

8 March 2023

Family Law Amendment Bill Proposal

Central Victoria's leading family violence response agency, the Centre for Non-Violence (CNV) welcomes the Federal Government's steps to overhaul the family law system to ensure children's wellbeing and safety remain central when making parenting arrangements.

CNV is encouraged by the proposed amendments outlined in the Family Law Amendment Bill 2023 that seek to 'better recognise and respond to the impacts of family violence'¹ and in particular, providing a focus on ensuring children's safety and wellbeing where family violence is present. These changes impact a number of areas within the Family Law and its systems, including providing greater powers by the courts to stop harmful proceedings, improved case management procedures to better support victim survivors (both protective parents and children in their own right) and new rules preventing perpetrators from accessing sensitive information, such as medical and counselling records of victim survivors – an act that has resulted in court sanctioned violence and abuse for far too long. Importantly, the proposed amendments also seek to repeal the provisions of shared responsibility where children's safety and wellbeing is impacted by family violence.

As highlighted in the recent Royal Commission into Family Violence, it is imperative children are recognised as victim survivors in their own right; and to ensure children's needs are met and voices heard, will require driving systems change. As we noted in our Joint Submission to the National Plan in 2021², the intersection between family law and child protection delivers some of the most unsafe conditions for women and children in our communities, and our efforts as a leading family violence prevention and support service remains steadfastly committed to keeping children safe with their protective parent.

Within this context, CNV supports the proposal to repeal the presumption of equal shared responsibility (Section 61DA) and Section 65DAA provision of equal, substantial and significant time of the Family Law Act. These changes hold the potentiality - if correctly supported and applied - to keep the perpetrator in view when considering the safety and wellbeing of children at the time of applying court orders.

Under the current system, these provisions are often misinterpreted, leading parents to negotiate parental arrangements from an incorrect assumption of entitlement; focusing the needs and wishes of the parent over the best interests, wellbeing and safety of the child. And as outlined by the Position Summary of the Women's Legal Services Australia (WLSA) the presumption of equal shared parental responsibility must be 'removed on the basis that it incentivises violent fathers to litigate through the family law courts, enables violent men to exert ongoing power and control, and has

¹ Attorney Generals Department 2023. 'Public Webinars – Family Law Amendment Bill 2023', email correspondence, 13 February.

² The Loddon Consortium for Gender Equality and Violence Prevention 2021. 'Joint Submission to the National Plan to Reduce Violence against Women and Children', 20 July.

created a well-entrenched community misunderstanding that both parents are entitled to equal time regardless of violence and abuse.³

CNV also welcomes the proposed measure of a standalone best interests provision to ensure courts when making arrangements, consider the best interests of Aboriginal and Torres Strait Islander children – such as opportunity to connect with, and, maintain connection to family, community, culture and country. Relatedly, the amendment to subsection 4(1AB): ‘Definition of ‘member of the family’ and ‘relative’ to provide a definition of family member and relative that is inclusive of Aboriginal and Torres Strait Islander family and kinship relations is an important and long overdue step in working towards systems change that can achieve effective and positive outcomes for Aboriginal and Torres Strait Islander children, their families and community.

However, there still remain gaps. Ensuring the safety and wellbeing for victim survivors requires nuanced approach that recognises the intersectionality of oppression – including representation and self-determination. And this is where we ask the government to review reforms with a people with disability lens. As succinctly outlined by Women with Disability Australia (WWDA):

In Australia, the legal definition of ‘domestic violence’ varies across jurisdictions and most do not contain definitions which do justice to, nor encompass, the range of domestic/family settings in which women and girls with disability may live or occupy. They do not contain definitions which capture the range of relationships and various dimensions and experiences of domestic and family violence as experienced by people with disability, (particularly women and girls with disability).⁴

The proposed Family Law Amendment Bill goes some way in not only recognising the importance of children’s safety and wellbeing, but also the need for systems change to ensure that the law – and its operations - is working to better support and promote children’s needs and wishes. Within this context, consideration then must be given to building capacity and capability within the family law system, so that everyone, including judges and family court writers is family violence informed, trauma informed, disability informed and culturally safe with a child rights focus. This includes adequate and committed funding for supporting children navigating the system such as building in greater access to trained and informed Independent Children’s Lawyers and Indigenous Liaison Officers in courts as well as pathways made available for victim survivors and their families to access family violence support services.

Finally, CNV is committed to amplifying the voices of women and children, and calls on all levels of government to recognise the importance of undergoing legislative and systems changes in order to place greater focus on addressing attitudes that excuse and condone violence against women and children, in all its forms. An overhaul of our justice system is a necessary part of this work.

Centre for Non-Violence can be contacted on 1800 884 292 | The Orange Door Loddon can be contacted on 1800 512 359 | The 24-hour statewide safe steps family violence crisis response line is 1800 015 188 | Men’s Referral Service 1300 766 491 | In an emergency, call 000 | For information, visit: www.cnv.org.au/we-are-here-to-help

Further Information, please contact:

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³ WLSA 2023. ‘Exposure Draft of the Family Law Amendment Bill 2023’, Position Summary, <https://www.wlsa.org.au/wp-content/uploads/2023/02/WLSA-Position-Summary-Exposure-Draft-of-the-Family-Law-Amendment-Bill-2023.pdf> [Accessed: 22 February 2023]

⁴ WWDA 2023. ‘Submission to the Family Law Amendment Bill 2023’, shared via email (27/02/2023).