



Dr Patricia Easteal AM
Emeritus Professor

patricia.easteal@canberra.edu.au

12 July 2018

Re Family Violence and Cross Examination Bill

To Whom it May Concern:

Please refer to my submission to the Attorney General and to the article with Emma Fitch, which I have submitted to the Committee. The concerns expressed in that submission remain as the Bill has not addressed them.

Still of paramount concern is the word ‘and’ which requires that in addition to an allegation of domestic violence, there needs to have been an arrest, family violence order or injunction. We believe the ban should be much broader as most victims do not report the violence and most violence is not physical battery which would result in police charging. From the original submission:

‘Yes. As we say above, there needs to be a broader ban which should include Notice of Risk etc where a party alleges violence has occurred but has not gone down a legal protection pathway, as many victims do not.

This is particularly the case when the violence is primarily emotional/mental/psychological and also particularly the case with vexatious litigation and crosses by the unrepresented party. Litigation and the opportunity to cross-examine the victim witness may be a further manifestation of this type of violence.’

Further we remain concerned with the word ‘may’ in sub section (3).

(3) The court *may* make an order under subparagraph (1)(c)(iv):

- (a) on its own initiative; or
- (b) on the application of:
 - (i) the witness party; or
 - (ii) the examining party; or
 - (iii) if an independent children’s lawyer has been appointed for a child in relation to the proceedings—that lawyer.

The word ‘may’ is indeterminate and is therefore of concern. As we wrote in our submission to the Attorney in response to question 15: Are there any other issues the court should be required to consider before granting leave for direct cross-examination to occur?

‘Screening for IPV by specially trained staff.

From Emma Fitch and Patricia Easteal, “Vexatious Litigation in Family Law and Coercive Control: Ways to Improve Legal Remedies and Better Protect the Victims” (2017) 7 Fam L Rev

Research has suggested that while the *FLA* requires that attention be given to family violence, courts are reliant on the evidence that is brought before them. This means family lawyers play an integral role in identifying and adducing the evidence.¹

Lawyers need to understand that some victims of family violence might be reluctant to disclose it, or disclose it in detail, unless the demeanour of the lawyer is such as to give them confidence, or unless the lawyer asks specific questions. Lawyers, and judicial officers, and perhaps others, might learn to become more sensitive to the impact of their manner, and way of speaking, on people who have been exposed to violence, especially those from non-mainstream communities.²

Better screening tools and approaches to deal with violence are required to educate family law practitioners³ and judicial officers with professional development programs that include understanding coercive control.⁴ This could be facilitated by amending the Legal Profession Uniform Law to add IPV education requirements with all practitioners mandated to complete as a part of their continuing legal education (see, eg, *Legal Profession Uniform Conduct (Barristers) Rules 2015*; *Legal Profession Uniform Law Australian Solicitor's Conduct Rules 2015*, etc). Such training could also examine how to identify vexatious-like behaviour, the remedies available, and appropriate referrals for support services.'

Secondly 'gray drafting' requires the interpretation of judges and other gate-keepers. As shown in Anna Carline and Patricia Eastal (2014) *Domestic and Sexual Violence Against Women – Law Reform and Society: Shades of Grey*. (Routledge, London) the victims' 'reality' of domestic violence continues to collide with the legal construction and perception of violence in the home. Without the understanding of the victims' *reality*, the indeterminate wording in s102NA(3)(1)(c)(iv) is problematic.

I have written extensively about the importance in having a shared 'reality' of family violence which is appreciative of the dynamics, manifestations and effects of coercive control. I have attached a CV and am happy to email any publication, which could further assist the Committee.

Patricia Eastal AM
Emeritus Professor

¹ Parkinson P, Webster A, and Cashmore J, "Lawyers' Interviews with Clients about Family Violence" (2010) 33 *University of New South Wales Law Journal* at 929.

² Chisholm R, *Family Courts Violence Review* (Attorney-General's Department (Cth), November 2009).

³ Australian Institute of Family Studies, *Evaluation of the 2012 Family Violence Amendments: Synthesis Report* (October 2015) <<https://aifs.gov.au/publications/evaluation-2012-family-violence-amendments>>.

⁴ Faulks J, "Condemn the Fault and Not the Actor? Family Violence: How the Family Court of Australia Can Deal with the Fault and the Perpetrators" [2010] 33 *University of New South Wales Law Journal* at 818.