



14 January 2011

Public Consultation: Family Violence Bill
Family Law Branch
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

Email: familyviolencebill@ag.gov.au

Dear Mr McClelland,

Proposed Family Violence Amendments

1. We are writing to express our support for the changes to the *Family Law Act 1975* (**the FLA**) proposed in the draft Family Law Amendment (Family Violence) Bill 2010 (**the Bill**) and to make some additional submissions.
2. WLS NSW is a community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims compensation, care and protection, human rights and access to justice.
3. In summary:
 - we strongly support the Federal Government's moves to provide better protections for people who have experienced family violence within the family law system and believe that the proposed amendments are essential to place safety and protection of children and family members at the forefront of the FLA, but that further changes are needed;
 - we support the submission made by Women's Legal Services Australia and the Australian Women Against Violence Alliance, to which we have made a significant contribution;
 - further changes are needed immediately such as amendments to the concept of equal shared parental responsibility and its link to spending time arrangements for children;



Women's Legal Services NSW PO Box 206 Lidcombe NSW 1825

Administration: (02) 8745 6900 Fax: (02) 9749 4433 Website: www.womenslegalsw.asn.au

Women's Legal Resources Limited ACN: 002 387 699 ABN: 88 002 387 699

- further work must be undertaken to inquire into and improve the efficacy of the family law system and its response to family violence in relation to family law property issues;
- further work must be undertaken in relation to the injunctive powers of the family law courts; and
- we welcome the announcement of the additional inquiries into Aboriginal and Torres Strait Islander and other Culturally and Linguistically Diverse Communities experiences of the family law system.

Key changes we support

4. In particular, we strongly support:

- broadening the definition of 'family violence' to include a wider range of behaviour and removing the objective test of 'reasonableness' so that family violence can be properly considered whenever the victim actually fears for their safety. However, we are concerned that the definition of family violence is limited to behaviour included on the list. We think that the behaviour should be provided as examples so that other forms can be taken into account in individual cases;
- taking children's rights into account;
- a broader definition and understanding of child abuse;
- prioritising family violence when considering what is in the best interests of the child;
- removing the friendly parent provision; and
- repealing section 117AB about costs orders relating to false allegations or denials.

Further changes that are needed in relation to children matters

5. We believe that there are a number of changes needed immediately that have not been addressed in the Bill. We urge you to consider amendments to:

- the presumption of equal shared parental responsibility;
- the concept of equal shared parental responsibility;
- the link between equal shared parental responsibility and equal time/substantial and significant time arrangements; and
- the 'one size fits all' approach in which it is assumed that equal time and substantial and significant time arrangements are best for children.

Family violence and family law property matters and injunctive relief

6. Family violence impacts all aspects of family law proceedings including property disputes and injunctive relief. As such it is difficult to make submissions about reforms to parenting matters in isolation from proposals for change about how family violence be taken into account in property proceedings or when making injunctions for personal protection.

7. We support the recommendation for the Federal Government to initiate an inquiry into how family violence is dealt with in property proceedings under the FLA. We submit that the scope of any such inquiry also extend to injunctive powers under the FLA and consider the specific disadvantages which may arise if there are parenting and property matters to be resolved in circumstances of family violence (see Recommendation 17-2 of the Australian Law Reform Commission's report, *Family Violence – A National Legal Response*, ALRC 114, 2010).

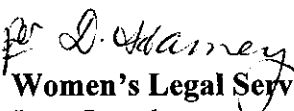
Filing fees

8. We call for an immediate review of recent changes to the fee structure for matters filed in the Federal Magistrates Court or Family Court. As of 1 November 2010, applicants in these jurisdictions can no longer seek a waiver or exemption of court fees. If eligible for a fee reduction clients must now pay a minimum of \$60 to file a range of documents, such as applications and responses, and consent orders require payment of a filing fee of \$80.
9. We submit that these fee changes may place children at greater risk if safety is sacrificed due to a cost barrier. For example, economically and socially disadvantaged people who may previously have elected to formalise a parenting plan into consent orders to gain the benefits of certainty and enforceability may now not be able to afford the filing fee.
10. Additionally the imposition of a minimum flat fee is likely to have a disproportionate impact on victims of violence as they often progress straight to court in circumstances where family dispute resolution is inappropriate.

Conclusion

11. We urge you and the Federal Government to act now in response to the evidence-based research you have commissioned in the past 18 months and the promises you have made to address the serious problem of family violence in the family law system. We strongly recommend you pass this Bill expeditiously with our suggested amendments and take steps to comprehensively respond to the recommendations of the Australian Law Reform Commission's report, *Family Violence – A National Legal Response*.
12. If you would like to discuss any aspect of this submission, please contact myself or Edwina MacDonald, Law Reform and Policy Coordinator on 02 8745 6900.

Yours faithfully,


Women's Legal Services NSW
Janet Loughman
Principal Solicitor