

WESTERN INTEGRATED FAMILY VIOLENCE PARTNERSHIP
RESPONSE TO THE CONSULTATION ON
THE PROPOSED FAMILY LAW AMENDMENT (FAMILY
VIOLENCE) 2010 BILL

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Introduction:

The Western Integrated Family Violence Partnership welcomes the opportunity to contribute to the Family Law Amendment (Family Violence) Bill 2010 and support this critical area of Legislation, with particular reference to women and children who experience family violence.

About Western Integrated Family Violence Partnership (for women and children)

The Integrated Family Violence Services System (IFVSS) is part of the Victorian State Government's strategy to reduce the incidence of family violence, the leading contributor to death, disability and illness for women aged 15-44 in Victoria.

The primary aim of the Victorian family violence reform was to introduce an integrated service response across community services - including community health, family violence services, police and courts - that improve the safety of women and children and to hold violent men accountable for their actions.

Since July 2006 women and children affected by family violence in the Western Metropolitan sub-region have been supported by a consortium of local agencies including Women's Health West, Western Region Health Centre and MacKillop Family Services. In 2010, Molly's House and McAuley Community Services for Women joined the partnership. This integrated multi-agency approach provides a range of support services, counselling and group work programs. Better communication between agencies will ensure that women receive an appropriate, gendered response, regardless of the pathway by which they receive assistance.

Like many other specialist family violence services we have a special interest in ensuring that women and children experiencing family violence are adequately protected in the family law process. Many women and children accessing our services experience disadvantage such as women from cultural and linguistically diverse backgrounds, Aboriginal and Torres Strait Islander women, women with disabilities and women from rural and remote communities and it is our aim that they do not experience further disadvantage through family law processes.

1. Convention on the Rights of the Child

We applaud the inclusion of the International Convention of the Rights of Children and the requirement of decision-makers to take the convention into account.

2. Prioritising Safety of Children – changes to primary considerations

We welcome the intent to the primary consideration of protecting the child from harm being given greater weight above the benefit of having a meaningful relationship with each parent.

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However, this intent would be clarified and strengthened by replacing the two considerations above with the following statement:

- *the need to protect the child from physical and psychological harm from being subjected to, exposed to, abuse, neglect or family violence.*

A list of additional factors for consideration should then include:

- *the benefit of the child of having a meaningful relationship with both of the child's parents*

This amendment gives clear legislative advice that children's right of protection from harm is paramount.

3. Broadening the Definition of Family Violence and Child Abuse

Family Violence

'The Partnership' welcomes the proposal that the definition of family violence is broadened and recognises that the definition closely aligns the definition of family violence in Victorian family violence legislation.

Importantly, the proposed changes include the removal of the test of reasonableness and require that the victim feels fear for their safety and that this would be a subjective test on the victim's actual state of mind.

The broadening of what constitutes a member of a family is also welcomed.

Unfortunately, the definition is a list of behaviours that constitute family violence only and does not draw attention to a key identifier that family violence is a pattern of behaviour used by the perpetrator over time to gain and maintain power and control over their victim/s. Perpetrators often use tactics that are not obvious to others, for example attending all medical appointments, which can be seen by others as supportive but in the context of family violence is a tactic of power and control over a person's basic right to personal privacy.

The practice of identifying the primary intention of power and control is critical in order to successfully counter the risk of perpetrator's using a list of behaviours to make claims of 'mutual family violence' under the family law context. Women's resistance to family violence could be portrayed by the perpetrator as intimidation, threatening behaviour and harassment. Not all women fit the stereotype of a submissive, passive and timid victim (McCloskey K.A and Sitaker M.H (2009) *Backs Against the Wall: Battered Women's Resistance Strategies* London, Routledge).

Nor should the court be swayed by assertions men too are equally victims of family violence and that the experiences of men are the same as women and children. Current research shows a marked difference between the experiences of women and men victims of family violence (Johnson, M.P (2008) *A Typology of Domestic Violence: intimate terrorism, violent resistance and situational couple violence*. New England, Northeastern University Press; Hester, M (2009) *Who does what to whom? Gender and Domestic Violence Perpetrators*, Bristol: University of Bristol in association with the Northern Rock Foundation)

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Child Abuse

The proposed change to the definition of child abuse is promising but is inadequate and must be deepened. 'The Partnership' welcomes the recognition that children are harmed through exposure to family violence.

However, under this definition, exposure is limited to specific incidences or events of physical violence. Current findings regarding the impact of family violence on infants, children and adolescents contradict this narrow definition with their recognition of the cumulative harm of family violence. This distinction is especially important today as child protection agencies are now required to take into consideration cumulative harm when assessing children at risk.

In addition, there is no recognition of harm caused to babies in utero due to violence perpetrated against the mother. This omission is of great concern given that pregnancy is a key risk factor of family violence since victimisation of family violence often begins during pregnancy (Family Violence Risk Assessment and Risk Management (2007) Victorian Government Publication; Graham-Bermann S.A and Edleson J.L (eds) (2001) *Domestic Violence in the Lives of Children: The future of research, intervention, and social policy*. American Psychological Association, Washington).

Therefore, it is important to recognise that all forms of family violence harms children. It is not necessary to restrict the impact on children to physical assault of the victim; often the more insidious behaviour that children witness or experience causes the greatest distress and anxiety.

The Family Law Act must make it clear that victims of family violence cannot be held responsible for not being able to remove children from the violence. The responsibility for children's exposure to violence must rest solely with the perpetrator of family violence, not the victims.

It is also important to recognise that victims' capacity to parent is undermined and impacted upon when women are required to 'positively engage' with the perpetrator who is likely to continue to use family violence tactics to regain or maintain power and control.

It is equally important to recognise that children who are traumatised cannot recover while they continue to be exposed to a perpetrator whose behaviour is causing the trauma. 'The Partnership' provides specialist family violence counselling to children many of whom are forced, by current family law orders, to continue to live with the consequences of family violence through the visitation rights of the perpetrator.

On other occasions counselling has had to be terminated because the children's attendance was exposing them to further abuse. Often perpetrator's feel threatened and interrogate their children about what they may or may not have said 'about them' and others pressure their children and ex-partner to terminate counselling. This may be alleviated if the court would direct children to support specialist children's services rather than expecting the victim to negotiate with their abusive ex-partner.

4. Friendly Parent Provision

We commend and support the removal of the friendly parenting provision. In our experience, women are advised by their lawyers not to disclose family violence because disclosure increases the risk of being judged as the 'unfriendly party'. In one instance that we are aware of, a woman whose safety was being monitored by police through the Western Region High Risk Strategy went against both family violence specialist and police advice and on the advice of her lawyer did not disclose family violence to the family court for fear of losing her children.

5. False Allegations Provision Costs

We support the removal of this section as it fostered a belief and culture that the majority of child abuse and family violence allegations are false.

We assert that Section 117 is sufficient to deal these instances.

6. Equal Shared Parental Responsibility (ESPR)

There should be no presumption of ESPR. The presumption of ESPR shows that family violence is not taken seriously and the removal ESPR is especially important at the interim stage before any assessment of allegations of family violence can be investigated.

The court is not resourced to inform itself about any allegations of abuse or family violence especially at the early stages. The court does not have access to risk assessments or other screening tools. Consequently, the court is not in a position to presume ESPR without placing some families and children at

significant risk of harm. This is especially dangerous as interim orders can be in place for up to two years.

It is therefore critical that the court does not presume ESPR and that decision-makers must only consider the best interests of the child on a case-by-case basis.

'The Partnership' also recommends the court be encouraged to inform itself about family violence by accessing 'expert evidence about family violence' for example, Victoria Family Violence Protection Act 2008. Part 4, Division 3, Section 73.

7. Equal Time or Substantial and Significant Time

Section 65DD stated that if ESPR is ordered, then the court is mandated to consider equal time or substantial and significant time if that time is in the best interests of the child and is deemed workable.

We understand that this section is the most misunderstood and misrepresented and that the community in general believe this section to be simply about time with equal time as the starting point. 'The Partnership' supports a change in wording from 'equal parental responsibility' to 'shared parental responsibility' to clearly separate parenting responsibility from time spent with the child.

We support the Women's Legal Services Australia position that provisions relating to equal time and substantial and significant time be repealed and that decision-makers should only consider arrangements in the best interests of the child on a case-by-case basis.

8. Risk Assessment Framework

The Partnership strongly supports the introduction of a well-resourced risk assessment framework into all parts of the family law system. In Victoria the Common Risk Assessment Framework (CRAF) is used across jurisdictions including police, courts, specialist family violence services and other community agencies. We believe that the success of the Victorian family violence reforms depended on the successful implementation of the CRAF that has encouraged and supported a shared understanding of family violence.

9. Mandated Family Violence Training

We encourage the family law system including the judiciary, lawyers, advisors and dispute resolution practitioners to undertake comprehensive training on the dynamics of family violence. 'The Partnership' is disappointed that the 2010 Bill does not include a provision requiring family law courts and relevant professionals to undertake mandatory family violence training and would see this as a key requirement for staff working in this area in the future.