

Public Consultation: Family Violence Bill
Family Law Branch
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600
Email: familyviolencebill@ag.gov.au

14 January 2011

Submission on the Family Law Amendment (Family Violence) Bill 2010

Introduction

The Queensland Domestic Violence Services Network (QDVSN) is a network of specialist agencies across Queensland with extensive collective knowledge and expertise in the field of domestic and family violence prevention. Our members provide education, counselling and support services to men, women and children affected by domestic and family violence, for whom appropriate, accessible and effective responses are critical. We make this submission on their behalf. We wish to comment on some aspects of the Bill, as detailed below. However, we urge the Government to also take specific action on initiatives recommended in several recent reports (on which the Bill is based) that are necessary for the effective implementation of the proposed reforms. These are addressed below as 'supporting measures'.

Supporting measures

Specifically, we urge the Australian Government to address the need for a common knowledge base and interpretive framework for domestic and family violence to be used within service delivery and legal systems across jurisdictions (see recommendations from the Family Law Council 2009 and the Australian and NSW Law Reform Commissions 2010). We also urge the Australian Government to take steps necessary to ensure that the multi-disciplinary training package for lawyers, judicial officers, counsellors and other professionals working in the family law system, commissioned by the Attorney-General's Department is implemented as intended and on an ongoing basis. Such training and professional development within all levels of the family law system, and across all jurisdictions, is essential to the employment of a common interpretive framework. Together, they will enable a more consistent and seamless response to separating parents and their children, which will have substantial benefits for them and for professionals working in the system.

In addition to a common knowledge base and interpretive framework for lawyers, judicial officers, counsellors and other professionals working in the family law system, we also believe that it is critical for the general public, particularly separating parents, to understand the intent of the Bill and the Government's commitment to ensuring that family court decisions do not compromise the well-being and safety of children and their carers. Therefore, we urge the Australian Government to implement a community education campaign to accompany the reforms to the *Family Law Act 1975* (FLA) that makes its intentions clear.

Comments on specific items of the Family Law Amendment (Family Violence) Bill 2010

QDVSN notes with some concern that the Bill does not address issues that have been raised about the complexity of Part VII of the FLA, and the confusion and unintended consequences arising from the presumption of shared parental responsibility (Chisholm 2009; Kaspiew et al 2010, ALRC/NSWLRC 2010). QDVSN endorses Chisholm's (2009) view that "In considering what parenting orders to make, the court must not assume that any particular parenting arrangement is more likely than others to be in the child's best interest, but should seek to identify arrangements that are likely to advance the child's best interest in the circumstances of each case".

QDVSN **recommends** that the Bill be amended to simply Part VII and removes the presumption of shared parental responsibility.

Item 1: Abuse in relation to a child

It is inappropriate to include the word 'serious' in proposed s4(1)(c) and (d), because The concept of 'serious' psychological harm and neglect is subjective and open to wide interpretation; people working in the family law system will not necessarily have the required expertise to make such determinations. All forms of psychological harm and neglect should be considered serious.

QDVSN **recommends** that the word 'serious/' be removed from proposed s4(1)(c) and (d)

Item: Definition family violence

The Australian and NSW Law Reform Commissions (2010) provide a necessarily detailed definition of family violence that addresses issues raised during their extensive consultation and, if adopted, their recommendations would address the problems of cross-jurisdictional inconsistencies in the way family violence is defined and responded to. The definition provided by the Commissions is an excellent expression of the true nature of family violence.

QDVSN **recommends** that the Bill adopt recommendations 6-4 and 7-3 of the ALRC/NSWLRC *Family Violence – A National Legal Response* (2010).

Item 17: Best interests checklist

Currently the Bill is proposing the maintenance of two lists of factors to consider when making decisions about the care of children (with primary consideration to be given to 'protection from harm' and 'meaningful relationship with both parents'). To overcome existing problems with the current FLA, the Bill proposes a new sub-section 60CC(2A) to ensure that if there is conflict between the two primary considerations then 'protection from harm' is the paramount consideration.

QDVSN **recommends** that this is unnecessarily complicated and that the objective can be met by simply providing one list of 'best interest' factors to be considered, with 'protection from harm' being the paramount consideration.

Items 18 and 37: Best interests of the child

QDVSN supports the repeal of sub-section 60CC(3)(c) (the 'friendly parent' provision) and 117AB (the provisions for a mandatory order to pay costs in certain circumstances), which have been deterrents to victims of family violence disclosing such violence and, therefore, leaving children and their carers at risk.

QDVSN **recommends** that Items 18 and 37 (the repeal of s60CC(3)(c) and s117AB) be retained in the Bill.

Item 19: Best interests of the child:

QDVSN supports the proposed removal of the requirement in sub-section 60CC(3)(k) for family violence orders to have been final or contested, but believes the proposal should be extended to include past orders as well.

QDVSN recommends that the Bill retain the proposed removal of the current requirement in sub-section 60CC(3)(k) for family violence orders to have been final or contested, and that the proposal be extended to include past family violence orders (whether final or contested).

Thank you for the opportunity to comment on the exposure draft of the Family Law Amendment (Family Violence) Bill. Our comments are limited to the issues that we see as critical to an effective response to family violence in the context of family court deliberations and urge the Australian Government to adopt our recommendations.

Yours sincerely Amanda Lee-Ross Secretary

References

Australian Law Reform Commission and NSW Law Reform Commission 2010 *Family Violence – A National Legal Response* Commonwealth of Australia

Chisholm, R. (2009) *Family courts violence review* Australian Government, Attorney-General's Department

Family Law Council 2009 *Improving responses to family violence in the family law system: An advice on the intersection of family violence and family law issues*. Family Law Council – Family Violence Committee

Kaspiew, R., Gray, M., Weston, R., Moloney, L. Hand, K. and Qu, L.(2009) *Evaluation of the 2006 family law reforms* Australian Institute of Family Studies.

