

Family Law Reform
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

Friday 24 February 2023

Dear Secretary,

Re: Consultation on the Family Law Amendment Bill 2023

Please accept this letter as Domestic Violence NSW's submission in response to the exposure drafts for the Attorney-General's Department's consultation on the Family Law Amendment Bill 2023. We consent to our submission being made public.

Domestic Violence NSW (DVNSW) endorses in full the submissions and recommendations made by Women's Legal Service Australia (WLSA) and Legal Aid NSW.

The safety of women and children needs to be paramount in family law matters. DVNSW support all recommendations made by Women's Legal Service, particularly to:

- Prioritise the safety principle in the proposed amendments to the best interests of the child and the overarching purpose.
- Support the removal of the presumption of equal shared parental responsibility.
- Commence the amendments as soon as possible, including current matters with current interim orders, awaiting a final hearing.

About Domestic Violence NSW

Domestic Violence NSW (DVNSW) is the peak body for specialist domestic and family violence services in NSW. We have over 150 member services across NSW.

DVNSW members represent the diversity of specialist services working in NSW to support women, families and communities impacted by domestic and family violence. Our member organisations include crisis and refuge services, specialist women's legal support services, transitional accommodation and community housing providers, Aboriginal controlled organisations and specialist culturally and linguistically diverse organisations, men's behaviour change programs and networks, women and children's support services, women's health centres and Safe at Home programs.

DVNSW works to improve policy and legislative responses to domestic and family violence and to eliminate domestic and family violence through advocacy, partnerships and the promotion of good

practice. We sit on over 50 advisory groups and committees and provide regular, informed advice to all levels of government. We are a member of the National Women’s Safety Alliance and work alongside other peak organisations such as Safe and Equal in Victoria.

Family Law Amendment Bill 2023

DVNSW welcomes the Family Law Amendment Bill 2023 and applauds the Attorney General’s Department for this incredibly important step in the right direction. Domestic and Family Violence and Family Court proceedings are inextricably linked, with 2021 research demonstrating that up to 80% of family law cases allege at least one major risk factor, including family violence.¹ As such, the safety of victim-survivors and their children needs to be of paramount concern in all Family Court proceedings.

DVNSW further applauds the decision to remove the presumption of equal shared parental responsibility, with this having been recommended by advocates since it was introduced. As pointed out by the Australian Law Reform Commission (ALRC), the presumption has long been misunderstood, allowing it to be exploited by violent fathers to exert ongoing power, control, and abuse.² As a result, women find themselves in a situation where they may be responsible for caring for and rearing the children for the significant majority of the time but continue to be required to engage with their violent ex-partner due to shared decision-making obligations. This may also leave the child/ren open to further violence and abuse through the decisions made or restrictions made by the father, and continued exposure to domestic violence. As demonstrated in case studies provided by DVNSW members, the ways in which domestic and family violence offenders manipulate the presumption of equal shared responsibility are many, complex and harmful:

“I had one client whose child was low functioning special needs. He required a significant amount of care, from NDIS and medication to physical activities and mum’s caretaking routine. However, the father was in complete denial that the child had any special needs at all, and equal shared parental responsibility meant that it was forever a battle to ensure the child had the care he required. While it was being made difficult for mum, the overall impact was 100% detrimental to the child.”

“Schools are often used as a tool of control. For example, I had a case where the child was talented at basketball, but not that great and absolutely didn’t want to go to a specialist school. But dad was absolutely hell bent on the child going to a private specialist sports high school that specialised in basketball. Not only was this school a long way from mum’s house, but it was also incredibly expensive. But equal shared parental responsibility meant that he was able to push for the child to be sent to this specialist school that he didn’t even want to go

¹ Federal Circuit and Family Court of Australia, 2021. *Media Release: New Court initiatives help uncover higher prevalence of family violence and other risks*. Media Release. https://www.fcfa.gov.au/sites/default/files/2021-11/mr101121_0.pdf.

² Australian Law Reform Commission (ALRC), 2019. *Family Law for the Future — An Inquiry into the Family Law System: Final Report*, March, Report 135, https://www.alrc.gov.au/wp-content/uploads/2019/08/alrc_report_135_final_report_web-min_12_optimized_1-1.pdf.

to, whilst forcing mum to deal with the distance day-to-day, as well as costs that she could not afford.”

Moreover, this provision has created a problematic and deeply rooted community misconception that both parents are entitled to shared time with children, despite the ongoing risk of significant harm, violence, and abuse.

It is also important to note the Amendment Bill’s recognition and acknowledgment of safety for each person who has parental responsibility for the child. This recognises two long-known truths in the domestic violence sector: first, for the best interests of the child to be upheld, the safety of the other parent is paramount, and second, that violence perpetrated against a mother is not only relevant to a child’s safety but increases the risk of violence against the child.³ The consequences of these truths being ignored are evident in the recent matter *Carter & Wilson* [2023] FedCFamC1A 9 (10 February 2023).

DVNSW also welcomes the Amendment Bill’s simplification and focus of the best interests of the child, whilst also supporting the amendments and contingencies recommended by WLSA. The Bill’s focus on the best interests of the child and a child’s right to express views is in line with the long-standing advocacy for children to be treated as victims in their own right. This amendment has been applauded by DVNSW members, with one stating:

“Children must be treated as whole people, and given the opportunity to speak for themselves. They must be asked the right questions, in a trauma, sexual, domestic and family violence-informed, culturally safe, and responsive way, and they must be listened to. Children must be afforded the right to choose whether they have visits with a parent. If a child does not feel safe around a parent, and there have been police reports made about that parent, a child should not be forced to see that parent”.

Victim-survivor advocate and strong Yorta Yorta woman Amanda Morgan has asked for her name to be identified in case study below. She remembers her experience of forced supervised visitation after her experience of child sexual abuse by her father:

“In the two years following our police report, I was forced to have supervised visitation with my perpetrator. My sister volunteered to be the supervisor because she wanted to protect me. Neither I, nor any of my family members were offered counselling in relation to those visits, or even a professional to debrief with. I can only imagine the anxiety that my mum suffered during this period, having to watch my siblings and I go off on these visits. Those visits and the retraumatisation we experienced was confusing, painful, dangerous, and most poignantly, avoidable.

³ Herrenkohl, T.I., Sousa, C., Tajima, E., Herrenkohl, R.C., & Moylan, C.A.2008, ‘Intersection of child abuse and children’s exposure to domestic violence’. *Trauma, Violence, & Abuse*, vol. 9, no. 2, pp. 84-99.

When I was 12 and still living in New South Wales, the perpetrator applied to the QLD Family Court for further visitation orders. This was distressing for my family and extended family who felt that the perpetrator was using this application as a tool to manipulate and control our lives.”

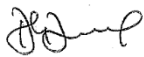
The latter point made by Amanda demonstrates the reasoning behind changes to harmful proceedings orders in the Amendment Bill. However, DVNSW shares WLSA’s concerns around safety if victim-survivors are not aware of leave orders. As such, DVNSW supports WLSA’s suggested amendments regarding notification.

The changes proposed by the Amendment Bill are an incredibly important start to many required reforms as outlined in [DVNSW’s recommendations for the draft National Plan](#). For example, the reforms to child support payments are required, as explored in the Australian Government’s 2015 inquiry.⁴ As stated by a DVNSW member:

“The presumption of shared equal responsibility can cause difficulties, especially when the children are young or when there are child protection concerns. I have also seen it in the context of child support payments. Many parents settle for 50% custody arrangements, because then they can avoid paying child support. Many family law issues and incidents arise after one parties has applied for child support. Even though the bill is not about the child support, the motivation needs to be tested in assessing the presumption of equal responsibilities. Sadly, in many cases it is to avoid child support.”

Thank you for considering our submission to this consultation. If you have any questions, please contact CEO Delia Donovan on ceo@dvnsw.org.au or Policy, Advocacy and Research Manager, Renata Field on renata@dvnsw.org.au.

Yours sincerely



Delia Donovan, Chief Executive Officer, DVNSW

⁴ Parliament of Australia, 2015. *From conflict to cooperation: Inquiry into the Child Support Program*. 20 July, <https://www.aph.gov.au/childsupport>.