

27 February 2018

Mr Tim Watling
Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email: legcon.sen@aph.gov.au

Dear Mr Watling

Senate Legal and Constitutional Affairs Committee inquiry in response to the *Family Law Amendment (Parenting Management Hearings) Bill 2017*

Rape & Domestic Violence Services Australia (R&DVSA) thank the committee for the opportunity to appear at the public hearing in Sydney on Thursday, 22 February 2018.

After reviewing the Proof Committee Hansard, we would like to make the following clarifications in relation to our evidence:

1. While introducing our organisation, the Chair stated:

We have your submission in relation to family violence, which we've labelled as submission No. 5, and, in relation to parenting, No. 8—that's our numbering.¹

However these submission reference numbers relate to submissions made by People with Disability Australia, rather than submissions made by R&DVSA.

The submission made by R&DVSA in relation to the *Family Law Amendment (Parenting Management Hearings) Bill 2017* is labelled as submission No. 10.

R&DVSA did not make any submission in regards to the *Family Law Amendment (Family Violence and Other Measures) Bill 2017*.

¹ Evidence to Senate Legal and Constitutional Affairs Committee, Parliament of Australia, Sydney, 22 February 2018, 43 (Senator Ian MacDonald, Chair).

2. During our opening statement, Ms Karen Willis raised R&DVSA's concerns in regards to the evidence base for the proposed parent management hearings model. She stated:

In the first instance, the evidence on which it was based, when we checked it, really isn't terribly robust. The evidence was based on some work done where basically six people, three judges and three magistrates, were interviewed.²

In this statement, Ms Willis was referring to the evaluation of Oregon's Informal Domestic Relations Trial model conducted by William J Howe III and Jeffrey E. Hall.³ Ms Willis mistakenly suggested that the evaluation was based on conversations with "three judges and three magistrates". In fact, the evaluation was based on a post-implementation questionnaire administered to three judges and three attorneys.⁴

3. During our evidence, the Chair of the committee misquoted recommendation 2 of our submission. He stated:

Your recommendation 2 states:

... that the Panel be required to grant leave wherever any of the mandatory considerations in proposed section 11U are met.

What is section 11U?⁵

In fact, recommendation 2 in our submission refers to section 11LJ not section 11U. It states:

... that the Panel be required to grant leave wherever any of the mandatory considerations in proposed section 11LJ are met.⁶

As a result of this confusion, Ms Kajhal McIntyre subsequently referred the Chair to section 11NB which outlines the circumstances in which an application for parenting determination may be dismissed if the Panel considers it appropriate.

However, it appears the Chair's question related to proposed section 11LJ which deals with legal representation and assistance in relation to hearings.

Section 11LJ provides the Panel with discretion to allow (by leave) a party to have legal representation in a PMH. When considering whether to grant leave, the Panel must have regard to those factors outlined in section 11LJ(2): (a) whether there are reasonable grounds to believe that there has been family violence, or a risk of family violence, by a party to the hearing; and (b) the capacity of a party to effectively participate in the hearing without legal representation, having regard to any power imbalances between the parties to the hearing or any other relevant factors. However, while it is mandatory to consider these factors, the Panel retains the discretion to deny leave even where a finding of family violence is made.

² Evidence to Senate Legal and Constitutional Affairs Committee, Parliament of Australia, Sydney, 22 February 2018, 43 (Ms Karen Willis, Executive Officer, Rape & Domestic Violence Services Australia).

³ Howe, WJ and Hall, JE (2017) 'Oregon's Informal Domestic Relations Trial: A New Tool to Efficiently and Fairly Manage Family Court Trials', *Family Court Review* 55(1), 81.

⁴ Ibid 75.

⁵ Evidence to Senate Legal and Constitutional Affairs Committee, Parliament of Australia, Sydney, 22 February 2018, 49 (Senator Ian MacDonald, Chair).

⁶ Rape & Domestic Violence Services Australia, Submission No. 10 to Senate Legal and Constitutional Affairs Committee, *Inquiry in response to the Family Law Amendment (Parenting Management Hearings) Bill 2017*, 7 February 2018, [4.12].

Recommendation 2 in our submission argues that it should be mandatory for the Panel to grant leave where the Panel makes a finding that:

- there are reasonable grounds to believe that there has been family violence, or a risk of family violence, by a party to the hearing; or
- a party does not have the capacity to effectively participate in the hearing without legal representation, having regard to any power imbalances between the parties to the hearing or any other relevant factor.

In other words, the Panel should not have the discretion to deny leave in these circumstances.

We respectfully request that the committee consider these clarifications to our evidence.

Please do not hesitate to contact me on _____ or by email at _____ if you have any questions.

Yours faithfully,

Rape and Domestic Violence Services Australia

Karen Willis

Executive Officer