

Committee Secretary

Senate Legal and Constitutional Affairs Committee

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Parliament House

Canberra ACT 2600

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Dear Committee Secretary,

**Family Law Amendment (Family Violence and Cross-examination of Parties) Bill 2018**

The National Council of Single Mothers and their Children Inc would like to congratulate the Federal Government and the progressive action on the matter of protecting victims of family violence from cross-examination in family courts. It is most encouraging that the protection for victims of family violence in family law proceedings was identified as a key issue by the Council of Australian Governments' National Summit on Reducing Violence against Women and their Children, and this outcome illustrates the commitment.

It is essential that victims of family violence will be protected from having to directly cross-examine or be cross-examined by perpetrators of violence during family law proceedings. Directly facing a perpetrator or alleged perpetrator of family violence compounds the trauma of that violence and can also impact on the ability of a victim to give clear evidence in legal proceedings.

NCSMC does not understand the circumstance where a court would prohibit direct cross-examination in cases where family violence is alleged, and we would seek that this outcome is monitored to ensure that family law proceedings is consistent with this legislation. However, we do take some reassurance in noting that where a court does not exercise that discretion, it will be mandatory for the court to apply other protections, such as the use of video links or screens in the court room.

**Recommendations**

- 1. The family courts prohibit the practice of perpetrators cross-examining the victims of family violence where allegations have been made.**
- 2. The implementation of this legislation is monitored to ensure that perpetrators do not cross-examine the victims of family violence and where the practice does occur, that the reasons are documented and that the Court have appropriately applied other protections such as the use of video links or screens in the court room.**



National Council for Single Mothers and their Children Inc.

Eliminate and respond to violence, hardship and inequality for single mothers and their children

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Additionally, NCSMC is also seeking that victims of family violence will be protected from having to directly cross-examine or be cross-examined by close friends and/or known acquaintances of the perpetrators of violence during family law proceedings. It was during the consultation of this submission that NCSMC was recently contacted by a woman who had the direct lived experience of this intimidation.

*My abuser did not cross examine me. But he used his best friend, a lawyer, to do it for him. There was significant 'conflict of interest' in this, but the Magistrate Court Magistrate did nothing to stop it. For me, this was exactly the same as being cross examined by my abuser. I have nightmares and flash backs often. I put in a complaint to the Judicial Commission of Victoria about the Magistrate for allowing the involvement of his best friend. They dismissed my complaint.*

*My legal representation continually warned him to remove himself from the matter because of the obvious conflict telling him he is risking his legal registration. He has finally. But for a 18 month period he refused to. (Sandra)<sup>1</sup>*

### **Recommendation**

#### **3. The family courts prohibit the practice of known friends and acquaintances of the perpetrators to cross-examine the victims of family violence where allegations have been made.**

The National Council of Single Mothers and their Children Inc are aware that separation increases safety concerns. Therefore, all processes that are part of the socio-legal separation environment needs to have a heightened awareness of safety risks and increase their protection for victims of family violence which includes the process of cross-examination in family courts. NCSMC also believes that the use of courts to inflict trauma extends beyond the process of cross-examination and includes litigation abuse and matters in the other courts.

*My ex hand me on the witness stand for 4 hours at our VRO trial. Because I felt so threatened and he badgered and badgered until I answered how he wanted, which I didn't. But because I was terrified and became flustered, my evidence was deemed not credible, despite my ex tendering the modem he smashed into my head as evidence, "see Your Honour, it's only cracked a little bit" (Selena).*

Furthermore, and as illustrated by Selena's experience, her abusive ex-partner used the skills and his increase confidence gained by cross-examination at the Violence Restraining Order hearing to cross-examine her during family law proceedings.

*Then during Family Court, I was again questioned for hours, essentially him asking the same questions our ICL asked. I was absolutely terrified to the point my Psychologist-who'd given evidence, was asked to stay (by our judge) while I gave evidence 'not only was I questioned in Family Court, but also in Magistrates Court by my ex at our VRO Trial' (Selena).*

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<sup>1</sup> Sandra and Selena's name has been changed for this submission.

### **Recommendation**

**4. The Committee explores the appropriate process that would protect victims of family violence from cross-examination in other Courts. Most notably matters relating to protection orders.**

NCSMC seeks that the commitment to reduce the trauma to victims of family violence extends beyond cross-examination by preparators. The Australian Institute of Family Studies found that there were 173 final hearings in the federal family law courts over two years between 2015 and 2017, involving allegations of family violence where one or both parties were self-represented. NCSMC continues to hear anecdotal evidence that the process of litigation abuse leads to victims of domestic violence self-representing as all their financial capacity has been eroded on continued court appearances. To this end we make a final recommendation for the committee's consideration;

### **Recommendation**

**5. The Committee institutes a review of litigation abuse. A concerted effort to protect victims of family violence against litigation abuse is consistent with the principles that underpins this Inquiry; reducing trauma and protecting victims of family violence during family law proceedings. Furthermore, action to eliminate litigation abuse has to potential free court resources.**

In conclusion the National Council of Single Mothers and their Children Inc congratulate the Federal Government for making headway and we warmly await the enactment of legislation that will ensure that the victims of family violence will be protected from cross-examined by perpetrators of violence during family law proceedings. If NCSMC can enrich the Committees deliberation through our attendance, please do not hesitate to contact us. Furthermore, the two women whose experience is contained within this submission are both willing to engage in the Inquiry and NCSMC would work with the Committee to advance this option.

Warm regards,

Terese Edwards,

11th July 2018

Chief Executive Officer