

Submission to the Family Law Amendment (Family Violence and Cross-examination of Parties) Bill 2017— Public Consultation on Cross-examination Amendment

*(Consultation closes **COB 25 AUGUST 2017**). Please send electronic submissions to familylawunit@ag.gov.au)*

Publication of submissions

Submissions will be published on the Attorney-General's Department website. Please advise if you wish all or part of your submission to remain confidential.

Please prepare your submissions in this template and submit in Microsoft Word format (.doc or.docx) to familylawunit@ag.gov.au. Use of the submission template assists in meeting the Australian Government's commitment to enhancing the accessibility of published material.

The department will consider hardcopy submissions received by mail, but these submissions will not be published on the website.

Please also note that it is an offence under section 121 of the *Family Law Act 1975* (Cth) to disseminate to the public or to a section of the public by any means any account of any proceedings under the Act that identifies:

- a party to the proceedings;
- a person who is related to or associated with a party to the proceedings or is otherwise concerned in the matter to which the proceedings relate; or
- a witness in the proceedings.

Your details

Name/organization (if you are providing a submission on behalf of an organisation, please provide the name of a contact person)

The Centre for Excellence in Child & Family Welfare

Contact details (*one or all of the following: postal address, email address or phone number*)

[contact details redacted]

Confidentiality

Submissions received will be made public on the Attorney-General's Department website unless otherwise specified. Submitters should indicate whether any part of the content should not be disclosed to the public. Where confidentiality is requested, submitters are encouraged to provide a public version that can be made available.

I would prefer this submission to remain confidential (please tick if yes)

Family Violence Task Force
Attorney-General's Department
3-5 National Circuit
Barton ACT 2600
Email: familylawunit@ag.gov.au

25 August 2017

Dear Sir/ Madam,

Submission regarding the proposed amendments to the Family Law Act 1975 (Cth) to address direct cross-examination of parties in family law proceedings involving family violence: Public Consultation Paper

The Centre for Excellence in Family Welfare ('the Centre') is the peak body for child and family services in Victoria. For over 100 years we have advocated for the rights of children and young people to be heard, to be safe, to access education and to remain connected to family, community and culture. We represent over 150 community service organisations, students and individuals throughout Victoria working across the continuum of child and family services, from prevention and early intervention to the provision of out-of-home care.

We know from our members that a large proportion of children and families assisted by community service organisations have direct experience of family violence, and that some of these children and families are involved or have been involved in family law proceedings.

The Centre welcomes attempts to better protect victims of family violence engaging in family law proceedings. In particular, we welcome steps that would prevent a victim of family violence from being placed in a situation where they can be directly cross examined by the alleged perpetrator.

Subsection 102NA(1) of the Exposure Draft would impose a ban preventing an unrepresented party from directly cross-examining, or being cross-examined by, another party if there is an allegation of family violence between them, and one or more of the following are satisfied:

- (a) either party has been convicted, or is charged with, an offence involving violence, or a threat of violence, to the other party;
- (b) a family violence order (other than an interim order) applies to both parties;
- (c) an injunction under section 68B or 114 of the Family Law Act applies to both parties.

Greater consideration should be given to circumstances where there is no existing order in relation to the allegations of family violence. The Victorian Royal Commission into Family Violence has shown that whilst the number of intervention orders in Victoria are increasing, there are still complexities and challenges associated with seeking to obtain an order.

We support proposed subsection 102NB(1) which will give the court discretion to prevent direct cross examination in the absence of an order or convictions as outlined above. However the process and procedure to seek such an order must be simple, easy to understand and not unduly onerous for self-represented parties to complete.

Subsection 102NB provides that if the ban on direct cross-examination applies, and a party is self-represented, any questions the self-represented party would like to ask the other party in cross-examination must instead be asked by a person appointed by the court. However, further detail about the proposed 'court appointed person' is required before the Centre can support the provision. Importantly, will the court appointed person be an independent legal practitioner or will the scheme allow for a friend or person selected by the party to undertake this role?

In situations where allegations of family violence are present it is vitally important that victims are enabled to participate fully in the proceedings before the court and to have access to the highest level of representation. The potential risks to adult and child victims, if unsafe contact is ordered because of an inability to properly cross examine evidence before the court, are considerable. Any proposal to assist self-represented parties where there are allegations of family violence must be adequately funded.

The Centre looks forward to receiving more information about the proposed amendments and their implementation.

Please do not hesitate to contact Georgette Antonas on 9614 1577 if you have any further queries about this submission.

Regards

Deb Tsorbaris
CEO