



IMMIGRANT WOMEN'S SUPPORT SERVICE  
a domestic violence and sexual assault service  
for women of non-english speaking backgrounds

28<sup>th</sup> April 2011

Committee Secretary  
Senate Legal and Constitutional Committees  
PO Box 6100  
Parliament House  
Canberra ACT 2600



Dear Committee Secretary

**Family Law Legislation Amendment (Family Violence and Other Measures) Bill**

I am writing on behalf of the Migrant Women's Emergency Support Service, trading as Immigrant Women's Support Service (IWSS) to express our support for the changes to the Family Law Act proposed in the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011, and to recommend that further changes be made to the Bill to ensure that the family law system does not jeopardise the safety of women and children.

The Immigrant Women's Support Service (IWSS) is a specialist domestic violence and sexual assault service that provides support services to women and their children from non-English speaking backgrounds (NESB) through information, advocacy, counselling, court support and ongoing case management. IWSS is the only service of its kind in Queensland with over 25 years of experience providing culturally appropriate services to women from NESB and their children affected by domestic and sexual violence.

IWSS recognise that domestic and family violence occurs in all communities and primarily affects women and children. Domestic and family violence has serious social, financial, legal and health implications for victims and their families, and requires a coordinated response from all levels, including government, human services and justice. IWSS believes a key role within this coordinated response is to address issues of disadvantage and improve access to legal justice responses for people from NESB.

Over the past 25 years of operation IWSS' staff has consistently observed our client group's experiences of the family law system to be inadequate in providing protection to women and children. IWSS therefore commend and strongly support the measures proposed in the Bill that will provide better protection for people who have experienced family violence. IWSS also believe that the proposed amendments are essential to placing the safety and protection of children and family members at the forefront of the Family Law Act. In particular, we strongly support:

- Broadening the definition of 'family violence' to include elements of coercion and control, a wider range of behaviour and removing the objective test of 'reasonableness' so that family violence can be properly considered whenever the victim actually fears for their safety
- A broader definition and understanding of child abuse that includes exposure to violence
- Prioritising family violence when considering what is in the best interest of the child
- Removing the 'facilitation' aspects of the 'friendly parent provision'
- Repealing section 117AB about costs orders relating to false allegations or denials of violence

While IWSS support the aforementioned changes we also believe that a number of further changes are necessary to protect the safety of children and their family in the family law system. In particular, we recommend that:

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**1. The safety and protection of children should be prioritised above all else. This priority should not be subject to proving an inconsistency with other considerations. And, furthermore that the Act should protect the safety of the primary carer as this increases children's safety.**

IWSS strongly recommends the introduction of provisions that oblige magistrates to consider the ongoing safety of the protected person and child and make conditions in relation to contact and residency arrangements where the perpetrator of violence is a parent of the child. There is substantial evidence to demonstrate that child contact arrangements in cases involving domestic violence and/or child abuse provide opportunities for continuing violence and abuse to occur. IWSS has significant experience in supporting women in family law proceedings who have experienced domestic violence and frequently observe practices which do not prioritise the safety of women and children due to the current legislation. These include, but are not limited to:

- Inadequate consideration and provisions for the safety of women and children in contact arrangements. For example, family court orders stipulating contact arrangements which require the mother to take the child to an arranged pick up point and is subsequently verbally abused or threatened by the perpetrator of the violence in front of the child(ren). Frequently women from NESB do not have their family in Australia and have very limited support networks so having a protective person accompanying them or dropping off the children at the pick up point is not a realistic option.
- Inadequate responses by the police and justice system to women who report breaches of a DVPO. We have observed women who have consistently reported that breaches of the DVPO happen in the contact arrangements and despite reporting to the police very little can happen unless the matter goes before the family court again which is almost impossible once final family court orders are made.
- Family court proceedings failing to give due consideration to Domestic Violence Protection Orders (DVPO) that specifically include the children.

**2. Exposure to family violence be included in the definition of family violence and recognised as a form of family violence.**

IWSS recognise that children are adversely affected through exposure to domestic and family violence. It has been further suggested that such exposure to violence may be considered a direct form of abuse towards children. S5 of the Victorian *Family Violence Protection Act 2008* includes the following within its definitions of family violence:

*(1)(b) behaviour by a person that causes a child to hear or witness, or otherwise be exposed to the effects of, behaviour referred to in paragraph (a).*

IWSS support the inclusion of similar provisions within the definitions of the aforementioned Act however such provisions must ensure that responsibility for exposing a child to domestic violence is located with the perpetrator of the violence. It is essential that issues of child safety are addressed within a framework that recognises that non-abusive parents are more likely to act to ensure their child's safety when they are provided with appropriate support, particularly in instances where they have been subjected to domestic violence perpetrated by an intimate partner or spouse.

**3. There should be no presumptions in family law – every family should be treated as unique.** This means that there should be no presumption of equal shared parental responsibility and the court should not be required to start from any particular care arrangement. Case examples of IWSS' experience of such arrangements are:

These examples are reflective of the experience of IWSS' clients and clearly prioritise equal shared parenting above the safety and best interest of the child.

#### **4. Access to interpreters**

It is not enshrined within the current family law legislation that people from NESB have a statutory right to an interpreter. This situation is creating inconsistency within the family law system as access to an interpreter is dependent upon the magistrates' ability to assess a person's English proficiency and whether they think the person requires an interpreter. This current process is not equitable and IWSS has observed the absence of an interpreter leading to family court orders that have exposed women and children to further domestic violence.

- The proposed draft bill includes legislative provisions that ensure people from NESB have the right to an interpreter.
- Training on cultural competencies be a mandatory requirement for ongoing professional development for all parties involved in family law proceedings – eg. magistrates, court report writers, independent children's lawyers, mediators and child safety representatives.

Based on the work of IWSS over the past twenty five years and the evidence presented in numerous research reports, IWSS strongly recommend you support the amendments suggested in this letter and the expeditious passage the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011.

Yours sincerely

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Director  
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