



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

28th April 2011

Dear Committee Secretary,

Re: *Senate Inquiry into the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011*

We welcome the opportunity to comment on the *Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011*. This response is the joint work of a number of family violence services and peak bodies in Victoria: Domestic Violence Victoria (DV Vic), the Domestic Violence Resource Centre Victoria (DVRCV), the Federation of Community Legal Centres Victoria (FCLC), Women with Disabilities Victoria (WDV), and the Victorian Women's Trust (VWT) (see below for details of our organisations).

We have also worked closely over many years with Women's Legal Service Victoria on systemic and legal reform to improve outcomes for women and children experiencing family violence. WLSV has joined with Women's Legal Services Australia (WLSA) in making a submission to this Senate Inquiry, and we endorse the issues raised and recommendations made in their background briefing and position papers, posted to their campaign website: www.safetyinfamilylaw.com.

Our services have been working collaboratively for many years on family violence systems reform in Victoria; as members of the first Statewide Steering Committee to Reduce Family Violence, established in 2002, we worked in partnership with government and other non-

government organisations, police, and courts to develop an integrated response to family violence.

This included developing the vision for family violence systems reform; and implementation of a range of policy, practice and governance initiatives. We lobbied for funding, and for a review of family violence legal responses in Victoria. We worked with the Victorian Law Reform Commission (VLRC) in its review of family violence laws and then campaigned for adoption of the whole package of recommendations made by the VLRC¹. Many of these are now part of legislation and practice in Victoria. More recently, our work alongside Government has involved advising and assisting with the development and roll-out of a common approach to family violence risk assessment and risk management across sectors and settings in Victoria.

DV Vic, DVRCV, FCLC and WDV also made an extensive joint submission to the Australian Law Reform Commission (ALRC) /New South Wales Law Reform Commission (NSWLRC) review, *Family Violence: Improving Legal Frameworks* in 2010². Many of our comments below draw on and make reference to our feedback to the ALRC/NSWLRC review, and to the ALRC/NSWLRC Final Report: *Family Violence- A National Legal Response*³.

In January 2011, DV Vic, DVRCV, FCLC, WDV and VWT also made a joint submission to the public consultation on the *Family Law Amendment (Family Violence) Bill 2010*. We would be happy to provide copies of these submissions to the Senate Inquiry upon request.

We support many of the changes proposed in the *Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011*, but believe further changes need to be made to ensure that children's emotional and physical safety and the safety of other family members is the first priority within the family law system.

Definition of family violence

We particularly commend the broadening of the definition of family violence to include elements of coercion and control, and a wider range of behaviour, consistent with recommendations made in the ALRC/NSWLRC Final Report. A common understanding of family violence will facilitate the effective operation of the proposed scheme for national registration of protection orders, and will result in more useful and comprehensive data to inform policy and practice.

As we submitted to the ALRC/NSWLRC review, achieving core consistencies in protection of family members from violence is necessary for Australia to honour its international human

¹ Victorian Law Reform Commission, *Review of Family Violence Laws Report* (2006)

² Australian Law Reform Commission Consultation Paper 1 /New South Wales Law Reform Commission Consultation Paper 9 (2010) *Family Violence – Improving Legal Frameworks*

³ Australian Law Reform Commission Report 114 /New South Wales Law Reform Commission Report 128 (2010) *Family Violence- A National Legal Response*

rights obligations to respect, protect, fulfil and promote women's and children's rights to be free from violence, and to uphold the right of all persons to equality before the law.

Removing the test of 'reasonableness'

We also strongly support removing the objective test of 'reasonableness' as to whether a person feels fear. This will ensure that family violence can be properly considered whenever the victim fears for their safety.

Definition of child abuse

We agree with the proposal to broaden the definition and understanding of child abuse to include exposure to violence. However, we also believe that children being exposed to family violence, including seeing, hearing or otherwise experiencing non-physical forms of family violence, should also be included in the definition of *family violence*, as recommended in the ALRC/NSWLRC report, and as defined in Victoria's *Family Violence Protection Act 2008*⁴.

We also agree with WLSA in their position paper that:

*The proposed definition of exposure should make it clear that it applies to exposure by the person who perpetrates family violence (to avoid unintended consequences that a victim of violence has exposed the child to violence). It must be clear in the Family Law Act that victims of violence must not be held responsible for not being able to remove children from the violence*⁵.

We particularly support WLSA's position that the caregiver must be protected:

*WLSA also argues that children's exposure to family violence and child abuse cannot be isolated from the experience of family violence on their caregivers... Protection of children's caregivers who are victims must also be a priority and not artificially treated as a distinct issue from protection of their children, with different outcomes.*⁶

Prioritising safety from family violence

We remain concerned that the Bill continues to enshrine two primary criteria within the *Family Law Act* guiding decisions in determining children's best interests: - that children should have a meaningful relationship with both parents; and that children should be protected from physical and psychological harm. We are aware that the present Act, in its emphasis on shared parenting, often leads to contact orders that are inconsistent with expert knowledge about child development.

Worse, where family violence is present, a child's right to safety can often come second. In practical effect, the Act currently tends to prioritise the first principle of meaningful

⁴ *Family Violence Protection Act 2008 (Vic)* s.5

⁵ Women's Legal Services Australia, *Updated Position Paper: Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011*, 12 April 2011, www.safetyinfamilylaw.com Sec 5.6.3.

⁶ *Ibid* Sec 5.6.9-10

involvement with each parent at the expense of children's and women's rights to safety. The framing of these criteria takes the focus away from the best interests of the child, and places the emphasis on parental rights. This is evidenced by the numerous cases that come to the attention of our respective agencies in which it is clear that children's safety and best interests have been compromised by Family Law orders.

We believe that there should only be one primary consideration where family violence is present, which is the need to protect the child from abuse, and urge that the *Family Law Act* be amended to ensure that the safety of children and their protection from physical and psychological harm is paramount.

We endorse the WLSA/ AWAVA recommendation, in their submission⁷ to the Attorney-General in January this year in relation to the Exposure Draft of the Bill, that:

- a. *there should be no primary considerations at all but one list of factors for consideration, where:*
 - i. *the safety of children should be listed as the first consideration and given priority;*
 - ii. *that 'meaningful relationship' be listed as one of many factors;*
 - iii. *that the courts should weigh up all of the factors in the list, depending on the circumstances of each individual case.*

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

While we support the removal of aspects of the 'friendly parent' provision, we believe the original proposal contained in the Exposure Draft of the Bill offered better protection for children from family violence. The removal of this section in its entirety will allow women who are victims of family violence to act protectively when they have concerns for the safety of their children, rather than fearing negative consequences from the court in making such disclosures.

Repealing costs orders relating to false allegations or denials of violence

We support the removal of the mandatory costs provision in section 117AB of the *Family Law Act*, as it acted as an additional barrier to disclosure for women experiencing violence. Its removal, along with that of the friendly parent provision, goes some way to addressing many women's fears that the system is suspicious of those who allege violence.

Further changes required

While we support many changes proposed in the *Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011*, we believe that further changes need to be made to the Bill to ensure that the family law system prioritises the safety and protection of children and family members.

We note that the Exposure Draft of this Bill was released at the same time as the Final Report of the ALRC/ NSWLRC: *Family Violence – A National Legal Response*.

⁷ Women's Legal Services Australia & Australian Women Against Violence Alliance *Submission to Public Consultation: Family Violence Bill Family Law Legislation Amendment (Family Violence) Bill 2010*, 14th January 2011. Pp12-13

We remain concerned that the Bill misses many opportunities for reform that were recommended in the comprehensive ALRC/NSWLRC Report, and so see this Bill as the first step in improving safe outcomes for victims of family violence within the family law system, and not as the final step.

We urge that the Senate Committee consider the recommendations in that report relating to family law during this inquiry.

Please do not hesitate to contact us if you have further questions.

Yours sincerely,

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Who we are:

Domestic Violence Victoria (DVVic) –the peak body for over fifty family/domestic violence services in Victoria that provide support to women and children to live free from violence. The central tenet of DVVic is the safety and best interests of women and children and DVVic provides leadership to change and enhance systems that prevent and respond to family/domestic violence;

Domestic Violence Resource Centre Victoria (DVRCV) – a statewide service that provides information, training and resources to improve service and policy responses to family violence to a wide range of sectors and professional groups. DVRCV also provides commentary and advice on policy initiatives and law reform;

Federation of Community Legal Centres (Victoria)(FCLC Vic) – the peak body for over 50 Victorian Community Legal Centres (CLCs). CLCs are independent community organisations that provide free legal advice, information, assistance, representation and community legal education to more than 100,000 Victorians each year. CLC work against family violence includes the provision of duty lawyer services in Magistrates Courts for victims of family violence. The Federation also conducts strategic research, casework, policy development and social and law reform activities.

Women with Disabilities Victoria (WDV) - Victoria's peak body for women with disabilities. WDV membership and staff represent the diversity of women with disabilities, and supports women with disabilities to achieve their rights through community education, peer support, research and systemic advocacy. WDV speaks for the human rights of women with disabilities on many of Victoria's key violence prevention and violence response committees.

Victorian Women's Trust (VWT) –an independent body working to improve conditions for women and girls in practical and lasting ways, through: a funding program that invests in women and girls to effect social change; advocacy for women on key issues that affect their lives; special projects that deliver real outcomes for women; showcasing women's talents and fostering networks for the exchange of skills, ideas and solutions.