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)*

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Your details

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

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Your submission

SPRINGVALE MONASH LEGAL SERVICE Inc.

Celebrating 40 years of Working for Justice

Prepared by Springvale Monash Legal Service for the

Family Violence Taskforce
Attorney-General's Department

SUBMISSION TO EXPOSURE DRAFT (JULY 2017) FAMILY LAW AMENDMENT (FAMILY VIOLENCE AND CROSS-EXAMINATION OF PARTIES) BILL 2017

Date Submitted: 25 August 2017

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Introduction

Springvale Monash Legal Service (SMLS) welcomes the opportunity to provide submissions in response to the Draft Bill. While we have attempted to provide some reflections if there was a process solely for assisted cross examination, SMLS would always advocate that victims of family violence should be better resourced and supported (by legal representation) throughout the whole family law process.

SMLS also notes there is currently research being undertaken by the Australian Institute of Family Studies on Direct cross-examination in family law matters and a Parliamentary Inquiry into a better family law system to support and protect those affected by family violence. SMLS believes that these could both provide vital material to ensure the intention and effectiveness of a change to cross examination.

Our organisation

Established in 1973, Springvale Monash Legal Service (SMLS) is a community legal centre that provides free legal advice, assistance, information and education to people experiencing disadvantage in our community. For all of our operation, we have located within the Local Government Area (LGA) of the City of Greater Dandenong. We have been addressing the needs of marginalised community members, the majority who reside within the City of Greater Dandenong and its surrounds. The City of Greater Dandenong is the second most culturally diverse municipality in Australia, and the most diverse in Victoria. People from over 150 different countries reside in Greater Dandenong and 60% of the residents were born overseas. It also has highest number of resettlements from newly-arrived migrants, refugees and asylum seekers in Victoria. Data from the 2011 Census revealed that Greater Dandenong was the second most disadvantaged LGA in Socio-Economic Indexes for Areas (SEIFA) ratings. [1]

SMLS operates a duty lawyer service at various courts in Victoria, including Dandenong Magistrates Court, the Children's Court and provides legal representation at courts and tribunals such as the Victorian Civil and Administrative Tribunal, Fair Work Commission, Federal Circuit Court, Family Court and VOCAT. For most of the 40 years in operation, SMLS has been running a clinical legal education program in conjunction with Monash University's Faculty of Law, whereby law students undertake a practical placement at the legal service as part of their undergraduate degree. Additionally, as a community legal centre, we offer legal assistance as well as an extensive community legal education program that is developed in response to feedback from the range of community engagement and community development activities that we are and have been involved in. For example SMLS has contributed to reforms in family violence laws and practices, access to civil procedure reforms, discrimination towards young community members in their use of public space and their interactions with the criminal justice system, as well as in highlighting the needs of refugees and asylum seekers, particularly unaccompanied humanitarian minors and women escaping family violence.

[1] City of Greater Dandenong, A Profile of Health and Wellbeing in Greater Dandenong <https://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CB4QFjAA&url=http%3A%2F%2Fwww.greaterdandenong.com%2Fdocument%2F26113%2Fhealh-and-wellbeing-profile&ei=pc1nVaPmNdKF8gXg8YGwAg&usg=AFQjCNEXKJVTxEoiuWNm1YyXoYjki34cUw&bvm=bv.93990622,d.dGc>, 2013, (accessed 20 April 2015)

SMLS and Family Violence

SMLS provides a duty lawyer service at the Dandenong Magistrates Court three days a week, positions funded by the Victorian Government. The majority of the clients seen are victims of family violence under the *Family Violence Protection Act 2008* (VIC) (FVPA). The remaining clients are either respondents (i.e. perpetrators of family violence) or persons referred to SMLS for advice regarding parenting arrangements when an Intervention Order (IVO) is in place.

Family Law has been a priority area for SMLS since 1989, when we established a specialised Child Support clinic. We operate a dedicated family law clinic, and in 2014/15 we provided 1,947 casework and advice assistance to family law clients. Our staff have considerable expertise and appear in the Federal Circuit Court, the Family Court and regularly instruct Barristers. Over the last 3 years there has been dedicated focus on the management, structure, internal process and procedure, standard of skills & expertise and defined expectations of family law staff.

Clients are referred into the service for ongoing casework from one of our many advice/outreach sessions unless they are directly referred from our duty lawyer service or Berwick Family Relationship Centre. Since the introduction of these services, our family law services have increased by 328%. As a result of the structure of SMLS services, SMLS family lawyers are highly experienced both in substantive considerations as well as process and procedure. As with all services, our capacity is limited and we aim to assist the most vulnerable in our community, therefore when we accept a client for ongoing casework, family violence forms part of our eligibility criteria, and almost all of our family law clients are those who have experienced FV.

SMLS also has a joint clinic with the South Eastern Centre Against Sexual Assault, which funds a position for a lawyer working 1.5 days per week with victims of sexual assault. SMLS prepares applications to the Victims of Crime Assistance Tribunal (VOCAT) under the *Victims of Crime Assistance Act 1996* (VIC). In the 2013/2014 year, the SECASA lawyer dealt with 54 applications to VOCAT for compensation for injuries suffered predominantly from family violence. Most of these applications involved an alleged perpetrator who met the definition of 'family member' under the FVPA.

1. **Should direct cross-examination only be automatically banned in specific circumstances?**

Direct cross-examination should be banned in all circumstances where there is evidence in the proceedings of family violence deposed in a party's affidavit and/or Notice of Risk. The court should conduct a hearing to make determination at the earliest possible opportunity.

2. **Should direct cross-examination be banned in each of the specific circumstances set out in the new proposed subsection 102NA(1)?**

Direct cross examination should be banned in each of the circumstances set out in addition to an additional circumstances outlined in our submission at "#21 General Comments" where there is evidence of family violence.

3. **Should direct cross-examination be banned in any additional circumstances not referred to in the new proposed subsection 102NA(1)? For example, in the courts' Notice of Risk/ Notice of Child Abuse, Family Violence or Risk of Family Violence.**

There is merit in banning direct cross-examination if a party is being questioned on their filed Notice of Risk. As the party's Affidavit must set out the particulars of the alleged family violence, which includes alleged family violence towards a child, the parties would be examined on their evidence. As the 'Notice of Risk' document details exposure to harm of children from family violence, direct cross examination should be banned where there is evidence the perpetrator has alleged to have exposed the children to harm.

4. **Should any ban on direct cross-examination apply to both parties to the proceedings asking questions of each other, or only to the alleged perpetrator of the family violence asking questions of the alleged victim?**

The ban on direct cross-examination should apply to both parties, as it does in the *Family Violence Protection Act 2008 (Vic)* for contested intervention order hearings where the respondent and affected family member are not permitted to directly cross examine each other. In family law proceedings the family violence experienced by the alleged victim may continue during proceedings particularly if any interim parenting orders limit the alleged perpetrator's time with the child because of family violence. Consequently both parties need to have the opportunity to be cross examined by a lawyer to ensure procedural fairness.

5. **Should the discretionary power only be exercised on application by the alleged victim, or by the courts' own motion, or should the alleged perpetrator also be able to make an application to prevent direct cross-examination?**

For procedural fairness the discretionary power provision in 102NB – "Mandatory Requirements At Court's Discretion" should be triggered when any party to the proceedings makes an application.

6. **Which people would be most appropriate to be appointed by the court to ask questions on behalf of a self-represented person? For example, a court employee not involved in the proceedings, other professionals, lay people.**

The court appointed person should be a lawyer. The lawyer should be appointed specifically for the purposes of cross examination, as in the Victorian intervention order contested proceedings. Legal Aid Commissions in each state would require funding to provide this service, as currently occurs in Victoria, which is means tested. As only between 5 -10% of family law proceedings proceed to trial. Prevention of further trauma being suffered as a result of the abuse of cross examination by a perpetrators, outweighs long-term financial impact of assisted cross examination in matters involving family violence.

We note the white paper refers to the "court appointed person" is only to ask questions on behalf of a party for the purpose of cross examination who is not that party's legal representative and who cannot give legal advice. In our experience, cross-examination cannot be conducted without the cross-examiner having all the background to the dispute and the ability to adduce evidence to ensure fair process. A lawyer can identify strengths and weaknesses in evidence "on the papers" prior to a witness giving evidence. A non lawyer would not be able to do so.

In practice, this model would mean the court appointed non-lawyer for the alleged perpetrator is only permitted to only ask questions to the alleged victim in cross examination put to them by that party. If the person being cross examined is unrepresented, re-examination cannot occur. As re-examination is a critical step in trial proceedings, procedural fairness may not be achieved.

The same method applies for the court appointed person cross examining the alleged perpetrator. A person who has experienced family violence and is in a vulnerable situation is unlikely to be aware of the consequences of poor cross examination to test the evidence which is critical in proving family violence and hence would not know the right questions for the court appointed person to ask.

We understand the Victorian model used in the Magistrates Court is successful as lawyers for both parties are able to adduce evidence and cross examine effectively without causing further distress to the alleged victim.

If the court is to appoint 'a person' for cross examination that person could be called from a pool registered with the court or a Legal Aid lawyer drawn from each state's panel of practitioners experienced in family law practice. As cross-examination may take hours or most of a day the appointed person would need to have read all the court material before commencing cross examination.

We note that the draft Bill applies whether in the Family Court or Federal Circuit Court. As the former hears the most serious matters concerning family violence in the form of child abuse, the evidence is too critical to be dealt with by a non lawyer in cross examination.

The appointed person must not be a non lawyer. Cross examination, being a specific barrister's skill set is usually not even conducted by solicitors in family law trials. A non lawyer who may or may not be properly vetted by the court is unlikely to achieve procedural fairness in adducing evidence from the alleged victim or alleged perpetrator.

7. **What qualifications, if any, should the court-appointed person have?**

The appointed person should, as a minimum, be a solicitor who has practised in family law for 5 years or a barrister practising in family law.

8. **Should any requirements regarding who the court can appoint and their qualifications be included in the Family Law Act?**

The court appointed person and their qualifications should be included in regulations, similar to the *Family Law (Family Dispute Resolution Practitioners) Regulations.* This should set out any requirements (ie qualifications and experience) and a definition of "who is a court appointed person for the purposes of cross-examination?"

9. **Should any further information about the scope of the role of the court-appointed person be included in the Family Law Act? For example:**
    - **how the court-appointed person obtains questions from a self-represented party**
    - **the level of engagement the court-appointed person should have with a self-represented party on whose behalf they are asking the questions**
    - **whether the court-appointed person should be present in court for the whole of the proceedings or just during cross-examination**
    - **what discretion the court-appointed person can exercise (if any) in relation to asking the questions they have been provided by a self-represented party**
    - **whether the court-appointed person can ask any questions of their own (not provided by the self-represented party) during cross-examination**
    - **whether they are under a duty to cooperate with other parties to the proceedings such as an Independent Children's Lawyer appointed in a case, and**
    - **the intersection between the court-appointed person's role and that of the judicial officer.**

In our view, the scope of the role of the court appointed person should be included in the provisions of the Federal Circuit Court Rules and Family Law Rules and not the Act.

This question implies that the party can only give the appointed court person the questions they want to ask. They will not necessarily be the questions that can adduce the evidence required. If the appointed person is merely a "mouthpiece" given a set of questions, and not permitted to ask any more, there is a real risk that crucial evidence may be missed.

Specifically, addressing this point:

a) The court appointed person should meet with the party prior to the hearing, having read both party's affidavit material, child protection reports and any family consultant reports. The person should then take the party through their evidence, the other party's evidence and together formulate the questions to be asked of the other party.
b) The level of engagement for the court-appointed person should be as in a) above with a pre-hearing meeting, ability to follow up with questions for clarification and to be present in court for both party's examination in chief, cross examination and any re-examination.
c) The court appointed person should be present in the circumstances mentioned in b) above.
d) If the court appointed person is a lawyer they will be skilled at cross-examining the party on the evidence "on the papers" and know how to adduce the evidence required to prove their case. Consequently, a lawyer is likely to use their discretion and ask questions outside the pre-set questions by the party providing them. A non lawyer is unable to do this and can potentially cause more trauma to an alleged victim if an inappropriate line of questioning occurs before the judicial officer prevents it. A non lawyer is not able to fully appreciate the duty to the court prevailing over the duty to the client in adducing evidence. There is also a risk a non lawyer will adduce evidence that is inadmissible that if it had been put correctly, would be admissible.

   If the draft Bill proceeds without amendments for non lawyers to be the court appointed person the questions should be drafted and submitted to the judicial officer prior to cross examination.

   If the legislation provides for a lawyer to do the cross examination, then discretion should be given to the lawyer regarding the questions to put to the other party.
e) Refer to point d) above.
f) If the draft Bill proceeds without amendments it is difficult to determine how a non-lawyer would be bound by the rules of the court to cooperate with another party such as the Independent Children's Lawyer. If the court appointed person is to be a lawyer, then the lawyer is bound by the solicitor's conduct rules regarding co-operating in proceedings.
g) The court appointed persons' role should clearly be set out by the judicial officer prior to evidence being adduced. If that person is a non lawyer, the judicial officer should explain the basic principles of examination in chief and cross examination. The judicial officer should explain that they will interrupt questioning where appropriate and redirect the court appointed person where necessary.

10. Should a self-represented person be allowed to nominate the person who is appointed by the court to ask questions on their behalf?

The self represented party should be given alternative court appointed names from a court list. It is not clear from the draft Bill whether the court appointed person will be drawn from a 'pool' of persons approved by the court, as currently occurs with the appointment of family consultants or, whether the self represented party nominates their own person who the court then approves. If the draft Bill proceeds with a non-lawyer as the court appointed person the alleged victim should be able to nominate a particular person, particularly if they are their case worker. For the alleged perpetrator, the court appointed person should not be a relative or friend. Their choice may reflect a person who could effectively act as their 'agent' in pursuing a line of questioning to the alleged victim causing further trauma in cross examination. Although the judge has the discretion to "shut down" an abusive line of questioning, the trauma may already be evident before the examination is terminated.

11. Do you have any concerns about the court-appointed person model?

Concerns about the court appointed person model include:

- If the alleged perpetrator or alleged victim have their own legal representative and the other party does not, there is a risk of procedural fairness not being followed. A lawyer skilled in cross examination will know the rules of evidence; a non-lawyer court appointed person court will not. The legal representative will be able to do re-examination; a lay person appointed under this model will not – their involvement is only to "put" questions to the other party. This could be mitigated by

the court appointing a lawyer as the court appointed person for the unrepresented person where the other party is represented.
- The rule in "Browne vs Dunn" - if a non-lawyer court appointed person does not put relevant questions to a party they are cross examining, crucial evidence regarding facts in dispute may be inadmissible when the other party is giving evidence.
- If the proposed court appointed person is based on the Domestic and Family Violence Act 2008 (NT) there is no definition of the "court appointed person" and that person appears to be merely a mouthpiece as they restate the question the self represented party wants to ask the other party. This model may not prevent further trauma being experienced by an alleged victim, consequently undermining the purpose of the draft Bill.

Our centre recently represented a parent who experienced family violence by the father. The father self represented and cross examined our client directly at a contravention application hearing with questions that caused her further trauma. At the next return date the Judge had to intervene and shut the cross examination down. The Judge noted the continuing abuse. Based on the Northern Territory model of a court appointed person, the same outcome would be likely to occur, particularly if the questions are written out by the alleged perpetrator and not vetted by the court.

The preferred model is found in the *Family Violence Protection Act 2008* (Vic) (sections 71 for respondents and section 72 for applicants). Victorian Legal Aid (VLA) lawyers on a 'practitioners panel' are appointed automatically for the respondent perpetrator and affected victim. If the person refuses the VLA lawyer, a respondent is not permitted to cross-examine the applicant on events relevant to the intervention order, give their own evidence regarding those events and nor are any of their witnesses.

12. Should the court only grant leave for direct cross-examination to occur if both parties to the proceedings consent? i.e. where an alleged victim consents to being directly cross-examined or consents to conducting direct cross-examination, should the alleged perpetrator's consent also be required?

The court should only grant leave for direct cross-examination in circumstances where both parties consent and have provided evidence they have sought legal advice prior to giving their consent.

13. Should the court only grant leave for direct cross-examination to occur if it has considered whether the cross-examination will have a harmful impact on the party that is the alleged victim of the family violence?

The judicial officer would need to weigh competing facts in dispute before considering that cross examination would not have a harmful impact on the alleged victim. There should be a rebuttable presumption that the impact will be harmful. This would presumably be based on affidavit material and the Notice of Risk. Further consideration would be given to any family consultant's recommendations and any report from Child Protection. Only then should leave be granted for cross examination.

14. Should the court only grant leave for direct cross-examination to occur if it has considered whether the cross-examination will adversely affect the ability of the party being cross-examined to testify under the cross-examination, and the ability of the party conducting the cross-examination to conduct that cross-examination?

The judicial officer should consider competing facts in dispute to decide whether a person will be adversely affected by direct cross examination. They will also need sufficient material before them to assess the competency of a court appointed cross-examiner. It is difficult to see how this can occur without first hearing submissions from the parties prior to evidence in chief and cross commencing.

15. Are there any other issues the court should be required to consider before granting leave for direct cross-examination to occur?

If the court was to give leave for direct cross examination, it must consider the evidence in the party's affidavits, any family consultant reports, whether only one party is represented and if one or both of the parties is non English speaking or suffers from a disability.

16. **Should the amendments apply to proceedings started before the law comes into effect, or should they only apply to proceedings started after the law comes into effect?**

Amendments should apply to any proceedings already commenced at the time the Bill is enacted as there are long delays in bringing matters to trial.

17. **Should any changes be made to the proposed amendments to ensure that all parties receive a fair hearing?**

To ensure a fair hearing we recommend the court appointed person be a solicitor with at least 5 years' experience or a barrister and not a non-lawyer, for reasons outlined elsewhere in our submission. The purpose of providing evidence and procedural fairness through cross examination is critical to testing the facts in dispute. A perpetrator will rarely admit to committing family violence to the victim or the children. A cross examination conducted by a court appointed non lawyer can undermine the purpose of cross examination in testing the evidence.

18. **Should any changes be made to the proposed amendments to ensure that the courts can be satisfied that any cross-examination of the parties that occurs through a court-appointed person will enable the judicial officer to accord procedural fairness to the parties?**

We reiterate that any non-legally trained court appointed cross examination will undermine any attempts at procedural fairness.

19. **Should any changes be made to the proposed amendments to ensure that the courts are able to make informed decisions?**

The amendments should include the material the judicial officer must consider in making an informed decision about permitting cross-examination. For example, the party's affidavits, child protection reports and family consultant reports.

20. **Should any changes be made to the proposed amendments to ensure that they do not have any unintended consequences for victims of family violence?**

We have outlined our comments regarding unintended consequences elsewhere in these submissions. The limitations in the drafting appear to pay lip service to those experiencing family violence who are being cross examined. This includes further trauma to the alleged victim, failure to properly test the evidence adduced and denial of procedural fairness regarding evidence of family violence, its impact on the alleged victim and the children.

21. **Any general comments.**

Our comments fall into 3 sections:

1. **Proposed Wording in Section 102NA**
2. **Family Law Courts' Family Violence Best Practice Principles (December 2016) and The National and Domestic Family Violence Bench Book**
3. **Principles of Cross Examination**

1) Proposed Wording in Section 102NA

The draft Bill requires a 'two step' process to be satisfied before mandatory requirements are triggered for a court appointed person to conduct cross examination. Firstly, there must be an allegation of family violence. Secondly at least one of three different criteria must be satisfied. This criteria is specific and does not include family violence where there are no charges, no final order or no injunction under the Family Law Act.

Regarding the criteria in 102NA(1) (c):

i. "either party has been convicted, or is charged with, an offence involving violence, or a threat of violence, to the other party"
This does not provide for circumstances where a party has been subjected to family violence but due to fear from the perpetrator, has not reported it to the police. Nor does it provide for family violence in the form of financial, emotional or psychological abuse, which are not necessarily criminal offences.

We are concerned the proposed wording does not address ongoing systemic family violence which went unreported. In our experience, it is not unusual for alleged perpetrators to use threats to "take the children away" from an alleged victim if they report the violence.

ii. "a family violence order (other than an interim order) applies to both parties"
Although a final family violence order may be in place, it may have expired by the time the final hearing or trial is held. It is not unusual for proceedings to take between 12 months – 2 years and for intervention orders to expire after 12 months. Intervention orders may also be revoked before proceedings commence in the Federal Circuit or Family Courts.

The wording should be amended to include any order made in the last 5 years (whether revoked, varied or expired) and any interim order. Interim orders may last months before a final hearing or consent orders are made. For example, we represented a client with an interim intervention order protecting her and the child that had been in place for over five months before the first cross-examination occurred in a contravention application hearing in the Federal Circuit Court.

iii. An injunction under section 68B or 114 of the Family Law Act applies to both parties"
Section 68B of the Family Law Act has a similar protection to an intervention order regarding personal protection of the parent and the welfare of children. In our view, it is rarely used as there is usually an intervention order in place by the time proceedings commence. Family law orders are an exception to the intervention order where no contact is permitted. Only the most serious matters would include a 68B order.

Section 114 protects a person from the perpetrator selling assets and committing financial abuse by removing property. We welcome this inclusion.

Suggested Changes in Drafting

There should be an additional criteria to 102NA (1) (c) that captures instances of systemic abuse that has occurred over a number of years where the abuse has gone unreported and hence no intervention order or charges against the perpetrator. Suggested wording could be "where there is evidence from a party that the other party has engaged in family violence within the definition of 4AB of the Family Law Act which may or may not have been reported or been the subject of an intervention order".

2) Family Law Courts' Family Violence Best Practice Principles (December 2016) and The National and Domestic Family Violence Bench Book

The fourth version of the Family Violence Best Practice Principles referred to in the Consultation Paper at Appendix 1 was published in December 2016. We note the National and Domestic Family Violence Bench Book launched on 18 August 2016 by the Attorney-General's Department has only been cited in the paper as a footnote and not referred to generally. It is cited as "assisting the education and training of judicial officers so as to promote best practice and improve consistency in judicial decision-making and court experiences for victims in cases involving domestic and family violence across Australia".

The exposure Bill touches on two sections of the Bench Book. At section 3.1 the book outlines "systems abuse" as:

Research indicates that a court's failure to respond adequately or appropriately to a victim's allegations of domestic and family violence may constitute a form of abuse that is secondary to that already being experienced by the victim. In the context of judicial proceedings, a victim may feel intimidated, isolated or neglected by, for example: having to sit in proximity to the perpetrator and their family and friends in the courtroom; experiencing condescending, reproachful or diminishing language or demeanour from defence lawyers or judicial officers; in some courts, being cross-examined directly by the perpetrator (who may have chosen to self-represent so as to secure this opportunity); feeling unable to effectively advocate on behalf of children in their care; or enduring the ongoing economic impact of being a party to judicial proceedings. In these circumstances, judicial officers may need to weigh up and assess the requirements for procedural fairness and access to justice against protection of the victim from further abuse through the perpetrator's exploitation of the justice system.

And in section 10.3 (Cross Examination):

"A judicial officer must balance the need for procedural fairness in the presentation of both parties' cases, including proper testing of evidence by cross-examination, with the need to ensure the safety of parties".

Based on these summaries in the Bench Book it is our submission that if a court appointed non lawyer nominated by the alleged perpetrator is permitted to conduct cross examination on behalf of an alleged perpetrator the following impact on the alleged victim may include:

- A person asking questions to the alleged victim and given to them by the alleged perpetrator being a mere 'mouth piece' for that person and causing further trauma to and abuse to the alleged victim; and
- The proper testing of evidence is unlikely as the non-lawyer will not be skilled in adducing and testing the evidence in cross-examination.

3) Principles of Cross Examination

"Cross examination is a feature of the adversarial process and designed to let a party confront and undermine the other party's case by exposing deficiencies in a witness' testimony" It is unlikely a court appointed non-lawyer asking questions in cross examination will properly test the evidence under the model proposed.

Further, although inappropriate and offensive questioning under cross examination can be limited by a judicial officer, we note the Australian Law Commission's view (2005) that in practice, insufficient protection is afforded to vulnerable witnesses.

Alternatives to the Amendments

The Federal Circuit Court Rules already provide for a judicial officer having discretion to dispense with the attendance for cross-examination of a person making an affidavit or to direct the affidavit be used without the person making the affidavit being cross-examined (Rule 15.29A). Arguably, where there is evidence of family violence allegations and those allegations are supported by other material such as a child protection report or a family consultant's report, the court can excuse the alleged victim from cross-examination without changing the Family Law Act.

Summary

We welcome the Draft Bill's acknowledgement of the impact of cross-examination on a self represented party who has and probably still is, experiencing family violence from the other parent. However the amendments do not go far enough. Should the Bill proceed we recommend a new provision ('iv') be inserted at 102NA to read "and where there is evidence from a party that the other party has engaged in family violence within the definition of 4AB of the Family Law Act which may or may not have been reported or been the subject of an intervention order".