



**National Women's
Safety Alliance**

Submission to the Standing Committee on Legal and Constitutional Affairs Family Law Amendment Bill 2024.

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About NWSA

The **National Women's Safety Alliance** brings together a diversity of voices, expertise, and experience to inform and guide national policy on women's safety. The NWSA, established in August 2021, connects the sector, experts, government, and victim-survivors with a shared vision to end violence against women. This will be achieved through consultation, research, and the collaborative development of expert policy advice to government.

More information about NWSA is available on our [website](#).

Introduction

The National Women's Safety Alliance welcomes this opportunity to contribute to the *Family Law Amendment Bill 2024*. The Alliance, through our members, has a strong interest in family law reform and we have previously participated in consultations regarding substantive amendments to the *Family Law Act (1975)* and to the *Family Law Amendment (Information Sharing) Bill 2023*.

With regard to this Bill, the Alliance and our members are particularly interested in providing feedback on Part 5 of Schedule 3 (Protected Confidences). Protected confidences are those made in the course of professional services, which rightly includes specialist sexual violence and family violence services. We welcome the efforts of this Bill to safeguard confidential counselling material from weaponisation by perpetrators of domestic, family or sexual violence. We use this submission to raise potential policy implications as well as detail of the Bill itself.

Our members, domestic and family violence support services and sexual violence support services, are familiar with efforts by perpetrators of violence to subpoena notes by their client's perpetrator in legal proceedings. In developing a response to this Bill, we engaged with members of our Policy Advisory Committee as well as representatives from women's legal services. We use this submission to outline considerations going forward.

Overarching considerations

Definition of *professional services* (102BB)

Professional services such as counselling and crisis support services play an intrinsic role in responding to domestic, family or sexual violence or assisting in the survivor's recovery from violence. These services operate off a relationship of confidence and trust between the client and their confidant.

We support the definition of professional services as outlined at 102BB and the explicit reference to a specialist service in relation to sexual assault or family violence. Trust between these service confidants and the clients who confide in them is inherent to a service's ability to deliver the most qualified and appropriate assistance.

The potential for 'systems abuse' of domestic, family and sexual violence services

In providing input into the earlier reforms to the Family Law Act (Information Sharing) Bill 2023, we urged that sexual violence counselling notes be specifically mentioned in the list of “protected materials” and treated similar to legal professional privilege.

The intersection between establishing confidence between a client and a support service and protecting that confidence from abuse by perpetrators of domestic or sexual violence is well understood by our members. Receiving subpoena applications is a typical part of a service case-worker's workload. While preparing objections to a subpoena are a standard response, there is still a significant amount of work which is required. While we fully support protecting these confidences, it is imperative that the Federal Court and Family Court of Australia (FCFOA) are aware of how systems like domestic violence and sexual violence response services can also be abused by perpetrators of violence.

Given the systemic and longstanding resource limitations of sexual violence and domestic and family violence support services, we are concerned that time-poor services and overwhelmed staff may not have the resources or skills to object to a subpoena and may, in some cases, comply with the application not knowing the exemptions that are in place. This must be considered and addressed in the implementation phase of the protected confidences legislation.

In consultation with our members, we have also been advised of how proceedings in different court jurisdictions can be subjected to systems abuse by legal counsel. Despite the *Harman* undertaking (where documents obtained through compulsory processes of the court will only be used for the purposes for which they were disclosed), our members have detailed how perpetrators of violence use proceedings in the FCFOA to subpoena notes that are then used to 'background' or 'undermine' claims on behalf of their clients in adjacent court proceedings.

As with the subpoenaing of confidences and the limited capacity of women's legal services to develop objections, these revelations by our members are further indication of how the FCFOA must remain vigilant to the scope of

domestic and family violence and the dynamics of systems abuse throughout Australia's justice system.

Grounds and considerations for directions (102BE)

While we support the objective of the protected confidences amendments, the complexity of systems abuses, and in particular how professional services can also be subjected to this abuse, must be kept in view.

We urge the Committee to refer to the findings of the Coroners Court of Queensland and the inquest into the death of Hannah Clarke and her children by her estranged husband, Rowan Baxter.¹ The Inquest found that Baxter used professional counselling services to manipulate the service and the Family Court systems into reinstating access to his children. As revealed through the Inquest, his selected counsellor provided false evidence and was not sufficiently qualified to assess Baxter's risk to his family. Protecting *these* counselling notes would not have served the purposes of the Inquest. While there is an abundant need for the protected confidences provision, the ultimate determination between the weight of harm, such as in cases of attempted or actual homicide or sexual violence,² and the benefit of release should reside with the court, as captured at 102BE.

¹ *Inquest into the death of Hannah Ashlie Clarke, Aaliyah Anne Baxter, Laianah Grace Baxter, Trey Rowan Charles Baxter, and Rowan Charles Baxter* (2022)
https://www.courts.qld.gov.au/_data/assets/pdf_file/0010/723664/cif-hannah-clarke-aaliyah-baxter-laianah-baxter-trey-baxter-and-rowan-baxter.pdf, pg. 122-135.

² Similarly in *R v Baden Clay* (2014) QSC where the Court ruled privilege did not apply to relationship counselling undertaken in the immediate period prior to the homicide being trialed.