Relationships Australia

1300 364 277
www.relationships.org.au

10 June 2021

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

By email: legcon.sen@aph.gov.au

Dear Secretary

Family Law Amendment (Federal Family Violence Orders) Bill 2021

Thank you for your invitation to make a submission to the Committee's inquiry into the Family Law Amendment (Federal Family Violence Orders) Bill 2021.

Work of Relationships Australia

The Relationships Australia federation is a leading provider of secular, not-for-profit services, helping individuals, families and communities to achieve and maintain safe, positive and respectful relationships. Relationships Australia believes that violence, coercion, control and inequality are unacceptable. We offer counselling, family dispute resolution, mental health services, and a range of family and community support and education programs. Relationships Australia State and Territory organisations, along with our consortium partners, operate around one third of the 66 Commonwealth-funded Family Relationship Centres. Relationships Australia Queensland operates the national Family Relationships Advice Line and the Telephone Dispute Resolution Service. Our member organisations have served Australians for over 70 years and are funded by a range of federal, state and local government grants to work across over 100 sites in metropolitan, regional and rural Australia.

We respect the rights of all people, in all their diversity, to live life fully and meaningfully within their families and communities with dignity and safety, and to enjoy healthy relationships. A commitment to fundamental human rights, to be recognised universally and without discrimination, underpins our work. Relationships Australia is committed to:

- Working in regional, rural and remote areas, recognising that there are fewer resources available to people in these areas, and that they live with pressures, complexities and uncertainties not experienced by those living in cities and regional centres.
- Collaboration. We work collectively with local and peak body organisations to deliver a spectrum of prevention, early and tertiary intervention programs with older people, men, women, young people and children. We recognise that often a complex suite of supports (for example, family support programs, mental health services, gambling services, drug and alcohol services, and housing) is needed by people affected by family violence and other complexities in relationships.
- Enriching family relationships, and encouraging clear and respectful communication.
- Ensuring that social and financial disadvantage is no barrier to accessing services.
- Contributing our practice evidence and skills to research projects, to the development of public policy, and to the provision of effective and compassionate supports to families.

Relationships Australia

1300 364 277
www.relationships.org.au

Relationships Australia's views on the Bill

The Bill acknowledges concerns previously expressed by Relationships Australia

Relationships Australia welcomes Government's intention, expressed in this Bill, to improve the protection available to people against whom family violence is directed, by:

- stating explicitly that family violence is not a private matter between individuals, but a matter of public concern[1]
- emphasising the paramountcy of children's best interests, including through:
    - explicitly prioritising the safety and welfare of children over 'additional considerations,'[2] and
    - ensuring that proposed Federal Family Violence Orders ('FFVO') for the protection of children are only issued under proposed clause 68AC of the *Family Law Act 1975* (Cth); ('the Act'), which provides various safeguards for children's best interests[3]
- empowering family law courts to proactively identify the most suitable forms of relief to prioritise and maximise safety in individual cases by, for example:
    - providing that a listed court must not grant a personal protection injunction ('PPI') if it could make an FFVO, and
    - requiring listed courts, if the criteria for obtaining an FFVO are *not* met, to consider if the party seeking protection could be assisted by a PPI (see, for example, proposed subclauses 68AC(13), 68AI(13); paragraphs 149-156, 281-282, 287, 310-325 of the Explanatory Memorandum to the Bill)
- mitigating the burden on families to navigate fragmented systems and services[4]
- reducing gaps in protection for people against whom family violence is directed[5]
- reducing overlaps, duplication and inconsistencies between PPIs currently available pursuant to the Act, proposed FFVOs, and State/Territory family violence orders,[6] including through:
    - proposed new Division 11 of Part VII of the Act
    - proposed new Division 4 of Part XIV of the Act, and
    - the transitional arrangements set out in items 46 and 47 of the Bill

[1] See, for example, paragraph 209 of the Explanatory Memorandum.
[2] As, for example, in proposed subclause 68AC(10); see also paragraphs 125, 137 of the Explanatory Memorandum.
[3] See also paragraphs 450, 459 of the Explanatory Memorandum.
[4] See, for example, paragraph 452 of the Explanatory Memorandum.
[5] See, for example, proposed subclause 68AI(13); paragraphs 287-288 of the Explanatory Memorandum; proposed subclause 68NB(3), paragraphs 389-399 of the Explanatory Memorandum.
[6] See, for example, proposed subclause 68AI(10), Division 11 of Part VII, subclause 113AC(4); paragraphs 276, 344ff, 459-471 of the Explanatory Memorandum.

- responding to particular vulnerabilities of self-represented litigants through conferring on listed courts[7] the power to make orders on their own motion,[8] and
- addressing practical challenges faced by police in enforcing protection orders.[9]

Relationships Australia has expressed concern about these issues in submissions to numerous recent inquiries, including:

- the 2017 inquiry undertaken by the House of Representatives Social Policy and Legal Affairs Committee into a better family law system to support and protect those affected by family violence
- the 2018 Australian Law Reform Commission inquiry into Australia's family law system (in response to Issues Paper 48 and Discussion Paper 86)
- the inquiry of the Senate Standing Committee on Legal and Constitutional Affairs into the Federal Circuit and Family Court of Australia Bills 2018
- the 2019 inquiry undertaken by the Parliamentary Joint Select Committee into Australia's Family Law System
- the inquiry of the Senate Standing Committee on Legal and Constitutional Affairs into the Federal Circuit and Family Court of Australia Bill 2019
- the 2020 inquiry undertaken by the House of Representatives Standing Committee on Social Policy and Legal Affairs into Family, Domestic and Sexual Violence, and
- the 2021 review of the ban on direct cross-examination in the family law courts.[10]

Prevalence of family violence in our services

Relationships Australia welcomes the various initiatives taken by Government and the family law courts in responding to family violence and the exigencies of the COVID-19 pandemic. We further acknowledge and warmly welcome the substantial additional funding of family law services announced in the 2021-2022 Federal Budget.

Reforms to enhancing the protection of those against whom family violence is used are of critical concern to Relationships Australia. Family violence remains a serious and highly prevalent problem among Relationships Australia clients. It is not a discrete phenomenon, but is generally accompanied by a constellation of interacting co-morbidities including substance

[7] To be defined in subsection 4(1) of the Act.
[8] See, for example, proposed subclauses 68AC(2), 113AC(2); see also paragraphs 457, 582 of the Explanatory Memorandum.
[9] As, for example, in proposed subclause 68AC(8) of the Bill; see also paragraphs 118-119 of the Explanatory Memorandum; subclause 68AI(4); see also paragraph 244 of the Explanatory Memorandum; proposed subclause 68NB(2), paragraphs 387-388 of the Explanatory Memorandum; proposed subclause 113AB and paragraph 445 of the Explanatory Memorandum; proposed subclause 113AC(6), and paragraph 499 of the Explanatory Memorandum; proposed subclauses 113AI(7) and (8); paragraphs 602, 603 of the Explanatory Memorandum.
[10] The reference list at the end of this submission contains links to each of these submissions.

abuse, mental health problems and personality disorders.[11] A recent national study of family dispute resolution conducted by Relationships Australia involved approximately 1700 participants, of whom:

- nearly a quarter (23%) presented with high levels of psychological distress, and
- 68% reported experiencing at least one form of abuse, with verbal abuse being the most common (64%).

A large proportion (72%) of parenting participants in the Study also reported significant child exposure to verbal conflict between parents, including yelling, insulting and swearing. The Act recognises that such exposure is a form of family violence in its own right, of which children are direct victims (subsections 4AB(3) and 4AB(4)). We therefore welcome the Government's attention to:

- evidence that people against whom family violence is directed remain at risk of being misidentified as aggressors (see, eg, Nancarrow et al, 2020; Reeves, 2020),[12] noting the Bill seeks to protect people against whom family violence is directed from being prosecuted under sections 11.2 or 11.2A of the Commonwealth *Criminal Code* (dealing with complicity, common purpose and joint commission)
- recognising that separating families do not experience parenting and property matters as discrete, and that property matters can raise safety concerns that warrant protective action backed by criminal justice sanctions[13] (noting, for example, proposed paragraph 68AB(1)(b), which is intended to apply when persons are before a listed court for proceedings other than proceedings under Part VII of the Act), and
- dynamics of power and control that can deter a person from applying for an order, noting that the Bill allows listed courts to act on their own motion to make or vary FFVOs.

In view of the prevalence of family violence, Relationships Australia supports the introduction of FFVOs. We consider, however, that there are some aspects of the Bill, and the underlying policy, that could be refined to offer Government and the community greater confidence that the Bill will achieve its stated objectives.

Definition of family violence

Jurisdiction to make FFVOs links back to the definition, provided for in the Act, of 'family violence.' To maximise the value of FFVOs, we encourage the Government to implement recommendations we have made in previous submissions to ensure that the Act reflects contemporary evidence and understanding about the scope and various forms of family violence.

---

[11] See, for example, the submission of Relationships Australia South Australia in response to ALRC IP48 (submission 62), 4, and Family Law Council, *Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems – Interim Report* (2015).

[12] As, for example, in proposed subclauses 68AG(4) and 113AG(4) and explained in paragraphs 213 and 573 of the Explanatory Memorandum (noting that the conduct of the person protected by the order may be taken into account in determining penalty).

[13] In the experience of Relationships Australia, litigation of property disputes often leads to the undoing of previously well-functioning parenting agreements - even in the absence of family violence; see also Fehlberg & Millward, 2014.

Systems abuse

Relationships Australia has previously urged Government to amend the definition of 'family violence' to include abuse of process, and implement proposals 8-2, 8-3, 8-4 and 8-5 in ALRC Discussion Paper 86 (dealing with the definition of 'family violence', abuse of process and unmeritorious proceedings).

Existing court powers to manage unmeritorious or abusive use of the court system are not sufficient. Current provisions are confined in their operation to conduct in relation to court or tribunal proceedings. Powers to identify and respond to abuse of systems and processes need to recognise the multiplicity of systems and processes that can be used, in concert or in succession, to perpetuate abuse, control, intimidation and coercion. The fragmentation of the family law system allows significant scope - even incentives - to someone who wishes to engage in this form of behaviour, offering multiple avenues by which to maintain contact and sustain violence and abuse. Responses to misuse of systems and processes cannot be confined to consideration of what happens in legal proceedings before the court and in the court room, but must also encompass conduct outside the court, that is connected to the dispute. This includes creating a climate of fear pervading all aspects of the family law system, contributing to what are, effectively, coerced 'consent orders' and 'agreements'.

For example, in its submission to this Committee's inquiry into the Family Law Amendment (Parenting Management Hearings) Bill 2017, the Law Council of Australia noted that

> It is widely acknowledged that the AAT child support jurisdiction has come to be used by perpetrators of family violence as a means of committing further family violence by exploiting the opportunity to take legal proceedings against the victim. (Submission 20, p 18, paragraph 51).

Contravention proceedings are also exploited to pressure victim/survivors to acquiesce to 'consent' orders.

This, in our view, underscores the need to amend the definition of 'family violence' to recognise that systems misuse can be achieved by numerous routes inside and outside the court room, and within and adjacent to formal proceedings. An amended definition should include misuse of legal and other systems and processes, by including 'use of systems or processes to cause harm, distress or financial loss.'[14] Relationships Australia would also encourage further consultation in developing provisions to identify and respond to such misuse. Not all misuse of processes and systems constitutes family violence.

The characteristics described by the High Court in *Rogers v R*[15] would remain relevant.

Other proposed amendments of the definition of 'family violence'

Relationships Australia has, in previous submissions,[16] proposed that the definition of 'family violence' in the current Act be amended to:

[14] ALRC DP86, proposal 8-3.
[15] *Rogers v R* [1994] 181 CLR 509.
[16] The reference list at the end of this submission contains links to each of these submissions.

- replace ‘assault’ with ‘an act that causes physical harm or causes fear of physical harm’
- replace ‘repeated derogatory taunts’ with ‘emotional or psychological harm’
- add ‘including requiring the family member to transfer or hand over control of assets, or forcing the family member to sign a document such as a loan or guarantee’ to paragraph 4AB(2)(g)
- add ‘including unreasonably withholding information about financial and other resources’ to paragraph 4AB(2)(h)
- add reproductive coercion to section 4AB
- add ‘community or religion’ to subparagraph 4AB(2)(i)
- add to the definition in section 4AB two new examples:
    - using electronic or other means to distribute words or images that cause harm or distress; and
    - non-consensual surveillance of a family member by electronic or other means.

Relationships Australia would also propose to add ‘fear’ to ‘cause harm or distress’ to the first of the preceding examples for technology-facilitated abuse, and to add ‘(including, but not limited to, remotely operated aircraft)’ to the second of these. Relationships Australia supports the suggestion, made by the Royal Australian and New Zealand College of Psychiatrists, to include ‘medical neglect’ within the definition of family violence. The College gives the example of ‘…obstructing access to medical or psychological care for the child or refusing to attend appointments when the child is in their care.’[17] Relationships Australia also supports expanding the definition of ‘family violence’ in the Family Law Act to include dowry and forced marriage, as Victoria has done in its *Family Violence Protection Act 2008*.[18]

Engaging children as rights-bearers in the family law system

Clause 68AD does not comply with Australia’s public international law obligations to uphold children’s rights, including those conferred by Article 12 of the United Nations Convention on the Rights of the Child. It appears not to take into account concerns, expressed by parents and children, that the family law courts are not sufficiently concerned with the safety of children, or their rights and wishes. Nor is it consistent with contemporary evidence that children benefit from inclusion in, and suffer from exclusion from, decisions affecting them (Carson et al, 2018). The lack of visibility children have in relation to family court proceedings concerning them compounds their trauma and feelings of being unsafe and unprotected from family violence. Researchers have observed that

> The struggle that children have in a climate of domestic violence in just feeling safe is immense. There is physical safety… then there is psychological safety….The emotional climate and the child feeling fundamentally cared about and protected from uncertainty needs to be on a par with physical safety. There are very good data on that. (Lieberman et al, 2011, 530-531)

An information vacuum guarantees uncertainty.

[17] Submission 18 to the ALRC inquiry, 4.
[18] Relationships Australia notes support for inclusion of ‘dowry-related extortion’ by the Royal Australian and New Zealand College of Psychiatrists: submission 18 to the ALRC inquiry, 4.

What the evidence says about the harms of excluding children and the benefits of facilitating inclusion

AIFS' recent study (Carson et al, 2018) of the needs and experiences of children and young people in the family law system found that:

- half of the interviewees indicated that their views were not acknowledged by family consultants/report writers
- most of the interviewees described feeling negatively towards the court process, the family consultants/report writers and the Independent Children's Lawyers
- a substantial proportion of the interviewees felt that 'the approaches adopted by service professionals with whom they interacted operated in a way that limited their practical impact or effectively marginalised their involvement in decision-making about parenting arrangements'
- several participants were distressed by perceived inaction, when they raised safety issues (for themselves, parents and siblings)
- most interviewees wanted their views to be taken seriously by family law and related services, and
- interviewees indicated that they would like more information about various aspects of the process (including timeframes and outcomes).[19]

The recent AIFS report on the needs and experiences of young people drew attention to internationally consistent research that

> … establishes the importance for children and young people having an opportunity for their views to be heard and considered in decision-making affecting them. In particular, research has highlighted the importance of facilitating these opportunities to be heard, both in relation to matters relevant to deciding the post-separation care and regarding the more general effects of their parents' separation.[20]

Carson et al concluded that

- 'children in high-risk circumstances had a particular need and wish 'to be heard and taken seriously.'[21] Some participants felt that they had not been taken seriously when they expressed fears for their safety, or the safety of their siblings.

- 'While acknowledging concerns regarding the involvement of children in their parents' conflict, these concerns must be considered in light of circumstances where these children are, or have already been, exposed to their parents' conflict or violent and abusive behaviour.'[22] Sadly, children would rarely have their first exposure to parental conflict in the form of having their views sought about legal proceedings between their parents, or the outcomes of these proceedings explained to them. They will have already been exposed to that conflict and, all too frequently, to family violence

[19] Carson et al, 2018, vi-ix.
[20] Carson et al, 2018, 30.
[21] Carson et al, 2018, 42.
[22] Carson et al, 2018, 34.

- '…affording them the opportunity to participate in the decision-making process relating to future parenting arrangements, including safety orders, emerges as crucial. Hearing the voices of children and young people has been identified as particularly critical in these circumstances, not only because this participation is central to meeting obligations pursuant to the UNCRC but also because it is important from an evidentiary perspective and is consistent with the expressed views of the relevant children and young people in cases characterised by family violence or conflict.…'[23]

- 'This Australian and international research is consistent in identifying the importance of: (1) providing children and young people with the opportunity to be heard in the decision-making process; and (2) having the professionals that interact with them invest the time in getting to know them, to listen to their views and experiences, to keep them informed of the progress of their family's matter and to advocate for them in the decision-making process. *The data analysis suggests that the goals of protection and participation can be met with the application of trauma-informed, child-inclusive approaches to participation in the family law context*.'[24]

In September 2018, Relationships Australia conducted an online survey of more than 900 people asking for their opinions of whether children should have the opportunity, if they wished, to express their wishes, opinions and concerns about post-separation arrangements.[25] More than three-quarters (76%) of respondents identified as female, with more female than male respondents in every age group. Just under 85% of respondents were aged between 20-59 years, and more than half (52%) comprised women aged 20-49 years. As for previous surveys undertaken as part of the Relationships Australia monthly survey series, the demographic profile of survey respondents remains consistent with or experience of the groups of people that access the Relationships Australia website. A substantial majority of survey respondents reported that they (92% of women; 88% of men) believed children should have a right to express their own views and opinions in family disputes.

A smaller, but substantial, majority of men (86%) and women (89%) reported that they considered children should directly participate in family law court proceedings. Just under one-quarter of survey respondents reported that children should be given the chance to directly participate in family court proceedings regardless of age or maturity. Men were more likely than women to agree that children should participate directly if they were a certain age or maturity (36% of men; 28% of women), while women were more likely than men to report that children should only participate indirectly; for example, through a report from a child psychologist or youth worker (29% of men; 38% of women).

It is therefore unsurprising that mounting research and commentary favours the participation of children and young people, and notes the increasingly-articulated desire of children and young people to be included in decision-making that affects them. The ALRC pointed out that:

> This tension between protection and participation is sometimes framed as a contest between competing principles or rights…..The Committee on the Rights of the Child has

[23] Carson et al, 2018, 35 (references omitted).
[24] Carson et al, 2018, 50.
[25] Relationships Australia, Survey results, September 2018: *Hearing the voices of children in the Family Court*. See also the Australian Psychological Society, submission 55 to the ALRC inquiry, pp 6, 8.

> suggested that there is no tension between children's welfare or best interests (art 3) and their right to participation (Article 12). Instead, they are complementary…[at para 7.18][26]

Silencing children, by act or omission, does not protect them. Making explanations to children an exception rather than the rule does not protect them. Uncertainty, the product of an information vacuum, harms them.

Beneficial involvement, on the other hand, includes both participation in decision-making processes and receiving developmentally appropriate information about the content and implications of those decisions.

As currently framed, the Bill is an obstacle to such involvement.

The information vacuum

Relationships Australia agrees with the Law Council of Australia that the current arrangements for keeping children informed about matters affecting them is 'haphazard'. Generally, as suggested by the Law Council, this deficiency could be remedied by the judge giving specific directions.[27] In the context of this Bill, it could be remedied by subclause 68AD making explanation the rule, rather than the exception.

Carson et al found that the majority of young participants 'did not necessarily want to know everything…particularly regarding their parents' potentially strong feelings of hatred, anger or frustration at the other parent.'[28] Children and young people did, however, want information on matters such as:

- when and how they could have their say about post-separation arrangements
- to what extent their views would have influence
- whether they would be represented
- how could they get help to communicate their preferred living arrangements to their parents
- timeframes and nature of legal proceedings, the identity and role of decision-makers
- steps associated with negotiating parenting arrangements
- how to get mental health support, access support groups, helplines and legal advice, and
- the potential outcomes and options for their living arrangements.

The report concluded that

> Staying informed provided children and young people with a degree of comfort and assurance about the path ahead in the context of the uncertainty and upheaval associated with the separation.[29]

[26] See also the Australian Human Rights Commission, *Children's Rights Report*, 2015.
[27] Submission 43, paragraph 346; see also paragraph 353.
[28] Carson et al, 2018, 31.
[29] Carson et al, 2018, 42.

Yet the content of the relevant provisions in the Bill and the language of the Explanatory Memorandum suggest that the Bill was developed without regard to this contemporary and authoritative evidence and understanding of the needs and rights of children and young people.

Proposed solution

Relationships Australia respectfully submits that subclause 68AD(6) should be amended to align with subclause 68AD(4) by requiring listed courts to explain - or arrange for an explanation - in developmentally appropriate terms, of the order to children affected by it. The provision could include a limitation to the effect that a court is not required to give a child a full copy of the order, unless it considers it appropriate to do so. It is critically important, however, that there be a presumption in favour of providing information and explanations.

Resourcing implementation

Enforcement

Relationships Australia notes that, while steps have been taken in the Bill to promote the practical utility of FFVOs by State and Territory police (eg by using standardised forms for orders), police and prosecuting agencies must be adequately resourced to maximise the effectiveness of the new orders. In addition to ensuring adequate numbers of personnel empowered to engage in enforcement, resourcing must include initial and ongoing training.

Without proper resourcing that reflects the time and complexity involved, there is a substantial risk that FFVOs will simply not enforced in practice - rendering illusory the protection they are intended to provide to vulnerable people. People are endangered by such illusions.

This will occur if State and Territory police do not feel confident in interpreting and applying the orders, or are unable to prioritise enforcement of FFVOs in the context of their other responsibilities. Such issues have, arguably, contributed to the falling into disuse of other well-intended family law reforms (eg the Less Adversarial Trial provisions in Division 12A of Part VII of the Act).[30]

A further complication in enforcement arises inescapably from our federal system. Relationships Australia notes that the Explanatory Memorandum acknowledges the possibility of direct and indirect inconsistency between various orders; see, for example, paragraphs 417, 695 and 719-724. Direct inconsistency between federal orders (whether FFVOs or PPIs) and State/Territory orders is dealt with primarily by mechanisms in the Act and the Bill to avoid the making of inconsistent orders, and secondarily by s 109 of the Constitution. It is less clear how police are meant to recognise and deal with indirect inconsistencies. In line with Government's concern to ensure that orders are readily enforceable by State/Territory police, Relationships Australia would urge that education and training of police explain how to recognise and deal with such issues.

[30] Relationships Australia notes the remarks in paragraphs 336 and 656 of the Explanatory Memorandum that the existing arrest powers provided for by existing sections 68C, 114AA and 114AB (to be repealed by items 21 and 44 of the Bill) are not used because the format of the personal protection injunctions is incompatible with current information sharing systems.

Interpreters and assistive communication supports

Paragraphs 172 and 542 of the Explanatory Memorandum note that 'It may be necessary for the court to arrange for an interpreter…or arrange for the explanation [of the order] to be provided in an accessible format to accommodate a disability.'

Relationships Australia is pleased that Government has, in drafting the Bill, turned its mind to these issues. However, we are concerned that, if the listed courts are not adequately resourced to offer these services, then they will not be offered, excluding these vulnerable groups[31] from accessing FFVOs, and their intended protective benefits.

Further, we recommend that the Bill be amended to cast upon family law courts a positive obligation to arrange for interpreters or accessible communication formats where necessary. If the courts are properly resourced, this should not present a problem and would maximise compliance with Australia's human rights obligations.

Court-based ADR – Schedule 4 of the Bill – protection for Registrars

Relationships Australia supports increased availability of services that support separating partners to reach their own agreements about parenting and property matters – where it is safe to do so. We are aware of recent instances in which court-based mediation has been conducted on the basis of 'agreement by attrition' (eg 'We stay in this room until an agreement is reached'). Relationships Australia is concerned that such practices are not safe or trauma-informed and that they in fact enable abuse and inflict secondary victimisation (see, eg, Laing, 2017). The recent study by Francia *et al*, 2019, found that 'coercion by legal professionals was common', as well as identifying, among parents, 'deep concerns around the expertise of professionals' (at p 227; see also p 230). There is a risk that, without ongoing and rigorous training about matters including family violence and coercive controlling behaviour, as well as appropriate monetary resourcing, registrars might feel empowered or even obliged to 'encourage' more people into ADR without attending sufficiently to matters of safety and trauma-informed practice. Great care should be taken to ensure that mediation and other forms of ADR offered through the courts do not lead to less safe processes and outcomes.

Requirement that court inspect record, database or register

Relationships Australia supports mechanisms provided for in the Bill which are aimed at avoiding inconsistency with family violence orders made by State or Territory Courts. We support the imposition on listed courts of requirements to inspect public records, databases and registers (see, eg, proposed subclauses 68AC(7), 68AI(7), 68B(1D), 113AC(5), and 114(1D)). We also welcome the work, described for example at paragraphs 401 and 712 of the Explanatory Memorandum, to enable the family law courts to make information about FFVOs readily accessible to police attending incidents. Fragmentation of information across government agencies, and tiers of government, has been a consistent theme raised by reports and inquiries into the family law system, and steps to share information are key to responding to these concerns.

[31] See, for example, AIHW, 2020; Maher et al, 2018; Koleth et al, 2020; Lu et al, 2020; Tayton et al, 2014.

Relationships Australia

1300 364 277
www.relationships.org.au

Ban on direct cross-examination

Relationships Australia acknowledges item 31 of the Bill, which would extend the existing ban on direct cross-examination (as provided for by sections 102NA and 102NB of the Act) to apply where an FFVO is in force (see also paragraph 427 the Explanatory Memorandum). In response to a request from the Reviewers of that ban, Relationships Australia has recently provided a submission that supports continuation of the ban.[32]

Complexity of the legislation

Numerous inquiries and commentators have advocated for the Act to be simplified over many years. The ALRC canvassed this in detail. It is pleasing that the Government has sought to avoid unnecessary complexity for users of the orders (both parties and law enforcement agencies), through mandating plain English[33] and clear identification of key elements of the proposed FFVOs.[34] The complexity of this Bill arises primarily from the interactions between (a) Commonwealth and State/Territory jurisdictions, and (b) provisions in Part VII of the Act (eg within section 60CC; see, for example, paragraphs 268, 406ff, 503, and 507 of the Explanatory Memorandum to the Bill). Relationships Australia is concerned that these complexities may discourage use of FFVOs. Accordingly, we recommend that Government expedite simplification of Part VII, and the Act as a whole.

CONCLUSION

Family violence costs the Commonwealth $13.5 billion per year; measures to identify and respond to it are much needed. The creation of FFVOs is a significant step to responding to concerns that fragmentation, silos and complexity of navigation compound the dangers faced by those against whom family violence is used, and that those who use violence are enabled and incentivised by these systemic shortcomings.

We again thank you for the opportunity to express our views to the Committee, and would be happy to discuss further the contents of this submission if this would be of assistance.

Yours sincerely

Nick Tebbey
National Executive Officer

---

[32] The reference list at the end of this submission contains links to this submission.
[33] See, for example, proposed subclauses 68AD(4), 68AI(11); paragraphs 170-172, 277-278, 518 of the Explanatory Memorandum to the Bill.
[34] See, for example, the intention to prescribe a standalone template for FFVOs which would 'be compatible with relevant police information sharing systems': subclause 68AC(11); paragraph 138 of the Explanatory Memorandum to the Bill; proposed subclause 113AC(9) and paragraph 517 of the Explanatory Memorandum.

REFERENCES

Anderson, D., Graham, A., Cashmore, J., Bell, F., Beckhouse, K., & Alex, M. (2016). *Independent Children's Lawyers: Views of Children and Young People*. Legal Aid New South Wales.

Australian Human Rights Commission, *Children's Rights Report*, 2015

Australian Institute of Health and Welfare. (2020). *People with disability in Australia: In brief.*

Australian Law Reform Commission. (2018). Discussion Paper 86 – *Review of the family law system*. https://www.alrc.gov.au/wp-content/uploads/2019/08/dp86_review_of_the_family_law_system_4.pdf

Australian Law Reform Commission. (2019). Report 135 – Family Law for the Future: An Inquiry into the Family Law system. https://www.alrc.gov.au/wp-content/uploads/2019/08/alrc_report_135_final_report_web-min_12_optimized_1-1.pdf

Australian Psychological Society. Submission to Australian Law Reform Commission in response to Issues Paper 48. (Submission 55). https://www.alrc.gov.au/wp-content/uploads/2019/08/family-law_-55._australian_psychological_society_submission.pdf

Carson, R., Dunstan, E., Dunstan, J., & Roopani, D. (2018). *Children and young people in separated families: Family law system experiences and needs*. Melbourne: Australian Institute of Family Studies

Family Law Act 1975 (Cth)

Family Law Council. (2015). *Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems – Interim Report*

Family Violence Protection Act 2008 (Vic)

Fehlberg, B. & Millward, C. (2014). Family violence and financial outcomes after parental separation. In Hayes, A. & Higgins, D. (Eds.) *Families, policy and the law: Selected essays on contemporary issues for Australia* (1 ed., pp. 235-243) Australian Institute of Family Studies.

Francia, L., Millear, P. & Sharman, R. (2019). Addressing family violence post separation – mothers and fathers' experiences from Australia. *Journal of Child Custody*. 16:3, 211-235, DOI: 10.1080/15379418.2019.1583151

House of Representatives Social Policy and Legal Affairs Committee. (2017). *A better family law system to support and protect those affected by family violence*. https://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/FVlawreform/Report

Koleth, M., Serova, N., & Trojanowska, B. K. (2020). *Prevention and safer pathways to services for migrant and refugee communities: Ten research insights from the Culturally and Linguistically Diverse Projects with Action Research (CALD PAR) initiative* (ANROWS Insights, 01/2020). Sydney, NSW: ANROWS.

Laing, L. (2017). Secondary victimization: Domestic violence survivors navigating the family law system. *Violence Against Women*, 23(11), 1314–1335. DOI:10.1177/1077801216659942

Lieberman, A., Zeanah, C., & McIntosh, J. (2011). Attachment perspectives on domestic violence and family law. *Family Court Review*. 49. 529 - 538. 10.1111/j.1744-1617.2011.01390.x.

Law Council of Australia. (2018). Submission to the Senate Legal and Constitutional Affairs Committee on the Family Law Amendment (Parenting Management Hearings) Bill 2017. https://www.lawcouncil.asn.au/publicassets/c9ad977e-3318-e811-93fb-005056be13b5/3400%20-%20FLA%20Parenting%20Management%20Hearings%20Bill%202017.pdf

Law Council of Australia. (2018). Submission to Australian Law Reform Commission in response to Issues Paper 48 (submission 43). https://www.lawcouncil.asn.au/publicassets/674e2f97-7b6f-e811-93fb-005056be13b5/3440%20-%20Review%20of%20the%20Family%20Law%20System%20%E2%80%93%20Issues%20Paper%2048.pdf

Lu, M., Mangahas, X., & Nimmo, J. (2020). *Domestic and Family Violence in Culturally and Linguistically Diverse (CALD) Communities*.

Maher, J. M., Spivakovsky, C., McCulloch, J., McGowan, J., Beavis, K., Lea, M.,…Sands, T. (2018). *Women, disability and violence: Barriers to accessing justice: Final report* (ANROWS Horizons, 02/2018). Sydney: ANROWS

Nancarrow, H., Thomas, K., Ringland, V., & Modini, T. (2020). *Accurately identifying the "person most in need of protection" in domestic and family violence law* (Research report, 23/2020). Sydney: ANROWS.

Reeves, E. (2020). Family violence, protection orders and systems abuse: views of legal practitioners. *Current Issues in Criminal Justice*. 32:1, 91-110, DOI: 10.1080/10345329.2019.1665816

Relationships Australia National Office. (2017). Submission to the House of Representatives Social Policy and Legal Affairs Committee into a better family law system to support and protect those affected by family violence. https://www.relationships.org.au/about%20us/submissions-and-policy-statements/a-better-family-law-system-to-support-and-protect-those-affected-by-family-violence-relationships-australia2019s-response-to-the-parliamentary-inquiry

Relationships Australia National Office. (2018). Submission to Australian Law Reform Commission in response to Issues Paper 48.

https://www.relationships.org.au/about%20us/submissions-and-policy-statements/australian-law-reform-commission-review-of-the-family-law-system-issues-paper-released-14-march-2018-submission-from-relationships-australia

Relationships Australia National Office. (2018). Submission to Australian Law Reform Commission in response to Discussion paper 86. https://www.relationships.org.au/about%20us/submissions-and-policy-statements/australian-law-reform-commission-review-of-the-family-law-system

Relationships Australia, Survey results, September 2018: *Hearing the voices of children in the Family Court* https://www.relationships.org.au/what-we-do/research/online-survey/september-2018-hearing-the-voices-of-children-in-the-family-court

Relationships Australia National Office. (2018). Submission to the inquiry of the Senate Standing Committee on Legal and Constitutional Affairs into the Federal Circuit and Family Court of Australia Bills 2018. https://www.relationships.org.au/about%20us/submissions-and-policy-statements/submission-inquiry-into-bills-relating-to-the-federal-circuit-court-and-the-family-court-of-australia

Relationships Australia National Office. (2020). Submission to Parliamentary Joint Select Committee on Australia's Family Law System. https://www.relationships.org.au/about%20us/submissions-and-policy-statements/joint-select-committee-on-australia2019s-family-law-system-2013-relationships-australia-national-office-submission

Relationships Australia National Office. (2020). Submission to the inquiry of the Senate Standing Committee on Legal and Constitutional Affairs into the Federal Circuit and Family Court of Australia Bill 2019. https://www.relationships.org.au/about%20us/submissions-and-policy-statements/federal-circuit-and-family-court-of-australia-bill-2019-submission

Relationships Australia National Office. (2020). Submission to the inquiry of the House of Representatives Standing Committee on Social Policy and Legal Affairs into Family, Domestic and Sexual Violence. https://www.relationships.org.au/about%20us/submissions-and-policy-statements/submission-24-july-2020-to-the-house-of-representatives-standing-committee-on-social-policy-and-legal-affairs-inquiry-into-family-domestic-and-sexual-violence

Relationships Australia National Office. (2021). Submission to the review of the operation of the direct cross-examination ban, as provided for by sections 102NA and 102NB of the *Family Law Act 1975* (Cth). https://www.relationships.org.au/pdfs/Reviewofthecrossexaminationban_260521.pdf

Relationships Australia South Australia. (2018). Submission in response to ALRC IP48 (submission 62).

Rogers v R [1994] 181 CLR 509

Royal Australian and New Zealand College of Psychiatrists, submission to the Australian Law Reform Commission review of the family law system. (2017).

Tayton, S., Kaspiew, R., Moore, S., & Campo, M. (2014). Groups and communities at risk of domestic and family violence. Melbourne: Australian Institute of Family Studies. https://aifs.gov.au/publications/groups-and-communities-risk-domestic-and-family-violence

United Nations General Assembly. (1989). *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: https://www.refworld.org/docid/3ae6b38f0.html [accessed 7 June 2021]