



30 January 2018

Senator the Hon Ian Macdonald, Chair  
Senator Louise Pratt, Deputy Chair  
Senate Standing Committee on Legal and Constitutional Affairs  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Dear Senator Macdonald and Senator Pratt

**Re: Family Law Amendment (Parenting Management Hearings) Bill 2017**

Thank you for the opportunity to submit to the committee our observations and comments on the *Family Law Amendment (Parenting Management Hearings) Bill 2017* (the Bill).

The Eastern Domestic Violence Service (EDVOS) is the lead family violence service in Melbourne's Eastern Metropolitan Region covering seven local government municipalities and a population of approximately 1.02 million.

EDVOS works to keep women and children alive.

With a staff of 90, EDVOS receives state and federal funding and has an annual budget of approximately \$10.5 million.

We have developed our expertise over 23 years and we work closely with the Department of Health, Attorney Generals and a network of service providers.

We also work closely with Victoria Police, co-chairing the Risk Assessment Multidisciplinary Panels (RAMP) for our region and we auspice our sector's Regional Family Violence Partnership Network connecting all services addressing family violence in our region including the local Magistrates' Courts.

EDVOS is not just a counselling service. We provide the spectrum of services to survivors of family violence from prevention to crisis intervention and recovery.

This includes risk assessment and safety planning, information, case management, court support, community education and flexible support packages for women and children.

We receive approximately 10,000 referrals per year. Every time Victoria Police attend a family violence incident in our region, they send EDVOS a referral. We contact the family, conduct risk assessments, provide safety plans and on-going case management.

We support women and children on their path to a safer, stable, more secure future.

Every day, EDVOS staff support women to navigate family law and the court system.





We support women at all stages of intervention order and family law proceedings, including liaising with court personnel, registrars and police while also providing emotional support at a very stressful time and place.

In 2015/16, we provided 8,600 women and children with urgent support, helped 556 women through the Court Program, and referred 271 women and their families to the Repeat Police Attendance and High Risk Response programs.

Some of these women were in imminent danger of death or serious harm.

### **Family Law Amendment (Parenting Management Hearings) Bill 2017**

EDVOS is uniquely positioned to work with the committee, informed by two decades at the coalface, with a respected and experienced management team, backed by a sophisticated administrative framework.

EDVOS strongly supports the Bill in its present form.

#### **Experience Threshold**

We are delighted that the Principal Panel Member must have at least five years experience in dealing with matters relating to family violence.

We also support non-legal Panel members having at least five years experience working with families or children and, have specialist knowledge and skills in one or more fields including psychology, family violence, mental health and child development.

Currently the majority of judicial officers in our family law system have no formal qualifications or experience in child development, psychology or family violence.

One could argue that this need not be a requirement as there are expert witnesses. In our view however, the quality of expert witnesses in our family law system is not sufficiently regulated.

We believe addressing the leadership qualities and experience of judicial officers will help achieve better outcomes for families.

#### **An Inquisitorial System**

EDVOS strongly supports trialing an inquisitorial system in family law.

Essentially the adversarial system has not worked. Pitting one parent against the other leads to greater conflict between parents, creating a negative and irreparable impact on their parenting relationship and causes harm to their children.

Moreover, we find that the adversarial system is embraced by people with high conflict behaviours, in particular coercively controlling fathers who thrive in it.

We find these men use the family law adversarial system as a means to harass, control and abuse their former partners. They issue countless proceedings, file pages of court documents detailing many falsehoods and seek unreasonable orders. Women are forced to attend court numerous times requiring time off work and child care. They spend many hours





reading distressing court documents detailing falsehoods and twisting the truth. Often at a financial disadvantage, they are forced to spend large sums of money on lawyers to prepare their responding court material and to represent them in court.

Commonly both parties run out of money and the male perpetrator will continue to file material in the court as a litigant in person. We have seen many perpetrators become 'bush lawyers' and make a sport out of it, often helping other men harass their former partners by assisting them with preparing court documents and giving them tips. Some of the harassed women become 'empty shells' exhausted by the experience. Tragically, some give up and hand over the children.

We are hoping that the inquisitorial approach will put a stop to this behaviour and reduce the high cost of legal proceedings.

### **Keeping People Safe and Intervention Orders**

We firmly support Parenting Management Panels hearing matters involving allegations of family violence, a history of family violence and intervention orders.<sup>1</sup>

The present adversarial system has failed to keep people safe or address family violence. Typically, only 5% of matters reach a final hearing. Parties do not get in the witness stand and have their evidence tested until the final hearing. Due to the high cost of court proceedings and long delays, the vast majority of matters settle at interim hearings where Judges make orders 'on the papers' without listening to the parties' circumstances.

For example, we find that our clients file material in court detailing family violence and risk. The male perpetrator will then file material denying the allegations. Judges make orders at interim hearings without testing the evidence and hence allegations of family violence are not properly examined and the risk is left unaddressed.

We envisage that the inquisitorial system will address allegations of family violence from the outset. Panel members will be able to ask questions and enter into discussions with the parents from the first hearing. The Panel member with expertise in family violence will be able to conduct a risk assessment by asking the parties questions and observing their behaviour. The member with expertise in child development will be able to assess the impact or likely impact of the violence on the children. Arrangements can be put in place from the outset addressing the parties' risk, safety and wellbeing. We anticipate family violence victim survivors will be more protected in the inquisitorial system.

### **Removal of Legal Representation**

We welcome the removal of legal representation at Panel hearings. While the aim of legal representation is to "level the playing field", this has not been the practical outcome.

A culture has developed in our family law system of getting through as many cases as possible, which leads to overlooking allegations of violence as there simply is not enough time. There are too many matters in courts, long delays and proceedings are very

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<sup>1</sup> In New South Wales it is formally known as an Apprehended Violence Order, in South Australia and Victoria it is called an Intervention Order, in Queensland it is a Domestic Violence Protection Order, in Western Australia it is a Restraining Order, in Tasmania it is a Family Violence Order and in the Northern Territory and the ACT it is a Domestic Violence Order.



expensive. It is common practice for lawyers to recommend women agree to 'the standard children's orders', regardless of the woman's concerns about their children's safety or wellbeing. In the adversarial system there will never be enough time to properly hear all these matters.

In an inquisitorial system, we anticipate that women who are guided by the direction of a Panel with expertise in family violence, child development and the law, will be in an enhanced position to make decisions in their children's best interests. We need to put the safety of the family first.

### **Conclusion**

The Legal and Constitutional Affairs Legislation Committee is in a position to make historic, game changing policy in providing an alternate, efficient, fair and safe process for promptly resolving parenting disputes.

There is a growing demand from the community for action and leadership.

This Bill is an opportunity for the Commonwealth Government to provide improved outcomes for thousands of Australian families through a more flexible and inquisitorial model that better addresses disputes and protects vulnerable families.

We also advocate strongly for one of the Parenting Management Panels to be stationed at our local registry at Dandenong in Victoria. It is a locality with a high level of diversity, low socio economic demographics and will receive strong support from EDVOS and our partner service providers.

We would welcome the opportunity to speak with committee members and to work collaboratively on policy change.

Thank you again for the opportunity.

Yours sincerely,

Jenny Jackson  
Executive Director