Relationships Australia

1300 364 277
www.relationships.org.au

3 October 2024

Committee Secretary
Senate Legal and Constitutional Affairs Committee

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

Family Law Amendment Bill 2024

Thank you for the opportunity to make a submission to the Family Law Amendment Bill 2024. We acknowledge the extensive work that has been done to respond to feedback about the Exposure Draft. Relationships Australia welcomes:

- reforms to ensure victim survivors of family violence will be able to have the economic effects of that taken into account in determining current and future circumstances, as well as contribution
- the focus on providing appropriate housing for children
- clarification that courts need only take into account relevant matters, which may lead to efficiencies and reduced legal costs for parties
- extension of the Less Adversarial Trial provisions to property and finance matters
- clarification of the arbitration provisions
- provision for an accreditation scheme for Children's Contact Services
- elevation of costs provisions from the Rules to the Act
- clarification of the provisions about Commonwealth Information Orders, which will enhance the availability of safety information to the family law courts, and
- efforts in the Bill to modernise and simplify the language and structure of the Act, including the co-location of various provisions relating to Part VIII and VIIIAB matters.

While acknowledging the extensive work already undertaken, there remain opportunities to significantly enhance and refine the Bill, to maximise success in achieving the Government's reform objectives of making the family law system safer, simpler and fairer.

Recommendations

Recommendation 1 That the Act require family law courts to make a positive determination about whether it is just and equitable to make an order altering interests, and that this requirement should be explicitly framed as an overarching consideration for the purposes of matters dealt with pursuant to Parts VIII and VIIIAB.

Recommendation 2 That the Act make explicit in a standalone provision that application, in Parts VIII and VIIIAB, of the 'just and equitable' principle should never derogate from the paramountcy of children's best interests, where there are dependent children.

Address: Unit 2, Level 1, 67 Eyre St, Kingston
Post: PO Box 5046 Kingston ACT 2604

Ph: 02 6162 9300
Email: natoffice@relationships.org.au

Recommendation 3 That, for the purposes subparagraphs 4AB(2A)(a)(i) and (iv):

- 'forcibly' be omitted and substituted with 'coercively', or 'through duress or undue influence -' , and
- 'sabotaging' be omitted and substituted with 'intentionally, recklessly or negligently undermining'.

Recommendation 4 That, for the purposes of section 79 and 90SM, that the Act provide that current and future circumstances must be taken into account *before* contributions.

Recommendation 5 That the Government plan for extensive public education and professional training to support the effectiveness of the proposed changes.

Recommendation 6 That Government provide more support for legally-assisted FDR for all clients, including clients with 'property only' matters.

Recommendation 7 That Government be on the front foot in preventing a perception that the amendments will revive concepts of 'fault' through appropriate guidance readily accessible online, at service provision premises, the courts and other touch points

Recommendation 8 That the Bill be as explicit as possible about what evidence the courts can consider and what standard of proof is to be applied, and this should be supported by clear, accessible and up to date information in the public domain

Recommendation 9 That the Australian Government work with state and territory legal profession regulators to ensure that lawyers who encounter matters raising domestic and family violence, and coercive control, are sufficiently knowledgeable to respond appropriately. Such training should be mandatory.

Recommendation 10 That paragraphs 79(7)(e) and 90SM(7)(e) be expanded to require the court to take into account any history of actual or threatened cruelty or abuse by a party towards not only the companion animal subject to the proceedings, but any such history towards any other animal (regardless of whether the animal was a companion animal, agricultural or business livestock, or a research animal).

Recommendation 11 That, to support safe and effective operationalisation of the amendments of Parts VIII and VIIIAB, Government plan for workforce training for legal professionals and FDRPS.

Recommendation 12 That:

- the Court consider using DOORS for all matters under Parts VII, VIII and VIIIAB (noting its successful use in Lighthouse), and
- for matters under Parts VIII and VIIIAB – if either or both of the parties have children under the age of 18, Part VII DOORS be used.

Recommendation 13 That that the Attorney-General liaise with the Treasurer to progress amendments to superannuation legislation for the purposes of allowing victim survivors of domestic and family violence offences to:

- be awarded an amount from their perpetrator's 'additional' contributions for the purposes of satisfying unpaid compensation orders, as proposed in Treasury's 2018 consultation, and
- submit a superannuation information request to the appropriate court which could then request that the ATO discloses specific information regarding the offender's or their spouse's superannuation accounts

Recommendation 14 That, in the Explanatory Memorandum, Government refer to 'gambling harms' or 'harmful gambling', rather than 'excessive gambling'.

Recommendation 15 That, in subclauses 79(5) and 90SM(5), that the Court be required to take into account excessive lawyers' fees (relative to the property pool) as a form of wastage.

Recommendation 16 That Government keep court funding under review to ensure that the family law courts remain in a strong position to use the LAT mechanisms to their best effect.

Recommendation 17 That Government introduce mandatory pre-filing for non-child-related proceedings.

Recommendation 18 That the Attorney-General's Department publish fact sheets and internal training by service providers to ensure that FDRPs and lawyers are aware of their obligations under clauses 70B and 90RI.

Recommendation 19 That the upper limit of matters eligible for PPP500 designation be further raised, and be reviewed regularly (at least once every two years).

Recommendation 20 That clause 10KB be amended to better reflect that the family law courts can, and do, order use of Children's Contact Services, to support contact between children and persons with whom children have a significant relationship.

Recommendation 21 That clause 10AA be amended to require the relevant acts or omissions to have occurred reasonably, as well as in good faith.

Recommendation 22 That accreditation and any other new oversight framework be directed to providers who operate a CCS but would not otherwise be subject to independent oversight as a matter of law.

Recommendation 23 That, where a CCS is provided by an organisation (whether a body corporate, a trust, a partnership or other entity), it be sufficient that the entity is accredited, and there be no requirement that individual workers employed by the entity be accredited as CCS practitioners.

Recommendation 24 That, for the purposes of subclause 13D(1B), the family law courts work with CCS providers to develop a standard template.

Recommendation 25 That Government review the maximum penalties for alignment with those proposed in the Aged Care Bill 2024.

Recommendation 26 That information about section 60I certificates should be available through a wide range of channels, including an updated Family Relationships Online, as well as through Family Relationships Centres, and the Family Relationships Advice Line, as well as legal and health service providers

Recommendation 27 That proposed Part 5 of Schedule 3 be omitted from the Bill for further consultation, to maximise opportunities for safe and successful operationalisation.

Recommendation 28 If Parliament passes the Bill with proposed Part 5 of Schedule 3 – that paragraph 102BB(1)(b) be amended to specify alcohol and other drug services and gambling help services, to put beyond doubt that such services are included within the definition of 'professional service'.

The work of Relationships Australia

We are an Australian federation of community-based, not-for-profit organisations with no religious affiliations. Our services are for all members of the community, regardless of religious belief, age, gender, sexual orientation, lifestyle choices, cultural background or economic circumstances. At over 100 locations (and more than 90 outreach locations), Relationships Australia provides 329 unique services, including counselling, dispute resolution, children's services, services for victims and perpetrators of family violence, and relationship and professional education. We serve around 150,000 clients each year.

We aim to support all people in Australia to live with positive and respectful relationships, and believe that people have the capacity to change how they relate to others. Through our programs, we work with people to enhance within families, whether or not the family is together, with friends and colleagues, and across communities. Relationships Australia believes that violence, coercion, control and inequality are unacceptable. We respect the rights of all people, in all their diversity, to live life fully within their families and communities with dignity and safety, and to enjoy healthy relationships.

Relationships Australia is committed to:

- ensuring that social and financial disadvantage is not a barrier to accessing services
- geographic equity in service provision, including by working in rural and remote areas, recognising that there are fewer resources available to people in these areas, and that they live with pressures, complexities and uncertainties not experienced by those living in cities and regional centres
- collaborating with other local and peak body organisations to deliver a spectrum of prevention, early and tertiary intervention programs with older people, men,

women, young people and children. We recognise that a complex suite of supports (for example, legal services, drug and alcohol services, family support programs, mental health services, gambling services, and public housing) is often needed by people engaging with our services, and
- contributing our practice insights and skills to better inform research, policy development, and service provision.

Framing Principles for Submission

Principle 1 – Commitment to human rights

Relationships Australia contextualises its services, research and advocacy within imperatives to strengthen connections between people, scaffolded by a robust commitment to human rights. Relationships Australia recognises the indivisibility and universality of human rights and the inherent and equal freedom and dignity of all. Enjoyment by individuals of their full human rights is underpinned by access to effective and timely mechanisms to prevent breaches of their human rights and to remediate breaches when they occur.

Our commitment to human rights necessarily includes a commitment to respecting epistemologies beyond conventional Western ways of being, thinking and doing. Of acute importance is a commitment to respecting epistemologies and experiences of Aboriginal and Torres Strait Islander people as foundational to, inter alia, policy and programme development and service delivery.

Principle 2 – The best interests of the child are paramount

Consistent with Principle 1, and with the policy intent underpinning both existing legislation and proposed amendments, Relationships Australia is committed to ensuring that the paramountcy of children's best interests, in all domains, is honoured and upheld. This includes, but is not limited to, ensuring that children's voices and children's developmental needs and safety are centred in all systems and processes with which they engage.

Principle 3 – Reforms should enhance accessibility: simplification, transparency, fragmentation, cost, and geographic equity

Relationships Australia is committed to promoting accessibility of services, including by:
- reforms to simplify and modernise legislation
- reducing fragmentation and, where it is unavoidable, removing the burden of navigating systems from those whom they are intended to serve and support
- ensuring high quality and evidence-based service delivery, accompanied by robust accountability mechanisms, and
- reducing barriers to access arising from financial or economic disadvantage, as well as those arising other positionalities and circumstances.

Detailed comments on the Bill

Schedule 1 – Property reforms

Part 1 – Property framework

Relationships Australia has advocated, in its submissions to multiple inquiries into Australia's family law system, for simplification of the structure, language and accessibility of provisions applying to decisions about property interests. Accordingly, Relationships Australia welcomes the co-location of related provisions, the reduced reliance on complex cross-referencing, and the reflection in the Act of decision-making principles grounded in established jurisprudence. Improved clarity of structure, concepts and language will assist all users to make informed decisions, whether or not they file an application, seek professional assistance, or simply agree between themselves without assistance.

Property framework – no order to be made unless just and equitable in all the circumstances

Relationships Australia **recommends** that the Act require family law courts to make a positive determination about whether it is just and equitable to make an order altering interests, and that this requirement should be explicitly framed as an overarching consideration for the purposes of matters dealt with pursuant to Parts VIII and VIIIAB (see **Recommendation 1**). Preferably, this would be achieved by inclusion in standalone provisions at the beginning of Parts VIII and VIIIAB, rather than as subsections within sections 79 and 90SM. Alternatively, the Bill could provide for this principle to be applied in a two step process: first, in considering whether any order for adjustment is appropriate and, second, when considering if a proposed order in its entirety is just and equitable.

Property framework – children's best interests

The application, in Parts VIII and VIIIAB, of the 'just and equitable' principle should never derogate from the paramountcy of children's best interests, where there are dependent children. We **recommend** that the Bill make this explicit in a standalone provision. This would align with other recent amendments to the Family Law Act (see **Recommendation 2**).

Property framework – economic or financial abuse – denying financial autonomy: paragraphs 4AB(2)(g) and (h), subclause 4AB(2A)

Relationships Australia is concerned that the use of 'forcibly' in subparagraphs 4AB(2A)(a)(i) and (iv) might support an argument that this requires physical abuse or physical force, which could undermine the intention of the amendment. Similarly we are also concerned that the use of 'sabotage' might be misused to require of the person alleging this form of financial abuse that they prove malicious (or at least deliberate) intent, in accordance with the ordinary meaning of the word.

We **recommend:**

- omitting 'forcibly' in favour of 'coercively', or 'through duress or undue influence', included at the end of the subparagraph, and
- omitting 'sabotaging' and substituting 'intentionally, recklessly or negligently undermining'. (see **Recommendation 3**)

Property framework – sequencing of circumstances and contributions: clauses 79, 90SM

We further **recommend** that the Bill provide that current and future circumstances must be taken into account *before* contributions (see **Recommendation 4**). Our practitioners report that many couples, caught up in considering property and finances, focus on contributions that they have made, and do not turn their mind to children's best interests (including future circumstances) in the context of resolving property matters. Explicit inclusion of the best interests of children as the paramount principle (where applicable) could assist in ensuring that children's best interests remain front of mind, not only for parents, but also service providers, who should continue to attend to children's needs as their parents and caregivers work through property matters. Children may have ongoing, or renewed, needs for support and counselling. The Act needs to be explicitly child-centric throughout, not just in relation to matters falling under Part VII.

Under the Act in its current form, contributions are often considered before current and future needs, and to the detriment of women. There is ample analysis of the jurisprudence demonstrating this, as well as a substantial body of literature showing that women (especially women with dependent children) experience greater financial and economic distress after separation, and for longer periods.[1] One of our member organisations suggested that a potential response could be to provide that future circumstances considerations should be accorded equal or greater weight than past or current contributions.

We **recommend** that the Government plan for extensive public education and professional training to support the effectiveness of the proposed changes (see **Recommendation 5**).

Relationships Australia **recommends** that Government provide more support for legally-assisted FDR for all clients, including clients with 'property only' matters (see **Recommendation 6**). The benefits of LAFDR are well-documented, and most recently canvassed in the final report of the review of the Family Relationships Services Program (Metcalfe, 2024).

Property framework – taking into account the effect of family violence: paragraphs 75(2)(aa), 79(4)(ca), subclause 79(5), paragraphs 90SF(3)(aa), 90SM(4)(ca), subclause 90SM(5)

Relationships Australia **supports** amendments to make the Act more DFV-informed. We welcome amendments to enable the effects of DFV to be taken into account in considering

[1] For example, Smyth & Weston, 2000. Broadway et al, 2022; de Vaus et al, 2007; de Vaus, et al, 2015; Easteal et al, 2018; Fehlberg & Millward, 2014; Gray et al, 2010; Warren, 2017.

current and future circumstances, as well as contributions. However, our practitioners have expressed concern that, without comprehensive risk screening, safety planning and specialised therapeutic services that are available in a timely way, these amendments may exacerbate risks. Our practitioners have also expressed concerns that, at least until jurisprudence on the amendments begins to emerge, there will be considerable uncertainty among parties and their advisors (including lawyers and FDRPs), adding to the stressors – and potentially costs - experienced by separating families. As one practitioner suggested:

> This is potentially the most important and difficult part of the proposed changes, as we [FDRPs] are not in the position to gather evidence [about DFV in the relationship]. It could give clients a sense they need to push their views harder and raise expectations of what they are entitled to – has the potential to expose/lessen neutrality of FDRP's. An area of concern is the enormous wait list of FDV services especially for men….The implications of this on property will make it harder for the FDRP to navigate the proposed division in circumstances where only one party acknowledges FDV. Is there a time frame/limit? That is, if FDV occurred towards the end of the relationship/leading up to separation or throughout the relationship – does this influence the difference in what a person will become entitled to?

These concerns illustrate a fundamental tension that arises in a discretionary system; on balance, however, we remain convinced that a discretionary system is preferred.

Finally, the amendments emphasise the significance of DFV to practitioners working within in the Family Relationship Services Program. As currently framed, the FRSP presumes a sharp binary between family relationship services and DFV services which is, in practice, illusory and exacerbates the administrative siloes and fragmentation in ways that pose serious safety risks for children and their families. As recently observed by the National Children's Commissioner

> …systems are not designed to meet people's needs. Siloes are designed to meet the administrative requirements of government.[2]

We respectfully agree. The FRSP has, throughout its existence, been founded on and entrenched siloes that do not reflect the needs and experiences of separating families, including the appalling prevalence of family violence and child maltreatment. We welcome the findings in the Metcalfe Review,[3] and observations such as 'the FRSP should be seen as a key program in the infrastructure of government responses to family violence.'[4]

Relationships Australia **supports** amendments to require the family law courts (and those families who do not use the courts, but rely on normative standards set by Parliament and the

[2] Speaking in *Health Justice Conversations: How collaboration can support families and children at risk of removal*, 2 November 2023.
[3] See, eg, Finding 1 (pp 8, 83); pp 54, 69, 71, 75-76, 87, 106; see also Recommendation 5 at p 110.
[4] Metcalfe (2024), p 107.

courts) to take into account the effect of family violence in ascertaining contributions and current and future circumstances.

The proposed changes acknowledge the extensive evidence demonstrating the serious and enduring adverse economic impacts of family violence, especially on women and children,[5] and are consistent with the importance accorded to recovery from domestic and family violence in the *National Plan to End Violence Against Women and Children 2022-2032*.

The Bill offers the courts, parties and their advisors structured guidance, while allowing crucial flexibility in responding to heterogenous family situations, and particularly if children will be affected by property division. Indeed, absence of flexibility would seriously undermine the capacity of courts and parties to ensure paramountcy of the best interests of children.

Relationships Australia considers that the proposed amendments, with the focus on the effects of family violence, uphold the foundational 'no fault' basis of the Act. We also welcome the attention paid to economic, financial and systems abuse.

We acknowledge, however, that the proposed amendments are not risk free.

It is probable that the proposed amendments may encourage perpetrators to make unfounded 'cross claims' of family violence and open new opportunities for coercive control through systems abuse. This is already a not uncommon occurrence, and the proposed changes lend additional urgency to work to equip all justice system professionals with the knowledge necessary to accurately identify the person most in need of protection and the primary aggressor across all types of abuse. Further, it is reasonable also to anticipate greater demand on the Family Violence and Cross-Examination of Parties Scheme,[6] and Government may wish to consider whether current resourcing of the Scheme is adequate.

Property framework – taking into account the effect of family violence - potential unintended consequences

Relationships Australia has some concerns about potential unintended consequences. Most importantly, there is concern that making an adjustment in favour of one party will, despite the intention of the Bill, be perceived as re-introducing elements of fault. One way to address this might be to include in the Bill the term 'economic effect', rather than simply 'effect'. This would be consistent with the Explanatory Memorandum. We think adding 'economic' before 'effect'[7] further emphasise that the focus is not to punish or compensate for injury or behaviour, but to reinforce the link between the violence and its impact on current and future circumstances and past contributions to the relationship.

[5] See, eg, Broadway et al, 2022.
[6] We support the exclusion, from the exemption of contributing to costs in respect of an Independent Children's Lawyer, of legal aid clients receiving assistance under this Scheme (subclause 114UC(3); see also paragraph 68 of the Explanatory Memorandum).
[7] To paragraphs 75(2)(aa), 79(4)(ca), 79(5)(a) and (d), 90SF(3)(aa), 90SM(4)(ca), and 90SM(5)(a) and (d).

In any event, we **recommend** that Government be on the front foot in preventing such a perception taking hold in the community through appropriate guidance readily accessible online, at service provision premises, the courts and other touch points (see **Recommendation 7**). We have seen, with the now-repealed statutory presumption of shared parental responsibility, how vulnerable family law legislation is to mythologisation; there is a risk that these amendments will, unless there is an upfront investment to prevent it, generate their own dangerous mythology.

As noted in the Metcalfe Review, there are significant gaps in the provision up to date and easily accessible information about the family law system. While we acknowledge that there is established jurisprudence demonstrating how the family law courts satisfy themselves as to the presence of family violence, our members continue to express concern about a lack of knowledge, understanding and clarity in the community (and, by extension, separating families) about what evidence will be accepted as establishing the fact of family violence. This can hinder parties resolving their matters in a safe, timely and fair way.

In view of this, our member organisations have expressed concern that these measures might inadvertently discourage perpetrators to submit to consent or no admission protective orders, which would have adverse consequences for victim survivors of DFV. To mitigate risks of unintended consequences (particularly those which carry safety risks), we **recommend** that the Bill be as explicit as possible about what evidence the courts consider and what standard of proof is applied, and this should be supported by clear, accessible and up to date information in the public domain (see **Recommendation 8**).

There is also concern that reliance on AVOs and similar protective orders, for the purposes of Part VIII and VIIIAB, may give rise to incorrect assumptions about who is the person most in need of protection. Our members have stressed the need for courts and legal representatives to be DFV-informed about systems abuse and coercive control behaviours that can be used to depict a victim survivor as a perpetrator. The proposed amendments underline the imperative, put forward by Relationships Australia in other family law reform and family violence submissions, that justice system professionals be required to undertake substantive initial and regular refresher trainer in the nature, prevalence and effect of domestic and family violence.

Further, we anticipate increased demand by legal representatives (and self-represented litigants) seeking access to records of counselling that occurred outside the parameters of the Act for the purpose of interrogating claims of family violence and its effects. This may discourage victim survivors of DFV from seeking therapeutic support, as well as having significant resourcing implications for our services in responding to those requests.

We **recommend** that the Australian Government work with state and territory legal profession regulators to ensure that lawyers who encounter matters raising domestic and family violence, and coercive control, are sufficiently knowledgeable to respond appropriately. Such training should be mandatory (see **Recommendation 9**).

Treatment of companion animals: subsections 4(1), 79(6), 79(7), 90SM(6), 90SM(7)

Relationships Australia welcomes the new provisions conferring on the family law courts powers to make orders about the ownership of companion animals. Over a decade of research has demonstrated that fear for the safety of animals, including agricultural livestock as well as companion animals, is both a barrier to leaving a relationship and also a means of perpetuating coercive control.[8]

Relationships Australia agrees that, for the purposes of Parts VIII and VIIIAB, animals kept as part of a business, for agricultural reasons or for use in research are appropriately dealt with as ordinary property. However, we **recommend** that paragraphs 79(7)(e) and 90SM(7)(e) should be expanded to require the court to take into account any history of actual or threatened cruelty or abuse by a party towards not only the companion animal subject to the proceedings, but any such history towards any other animal (regardless of whether the animal was a companion animal, agricultural or business livestock, or a research animal) (see **Recommendation 10**). We consider that a history of this kind should be treated as a relevant circumstance.

Property framework - workforce development

The inclusion of family violence as a relevant consideration for applications under Parts VIII and VIIIAB will also require upskilling among professionals who have not previously needed to have family violence front of mind, as well as adaptations to court processes to screen for risk and appropriately manage high risk cases, as is done in respect of applications under Part VII. We **recommend** that the Government plan for workforce training to support this upskilling (see **Recommendation 11**).

We further **recommend** that the Court consider using DOORS for all matters under Parts VII, VIII and VIIIAB (noting its successful use in Lighthouse).[9] There is already a tailored DOORS that can be provided in matters involving property issues only. However, where there are disputes about property, and there are children who may be affected, we **recommend** the use of the DOORS that is currently used in Part VII matters, because the safety of the whole family should still be understood irrespective of the legal nature of the dispute at hand (see **Recommendation 12**).

[8] See, eg, Butler and MacDonald, 2024; Giesbrecht, 2022; Kotzmann et al, 2022.
[9] See https://www.fcfcoa.gov.au/fl/fv/lighthouse

Property framework - – complementary recommendation - potential access to perpetrators' employee superannuation contributions

Finally, we draw to the Department's attention recommendations that we made in our submission, dated 7 February 2023, to Treasury about proposals that would allow victim survivors of domestic and family violence offences to:

- be awarded an amount from their perpetrator's 'additional' contributions for the purposes of satisfying unpaid compensation orders, as proposed in Treasury's 2018 consultation, and
- submit a superannuation information request to the appropriate court which could then request that the ATO discloses specific information regarding the offender's or their spouse's superannuation accounts.[10]

We **recommend** that the Attorney-General liaise with the Treasurer to ensure that these proposals are progressed to support not only the effectiveness of amendments of the Family Law Act, but also the emerging suite of policy and programme responses intended to ameliorate the enduring economic impact of family violence on women and children (see **Recommendation 13**).

Explanatory memorandum – wastage – stigmatising language: paragraphs 82, 170

Relationships Australia **recommends** that, in the Explanatory Memorandum, Government refer to 'gambling harms' or 'harmful gambling', rather than 'excessive gambling', which is a pejorative and stigmatising expression that may deter help-seeking (see **Recommendation 14**). Referring to 'gambling harms' or 'harmful gambling' is consistent with language being used elsewhere across Government (eg classification policy, restrictions on gambling advertising and on online gambling).

We further **recommend** that the Bill be refined by allowing the Court to take into account excessive lawyers' fees (relative to the property pool) as a form of wastage (see **Recommendation 15**). This could operate as an effective deterrent to systems abuse involving running up legal costs to the financial detriment of a party, and would support legal advisers and FDRPs in preventing such abuse.

Part 2 – Principles for conducting property or other non-child-related proceedings - extension of less adversarial trial provisions

Relationships Australia **supports** proposals to minimise adversarial characteristics of the current family law system, while again noting the innate unsuitability of the family law system to promote child development and co-parenting. Successive governments have made repeated –

[10] A copy of the submission can be accessed at https://relationships.org.au/research/#advocacy

and thus far, unsuccessful - attempts, over decades, to 'modify' what is seen as the 'family law system' to more safely accommodate emerging understanding of, *inter alia*:

- the harms inflicted on children, and their parents, by processes that institutionalise parental conflict
- the status of children as rights bearers
- the experience of children as primary victim survivors of DFV, and
- the long-term effects of trauma, including intergenerational trauma, and the importance that systems be trauma-informed and DFV informed.

As noted in previous submissions, where there are children of the parties, a proceeding which is ostensibly about property only can drag parents back to conflictual dynamics, including where they have been peacefully co-parenting under the terms of a formal parenting agreement (or no agreement at all).

Relationships Australia **supports** the emphasis on safeguarding parties and children against family violence, and the recognition that family violence is a critical issue in proceedings that are not child-related proceedings. Family violence has a high prevalence among our FRSP clients, and we offer a range of services and tools to empower families to address that, and to safely and effectively co-parent. Failing to address safety issues in families precludes effective delivery of therapeutic services that support long-term outcomes relating to child development and wellbeing, as well as the safety and well-being of all family members.

Introducing Less Adversarial Trial (LAT) processes to applications relating to property interests will, as mentioned in our previous submissions, require the family law courts to have in place appropriate risk screening and triage to adequately uphold the safety of court users. We **support** co-location of all LAT mechanisms in Part XI, to support usability of the Act, while emphasising that, in the past, the LAT mechanisms in Part VII have periodically fallen into disuse, particularly when the family law courts are facing high workloads with diminished resources. While a range of recent reforms and funding arrangements offer hope that the courts are currently in a better position to manage their workloads, Relationships Australia **recommends** that Government keep court funding under review to ensure that the family law courts remain in a strong position to use the LAT mechanisms to their best effect (see **Recommendation 16**).

Part 2 – Principles for conducting property or other non-child-related proceedings – proposed extension of mandatory pre-filing FDR

Accordingly, Relationships Australia **recommends** mandating a pre-filing certificate process for Parts VIII, and VIIIAB matters (see **Recommendation 17**). While the section 60I process is not without its flaws, a pre-filing process for Part VII matters has been extremely successful in saving many families the expense, stress and delays of litigation. While the consequent increase on demand will require increased funding for FRCs; however, this will be more than offset by savings made by reducing demand on far more expensive tertiary services, such as courts, as

well as the long-term savings in our social, economic, health and social welfare systems that are delivered to society by FRC services which build families' capacities in safe communication and problem-solving. Requiring FDR as a mandatory pre-filing requirement would also complement and reinforce the use of the Less Adversarial Trial mechanisms, as expanded in this Bill, for matters under Parts VIII and VIIIAB.

Part 3 - Continuing duty to disclose, clauses 71B, 90RI

Relationships Australia **supports** an explicit and continuing obligation of full disclosure. Centring full disclosure will help FDRPs and legal representatives to impress on clients that they can experience adverse outcomes if a court finds that they have not fulfilled their obligations. The proposed amendments reflect the importance of disclosure to reaching appropriate outcomes (whether through court order or by agreement), and also helps users of the Act in navigating the requirements to which they are subject.

Non-disclosure of income/assets accrued through participation in the cash economy is a significant issue in the family law and child support contexts. Reliance on taxable income can also lead to artificially low child support assessments that do not reflect the true financial position of the payer parent. We are aware of payee clients of our members who, because of non-disclosure or under-disclosure of money received through the cash economy, receive under $10 per month.

We **support** the proposed duties to be imposed on FDRPs and lawyers to inform parties about the duty and the consequences of non-compliance, and to encourage compliance. We **recommend** publication by the Attorney-General's Department of fact sheets and internal training by service providers to ensure that FDRPs and lawyers are aware of their obligations (see **Recommendation 18**).

As a more general comment, Relationships Australia **recommends** further raising the upper limit of matters eligible for PPP500 designation, noting current and projected increases in property values. Further, the upper limit should be reviewed at least once every two years to ensure that the PPP500 option remains viable and realistic (see **Recommendation 19**).

Relationships Australia supports the amendments in Part 3 of Schedule 1 imposing duties on legal practitioners and Family Dispute Resolution Practitioners to give parties information about their disclosure obligations and the potential consequences of non-compliance, and to encourage parties to comply.

We nevertheless entertain doubts as to whether that will prove sufficient to encourage improved compliance. It is our experience that non-compliance is not driven by a lack of awareness of obligations or gaps in the courts' powers to require compliance. Rather, non-compliance emerges from expectations that there will be no or few consequences. Relationships Australia recognises that change in this regard needs to be court-led to be effective and durable. In the absence of action of this kind from the family law courts, then

imposition of the proposed duty on lawyers and FDRPs will not necessarily achieve the intended policy objective of encouraging disclosure.

Schedule 2 - Children's contact services

Court-ordered services for children and people with whom they have a significant relationship: subsections 4(1), 4(1AB) and 4(1AC)

Some of our members have also suggested that, in the context of Children's Contact Services, the definitions of 'member of the family' and 'relative' in subsections 4(1), 4(1AB) and 4(1AC), may be inadequate. Orders can (and are) made, pursuant to paragraph 60CC(2)(e), to enable supervised contact between children and a range of people with whom they have a significant relationship; not only people who fall within the definitions in section 4. This reflects the fact that the Act is intended to accord paramountcy to children's best interests, and necessitates a degree of flexibility to ensure that children in separating families are supported to retain the full breadth of relationships that are meaningful to them. We **recommend**, therefore, that clause 10KB be amended to reflect this (see **Recommendation 20**).

Immunity - clause 10AA

This clause confers immunity for acts done, or omitted to be done, 'in good faith'. Relationships Australia notes that this formulation is narrower than expected in a modern integrity framework. It is, for example, inconsistent with the criteria for providing legal assistance under Appendix E of the *Legal Services Directions 2017*, which requires a Commonwealth employee to have acted 'reasonably and responsibly'.[11] Relationships Australia **recommends** that the immunity also require the relevant acts or omissions to have occurred reasonably, as well as in good faith (see **Recommendation 21**).

Scope of accreditation scheme

Consistent with previous submissions relating to CCS, Relationships Australia supports an accreditation scheme for CCS, and looks forward to working with Government to establish and successfully implement such a scheme. We **recommend** that accreditation and any other new oversight framework be directed to providers who operate a CCS but would not otherwise be subject to independent oversight as a matter of law (see **Recommendation 22**). Government-funded CCS are sufficiently regulated through contractual provisions, as amply demonstrated by services that have, despite years of grave under-funding, delivered safe and effective services to families in high risk circumstances.[12]

Further, Relationships Australia **recommends** that, where a CCS is provided by an organisation (whether a body corporate, a trust, a partnership or other entity), it be sufficient that the entity

[11] See paragraphs 5-7 of the Directions. An employee who has not acted reasonably and responsibly may be asked to contribute to their legal expenses.
[12] See the evaluation report of CCS: Carson et al, 2023.

is accredited, and there be no requirement that individual workers employed by the entity be accredited as CCS practitioners (see **Recommendation 23**). Of course, the Act should still provide for accreditation of individuals as CCS practitioners to accommodate sole traders. However, where an entity is providing the service, it is more appropriate to impose the regulatory requirements on the entity, which will be responsible, through the terms of employment contracts, for ensuring its workers provide a safe, high quality service. Contracts include obligations on individuals to, for example, undertake certain volumes and kinds of professional development, and provide for professional supervision.

Functions of CCSs: items 21-23

Relationships Australia **supports** requirements that CCS businesses, as defined, advise families that children's best interests are the paramount consideration,[13] which would be consistent with, and would reinforce, obligations on other professionals in the family law system. However, this is an instance demonstrating why, where CCS services are provided by an entity, it is appropriate only to impose the obligation on an entity, rather than individual, to ensure quality, timeliness and consistency of the advice.

Refusal of service – obligation to notify court, proposed subclause 13D(1B)

Currently, notification of refusal or withdrawal of service occurs in some form. Accordingly, Relationships Australia **supports** this obligation and, to ensure consistency and efficiency, **recommends** that the family law courts work with CCS providers to develop a standard template (see **Recommendation 24**). The template should be general, without any requirement for details that may give rise to safety risks; our members have expressed concern about the risk of over-disclosure, which may exacerbate safety risks. The template could also be used to advise the court that service has been suspended or that a party did not engage with the service.

Penalty provisions and strict liability offences

The effectiveness of the proposed penalty provisions will depend on whether they are enforced in practice, and whether providers are permitted to build the cost of fines into their business models, by simply passing it onto clients. Further, the penalties may not be sufficient to act as an effective deterrent.

Relationships Australia acknowledges the statement in the Explanatory Memorandum to the Bill that penalties have been set at a level that is 'consistent with other Commonwealth regulatory schemes concerned with ensuring the safety of vulnerable people', but notes that the penalties are nonetheless below the maximum penalties set out in Attorney-General's Department's *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* (paragraph 472). The penalties are significantly lower than some of those provided for in the

[13] See Schedule 2, items 21-23.

Aged Care Bill 2024. Given the sensitivity and risk profile of CCS clients (the children) and their families, we **recommend** that Government review the penalty units (see **Recommendation 25**).

Schedule 3 – Case management and procedure

Part 1 – section 60I certificates and exemptions

Relationships Australia welcomes reforms to encourage use of FDR, and we support mechanisms to encourage people to engage in FDR earlier rather than later. FDRPs are highly trained professionals who offer specialist expertise in dispute resolution, child focussed and child inclusive practice, as well as expertise in trauma-informed practice, DFV-informed practice and culturally safe practice. The earlier that people engage in FDR, the less entrenched they can become in conflictual and combative dynamics that undermine safe and effective co-parenting or, where there are no children, dynamics that can lead to ongoing perpetration of abuse including financial and economic abuse, technology-facilitated abuse and systems abuse. Other benefits of early and genuine engagement with FDR include lowering financial costs to families and to government.[14]

The proposed amendments should contribute to reducing the significant numbers of applications that are filed where the party has not attempted to resolve their issue in FDR first and is unlikely to meet the available exemptions. This loophole has been thoroughly exploited by parties and lawyers, unnecessarily protracting matters, incurring expenses and burdening the family law courts.

The amendments are likely to increase the demand by clients and their lawyers for FDRPs to issue s60I certificates without genuine engagement in the FDR process, shopping for certificates at multiple FDR services, or providing incorrect Party B details.

Our members say they will expect an increase in the number of clients ringing to say ‘my lawyer says I need a s60I’ etc and complains when these cannot be simply issued based only on their request or side of the story. The exceptions are clearly available for some clients but the process to seek an exception has long been seen as less desirable than just getting a s60I issued.

The proposed reforms do not address the current dilemma posed by parties who genuinely fall within the criteria for one or more exemptions, but either do not know this is an option or are unclear on how to apply for this pathway in a cost and time effective manner. This is of particular concern with self-represented litigants. Obtaining a 's60I' is seen as the easier option even if it potentially increases risk (by engaging with other party where there has been family violence) or takes too long (for urgent cases) etc. Often, a referral to a provider of legal services just leads to the client coming back and demanding a s60I. These (and other) issues could be

[14] Relationships Australia is currently participating in a consultation process about new Regulations, to take the place of those which sunset in 2025.

addressed through accessible, up to date public information about mandatory FDR for Part VII matters, and exceptions to that requirement. In line with the findings and recommendations of the Metcalfe Review, we **recommend** that information should be available through a wide range of channels, including an updated Family Relationships Online, as well as through Family Relationships Centres, and the Family Relationships Advice Line, as well as legal and health service providers (see **Recommendation 26**).

Part 3 – Commonwealth Information Orders

Relationships Australia **supports** amendments to clarify that, even if a Commonwealth department or agency does not have location information about a child subject to a CIO, it should still be required to provide information about actual or threatened violence against specified persons (see proposed subclauses 67N(9) and 67NA(1)). Such an amendment furthers the objective of promoting a safer family law system by promoting the development of a more comprehensive understanding of the circumstances in a family; it is particularly important in the context of blended families.

Part 5 – Protected confidences

Relationships Australia notes that Part 5 of Schedule 3 was not included in the Exposure Draft on which we were previously consulted.

Concerns about safe and effective operationalisation

Several of our members, seeing these provisions for the first time, have raised a number of significant concerns about how these provisions can be safely and effectively operationalised by service providers. We have drawn these to the attention of the Attorney-General's Department and look forward to working with the Department to address these concerns. Given the relatively short time frame for consultation on these provisions, which were not included in the Exposure Draft, we reluctantly **recommend** that these provisions be removed from the Bill and further consultation be undertaken with CCS providers to ensure that the reforms will work as intended. This will support safe and effective operationalisation of these provisions in the next tranche of Family Law Act amendments (see **Recommendation 27**).

In the meantime, however, we **support** amendments that locate in the Act requirements to obtain the court's leave for a legally-represented party to issue a subpoena that relates to 'protected confidence' records.

Definition of professional service, clause 102BB

Relationships Australia **recommends** that the definition be broadened to explicitly include alcohol and other drug services and gambling help services (see **Recommendation 28**). While these services may properly be considered to fall within the scope of subclause 102BB(3), we confidently expect that these provisions will be tested in litigation; in particular, by family law litigants who are perpetuating systems abuse. We accept that jurisprudence may, over time,

emerge to put the inclusion of such services beyond doubt (and thus be the catalyst for making regulations under paragraph 102BB(1)(c)). However, this will take time and necessitate families being put to the trauma and expense of litigation over a matter that is both foreseeable and could be easily addressed before the Bill is passed. This seems counter to the overall objective of the family law reforms.

Resource implications

Currently, our members expend substantial resources (time and money) providing court reports, responding to subpoenae, and attending court, as acknowledged by the Metcalfe Review. The Review suggested that these imposts should be recognised in future Grant Opportunity Guidelines (p 37).

The amendments will require that our clients (who may well be self-represented and potentially unaware of the option) or our services will need to apply for the proposed directions in relation to adducing evidence. We are not currently resourced to undertake this on behalf of our clients. Further, our services will still face subpoenae filed for fishing expeditions and to test the amendments, with the associated imposts of time and cost borne by our members who must file the objection and attend court. We **support** reforms to the 'front end' that clarify what communications are excluded communications and that filter out subpoenae issued for tactical reasons, including as part of systems abuse conduct. Relationships Australia National Office has also been advised by members that

> The current ability for named parties to request copies of subpoenaed information is also of concern. In many cases [we must] file an objection to other parties seeking/seeing access to the notes to protect parties, increasing the resources in responding to a subpoena. The increase in Independent Children's Lawyers being appointed by the courts to represent children's interests is a positive step but [we suspect] this will increase the number of subpoenas, and the need to object to parents requesting a subpoena copy to ensure child safety.

Our members have indicated that the complexity of admissibility and confidentiality provisions can be a source of confusion for clients and service providers, leading to inadvertent (as well as intentional) improper disclosures. Costs for clients would be reduced by having clear, intelligible rules.

Schedule 4 – General provisions

Part 1 – costs orders

Relationships Australia **supports** amendments that promote ease of access and use of the family law system, including by self-represented litigants. Including provisions in the Act, rather than the Rules, assists users. We acknowledge the key disadvantage is that locating matters in

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1300 364 277
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the Act makes amendments, when necessary, more difficult and time-consuming. We do not consider, in this instance, that this disadvantage outweighs the likely benefits to users.

Relationships Australia **supports** proposals to clarify that legal aid commissions can seek financial contribution towards the cost of ICLs and that family law courts can make such orders, subject to a financial hardship exception.

We also **welcome** the inclusion of clause 114UC, which we hope will reduce barriers to the appointment of ICLs and litigation guardians. The difficulty in finding people to accept such appointments is longstanding, and is a significant obstacle in providing people with disability with access to justice.

Other matters

To avoid unintended consequences that pose safety risks, it will be necessary to have available public education and awareness materials, as well as training materials for professionals. The Metcalfe Review has highlighted the difficulty of accessing current and intelligible information about the family law system. Further, sufficient time should be allowed to enable users of the family law system to be across the amendments, and able to confidently use and advise on them. Failure to allow such time may result in unintended consequences that pose safety risks.

Conclusion

Subject to the preceding comments and our recommendations, Relationships Australia supports the Bill. We again thank you for the opportunity to engage with this Inquiry, and would be happy to discuss further the contents of this submission if this would be of assistance.

Yours sincerely

Nick Tebbey
National Executive Officer

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