails to take sufficient account the potential disadvantages for self-represented litigants, for whom the Panel hearings are designed.

Many women who have experienced family violence are self-represented in the family law system. A **safe steps** FASS worker in Victoria described some of the reasons that victim-survivors are often self-represented in family law proceedings:

- It is common for perpetrators of family violence to prevent women from pursuing career goals as this is a form of power and control in the relationship, so many women are recipients of Centrelink or are on a low income;
- They do not have sufficient time to secure legal aid grants for legal representation or they are ineligible;
- Male perpetrators often access legal aid before women, rendering their female partners ineligible due to a conflict of interest; and
- Other avenues for legal representation, such as women’s legal services, have limited reach due to funding constraints and therefore prioritise women facing the most significant barriers, meaning that many women are unable to access support.

As highlighted by WLSA in its submission, the proposed model requires parties to seek leave from the Panel to obtain legal representation, making it the exception, not the norm. **safe steps** considers this a concerning aspect of the Panel model as women without access to legal advice and representation are likely to find the hearings re-

traumatising and re-victimising. Women will be forced to advocate for themselves without easy access to information regarding their legal options and explanations about Panel processes and determinations.

Although the Panel model is intended to avoid some of the problems inherent in the adversarial process by being less formal and allowing the adjudicators inquisitorial powers and substantial discretion to conduct hearings in a flexible way, **safe steps** does not believe that these features of the model remove the need for parties to be legally represented.

**safe steps** also directs the Committee to recommendation 12 of the recent report of the *Parliamentary inquiry into a better family law system to support and protect those affected by family violence*, which recommends that “the Attorney-General introduces the Family Law Amendment (Family Violence and Cross-examination of the Parties) Bill 2017 into the Parliament for its urgent consideration such that perpetrators of family violence will be prohibited from cross examining the other party including in relation to the qualifications and funding of those appointed to undertake such cross examination”. **safe steps** submits that the policy reasons behind prohibition of cross-examination in a court setting are also applicable to the Parenting Management Hearings model, particularly where parties are self-represented. The Committee should have regard to the issues raised in SafeNET Australia’s submission to the *Family Law Amendment (Family Violence and Cross-Examination of Parties) Bill 2017* public consultation in relation to self-represented litigants.

Although the Panel model is intended to reduce the risks and complexities that self-represented litigants are subjected to in normal court proceedings, we would argue that aspects of the Panel model may actually operate to expose them to greater risk and trauma. The apparent benefits of informal legal forums can work against vulnerable parties and it is important that the model incorporates safeguards to protect the legal rights and safety of those involved.

The Government’s proposal may alleviate some pressure on the courts and be an appropriate forum for simple parenting disputes that do not involve family violence or abuse; however, given the above issues, we would question the suitability of the Panel model as currently devised to consider any matters involving the presence of family violence.

## Training and qualifications of Panel members

As discussed in our previous submissions<sup>ii</sup> and in relation to the concurrent proposed *Family Law Amendment (Family Violence and Other Measures) Bill 2017*, **safe steps** supports the introduction of mandatory training for judicial, legal, and non-legal professionals working in the family law system about the complexities and gender-based nature of family violence and how it affects people involved in family law proceedings.

In relation to the proposed Panel model, we support WLSA’s recommendation that at least one sitting Panel Member on each Panel – other than the Principal Member, as they are not required to sit on every Panel – should have extensive knowledge and experience in family violence, child abuse and trauma-informed practice from a victim-survivor’s perspective. **safe steps** also agrees that all Panel members and staff conducting risk assessments must be trained in, and participate in ongoing training regarding family violence, child abuse, cultural competency, disability awareness, trauma-informed practice, and working with vulnerable clients.

## Other issues

**safe steps** considers the following other aspects of the proposed model to be concerning and urges the Government to give them further consideration prior to implementation.

## Role of assistants

Section 11LJ(4) allows parties to a Panel hearing to have an “assistant” present who can provide support and, in exceptional circumstances, address the Panel. We share the concerns outlined by WLSA that there is potential for the misuse of such a support person in the context of family violence. We direct the Committee to refer to the discussion contained in our joint submission with SafeNET to the *Family Law Amendment (Family Violence and Cross-examination of the Parties) Bill 2017* consultation process around self-represented litigants nominating people to ask questions on their behalf in family law proceedings.<sup>iii</sup> Many of the issues raised therein are relevant to our concerns in relation to Section 11LJ(4).

## Powers of Panel to gather evidence

The proposed Bill grants expansive powers and a significant level of discretion to the Panel to gather evidence when determining parenting matters. We agree with WLSA’s statement that the Parenting Management forum

“is an untested decision-making body which seems to want to exercise judicial power without the necessary oversight”.

## Conclusion

We thank The Committee again for the opportunity to provide feedback, and would welcome the opportunity to elaborate on any of the issues we have raised herein. We can be reached as per the contact details provided at the first page of this submission.

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<sup>i</sup> For example: Family Court of Australia, April 2007, *Finding a better way: A bold departure from the traditional common law approach to the conduct of legal proceedings*,; [http://www.familycourt.gov.au/wps/wcm/connect/03b6fe90-12d4-4840-9ef5-4cbaf690b297/Finding\\_Better\\_Way\\_April\\_2007.pdf?MOD=AJPERES&CONVERT\\_TO=url&CACHEID=RO\\_OTWORKSPACE-03b6fe90-12d4-4840-9ef5-4cbaf690b297-lh-nfrG](http://www.familycourt.gov.au/wps/wcm/connect/03b6fe90-12d4-4840-9ef5-4cbaf690b297/Finding_Better_Way_April_2007.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=RO_OTWORKSPACE-03b6fe90-12d4-4840-9ef5-4cbaf690b297-lh-nfrG)

<sup>ii</sup> safe steps, 3 May 2017, *Submission to the Parliamentary Inquiry into a better family law system to support and protect those affected by family violence*.

<sup>iii</sup> SafeNET Australia, August 2017, *Submission to the Family Law Amendment (Family Violence and Cross-Examination of Parties) Bill 2017 – Public Consultation on the Cross-Examination Amendment*.