

RE: Submission in response to the exposure draft of the *Family Law Amendment (Family Violence and Other Measures) Bill 2017 (Cth)*

I am the Chief Executive Officer of the Victim Support Unit, Newcastle, of the Victims of Crime Assistance League Inc NSW. We are both a charity, and operate the support service with funding from NSW Justice. Our clients are men, women and children affected by crime, including Domestic and Family Violence.

I cannot express how frustrating it was to receive this 'forward move' in such minimal effect – given the enormous wealth of material exposed in the various investigations and reports that formed the basis of the review about what needs to change to bring sense to the Family Law System – as found in the exposure Bill and recommendations. The suggestions made are, in my view, essentially trivial, expensive and miss critical inequities in the system. There will be little to improve the lot of women and protective parents and their children as a result.

The Family Law System as experienced by the majority of my clients in this situation – mainly but not only - mothers escaping Family Violence and trying to get free, keep their children safe and engaged in a positive, meaningful life, and receiving a fair share of marital property, is a disgrace. This Bill, if passed won't really achieve much.

1. I **Agree** that court systems can be better coordinated and delineations between welfare and marital cases needs to be clearly relevant and applicable. I however have little confidence in state child protection systems regarding young children and Domestic Violence cases.
2. **Agree** that a \$20,000 limit is inadequate in 2017.
3. With reservations, I endorse the recommendation that perpetrators can no longer cross-examine and humiliate and frighten their victims. My reservation of course, is when the same disgraceful and humiliating behaviour is delivered by a trained barrister who is the agent provocateur for the perpetrator, (often against an unrepresented victim/litigant, the victim/target/litigant is going to experience exactly the same, degrading and punitive reaction that mimics the control and abuse cycle of domestic violence by the agent of the abuser. Briefly, her memory will be effected in a normal response, but that will just encourage further abuse and manipulation. By a representative trained legally to ignore the reality of the victim's handicap. They (the victim) are then going to be

abused and punished for displaying any psychiatric injury caused by the trauma created by the perpetrator and deliberately manipulated by the legal interrogator. Recoverable psychological injury is able to be healed and overcome, but unlikely to be assisted by engaging in an unfair and unfunded legal process, especially where the safety and well-being of their children is concerned.

4. At the same time, since many but by no means all women leaving violence are offered an AVO **as the only legal remedy / support by the state** despite often having lived histories of extreme and ongoing physical, sexual, financial, psychological and social abuse at the hands of the person they left, the Family Courts frequently decide the violence was not severe enough to warrant any recognition and certainly no restriction on the father/ alleged perpetrator's access now. Women are losing their children in this practice.
5. In other cases where criminal prosecutions have occurred, no quarter or compensation is given to the non-party position of the unrepresented victim . Indeed the submission from the Victoria Bar in the Victorian DV report, highlights that legally, in their view, a person isn't a victim until such times as there is a guilty finding. If only that was in any way logical or morally right!

Perhaps it would be then inevitable that by disregarding the obscene difference between the rights and role of the person most affected – the alleged victim, and the weight of rights and representation for the accused, there would be little chance that state courts would, or could open-mindedly, with understanding of the enormous complexities of Domestic Violence, child development and child protection, be effective within the suggested changes. Could it accept and factor in the overloaded systems and difficulty being heard, investigated and prosecuted for young children, particularly but not only in incest cases accompanying violence? Could they really be expected or able to reach fair and equitable outcomes? Something has to change but so much has to change to begin to make it legally fair in state courts, that unless there is a huge injection into funding trauma and Domestic Abuse education, and training and compliance strategies, external compliance strategies and inclusion of the impact on children of forced association with their abuser, you'll be spending more money on lawyers and courts to create the same unfair outcomes.

Unless the Family court actually understands and factors in the state's inadequacies, they will continue to punish unsuspecting victims as they do now.

6. Agreed: Subsection 114(2) of the Act, - repeal orders regarding a party of the obligation to perform marital services.
7. Agreed: Section 68T of the Act be amended to remove the 21day time limit on a state or territory court's power to vary, discharge or suspend a family law order in interim domestic violence order proceedings.

8. Regarding Interim Consent Orders: These cause terrible issues because the court has not yet decided whether the DV experienced reaches their particular standard. Litigants are frequently bullied and threatened, sometimes by their own legal advisors, to 'consent'. Once consent has been reached they are made fools of, accused of exaggerating the violence 'or otherwise you would not have consented'. It's one of many manipulative disingenuous trickeries inflicted upon the innocent, unsuspecting and often poorly represented victim/protective parent/ litigant.
  
9. **Agree:** Section 68T of the Act be amended to remove the 21day time limit on a state or territory court's power to vary, discharge or suspend a family law order in interim domestic violence order proceedings.
  
10. **Agree:** that any amendment to subsection 68P(2) should be consistent with the *Convention on the Rights of the Child* – where children have a voice and an entitlement to participate in their own lives, not be pawns of the system.
  
11. **Agree:** with the policy objective of injunction amendment especially for women where there is an escalation of violence because they have dared take family law action, meaning the Family Court could manage the matter without the victim going to another court. Of course, the costs to the applicant in Family Court are significantly higher than state courts.
  
12. Police, state courts and Family Law courts need to get on the same page. Training in DV, child matters and child development must be 21<sup>st</sup> Century, not out-dated, poorly understood and decided by biased and uniformed practitioners and court cohorts, or judges as are now creating havoc and negatively influencing the cessation of intergenerational domestic abuse. Currently we live and work in silos of specialisation and ignorance, that does not serve victims.
  
13. My comments here are regarding increasing legal aid as a solution. Currently, in complex cases, victims are frequently let down by poor, inept and inadequate legal advice and representation, both privately funded and legal aid. It is not just an issue of pouring more money into an inadequate system, it needs a review that encapsulates the real experiences of people and from which excellent remedial strategies and change could flow.
  
14. Politically, George Brandis and co need to stop deflecting the experiences of people with complaints that legislation is not working in practice. It is unacceptable balderdash to push genuine litigants who are using their democratic rights (not that we really have any) away and refuse to hear their experiences. Family Law in DV cases and child protection is failing under his watch. The Family Court is not integrating the 2011-12 changes at any level. On his watch. Nor are victims asking politicians to 'intervene in a court case on their behalf', as is so often dismissively claimed, people are angry and want their politicians to get active and fix a thoroughly broken system. What's needed is not more money to bolster wages, it's a systemic review by experts in this system – not the legal system – the life system of citizens forced to participate in it and pay for it with their taxes, and as private citizens again..

15. Finally, the courts frequently order shared parenting outcomes where the alleged perpetrator has a particular form of personality disorder, that makes it unlikely and predictable that the well-being of children cannot and will never be their focus.

Many such perpetrators present as smooth-talking and CHARMING, but are narcissists, sociopaths or psychopaths – and they just skate by critical examination based on their glib capacity to lie and guilt transfer. Yet while unqualified sociologists and other wrongly qualified so called court ‘experts’ reject the need for investigations, risk assessments, reports and experiences of real specialists with actual experience of the litigants are rejected (making a total mockery of the Medicare, psychology profession, social workers, victim support systems at work in the community, these same non-expert experts diagnose fallacious mental conditions at the apparent drop of a hat, without testing, and as a result, DV victims and their children are separated to the power and benefit of the perpetrator. The decisions are frequently supported by equally inept and probably corrupt Independent Children’s Representatives (despite exposure of their failings).

I finish as I began – these small steps are expensive and the money could be better spent in having a holistic look at what works and what doesn’t, and particularly the gap between Government strategies and plans and the place they fail – family court.

Regards

*Robyn Cotterell-Jones*

Robyn Cotterell-Jones  
CEO VOCAL.

Ps. I was not going to bother commenting at all for all the above reasons. But one must exercise their democratic responsibility and perhaps one day, they, the children and the victims will have rights.