



Legal and Constitutional Affairs Legislation Committee

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26 May 2023

Dear Committee Members,

Re: Family Law (Information Sharing) Bill 2023

Thank you for the opportunity to comment on this important draft legislation.

We understand the timing of the opportunity to comment is not within the Committee's control, and urge the Committee in making its report **to advise the Senate** that such short timeframes (eleven full working days from receipt of advice to submission) greatly disadvantages vulnerable Australians who wish to have a say. Community organisations such as our own operate with limited staff and contacting our members, supporting them to respond, and organising their and our own response on a proper reading of proposed legislation is not possible within this timeframe. This response is therefore of necessity brief and limited to the explanatory memo.

Council of Single Mothers and their Children Inc. (CSMC) was founded in 1969 by single mothers to improve their lives and those of their children. Based in Victoria, we achieve change by championing the voices of single mother families and providing specialist support services.

Single Mother Families Australia, formerly National Council of Single Mothers and their Children, (SMFA) formed in 1973 to provide a lead voice for single mothers and their children around Australia. NCSMC believes access to information and support, when and as required, is empowering and enables women to make informed decisions. This in turn better equips and supports their parenting.

Together we provide information, referrals and assistance to single mothers, responding annually to thousands of requests, whilst our social media posts can reach more than 100,000 per week. 80% of lone parent households are headed by a single mother, and evidence shows single mother families are disproportionately affected by hardship, poverty and/or domestic violence, with 37% living below the poverty line and 60% affected by family violence.

Both Councils welcome an opportunity to speak to this submission or appear before the committee. We wish the Committee well with its deliberations.

Warm Regards,

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The purpose of these reforms

We are generally supportive of this legislation on the basis that a fundamental principle in enhancing information sharing is to ensure safety is granted primacy in all deliberations and outcomes.

We understand that in the Family Law Amendment Bill 2023, children's best interests will become the paramount factor in deciding family law disputes and in so doing, adopt the recommendations of a 2019 Australian Law Reform Commission review to remove the presumption of equal shared parental responsibility. We regard these as positive moves to immediately improve the safety of separating families and simplify the test for the best parenting arrangement for children.

In this and the larger Bill, we support all elements of family law reform to achieve the necessary cultural change to overcome dominant misinterpretations about parental rights rather than parental responsibilities. These have contributed to unsafe situations for children, their primary caregiver and other family members, prolonged litigation, and increased parental conflict.

On our reading of the Explanatory Memorandum, Family Law (Information Sharing) Bill 2023, we outline our support below. While we have not had time to consult with our members, we are aware that many have long said in relation to improving orders and court processes that:

- Lack of shared information between State and Territory courts and agencies dealing with family violence and all matters relating to the safety of both children and their primary carer and extended family, has been an impediment to both good court processes and workable, fair parenting orders.
- Insufficient attention appears to be paid to the child's physical, emotional and psychological safety, with judges making comments such as: "X is young. S/he will get over it." This in turn, leads often to insufficient understanding of trauma and long-term impacts of witnessing violence between their parents and/or between a parent and another child.

This issue has been raised with us many times as we have made submission relating to Family Law matters over the past seven years.

Members often comment to us that too often, judges, lawyers and 'experts' labour under preconceived views about what does and does not constitute harm to a child, what incidents children may be able to recover from quickly, and what damage is likely to occur in certain forms of continued contact with the harming parent. Witnessing violence, for example, in some circumstances can be more harmful in the long term to a child than some physical violence, and the impacts of vicarious and other forms of trauma manifest for many years in educational and social impact factors.

We are pleased to see in this Explanatory Memo, detailed and more expansive understandings of what constitutes family violence such as:

19. a. 'Family violence' is defined in subsection 4AB(1) as violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the family member), or causes the family member to be fearful. Subsection 4AB(2) lists several non-exhaustive examples of behaviour that may constitute family violence, including physical or sexual assault, stalking, verbal abuse, damage to property, harm to pets, unreasonably denying a person autonomy or liberty, preventing contact with family or friends and withholding financial support

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- b. 'Child abuse' is defined in section 4 and covers an assault, including a sexual assault, of the child, a person involving the child in a sexual activity, causing the child to suffer serious psychological harm, including (but not limited to) when that harm is caused by the child being subjected to, or exposed to, family violence, or serious neglect of a child.

Our previous submission (on the Exposure Draft) noted that: 'Where a court continues unsupervised contact with the parent who conducted the violence the child has witnessed, the residual trauma and uncertainty is highly likely to continue.'

We further noted that Australia has various legislative definitions as to when a child needs protection and suggested these be considered.¹

The following comments are representative of many made by our members on this matter of access to relevant information about matters affecting the safety of children and their primary carer:

"Magistrate's courts have a history of Intervention Orders (Apprehended Violence Orders etc) and breaches of these must be given weight.

As raised in the previous Royal Commission into Family Violence by those working with women and children, the disparity between the two jurisdictions (Federal and State/Territory) is one of the most significant and detrimental experiences that family violence victims experience. The Family Law and Federal Circuit Courts must cease overriding the Magistrate's Court's protections and instead work with them."

"I had a full no-contact IVO on my ex-partner, yet the FLC judge openly dismissed this and disregarded our protections. He granted several orders for my ex-partner to have contact and care (unsupervised) with our two young children (aged just 2 and 4 years old at the time) and ordered me to return to the perpetrator's resident state within a 28 day period".²

Future harm

We acknowledge the new paragraphs 67ZBD (2) (c) and (d) concerning future risks to the child. The example provided (38) is one in which some of our members have had experience and have expressed great concern: "For example, technology-facilitated abuse and violence may not be directed towards, or shared with, a child to whom proceedings relate. However, the experience of that abuse and violence may impact the way in which either party to proceedings engages, interacts with or supports a child. It is intended that the inclusion of these provisions will ensure the court is provided holistic information to make decisions which promote the best interests of the child, and ensure the safety of all children and parties involved."³

Protected information

We also support the provisions to deal with protected information, including the basis for the exclusion of such information, the provision for information sharing agencies to decide to provide such information, and particularly, the safeguard:

¹ Australian Institute of Family Studies: *Australian legal definitions: When is a child in need of protection?* February 2023 Accessed at: <https://aifs.gov.au/resources/resource-sheets/australian-legal-definitions-when-child-need-protection>.

² Comments here and elsewhere are taken from our second national survey of single mothers, 2022; Report as yet unpublished.

³ From the Family Law (Information Sharing) Bill, 2023 – Explanatory Memo

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67ZBF(2) provides that where an information sharing agency does not provide particulars, documents or information to the court on the basis that they are, or they contain, protected material, that agency must inform the court that they have not provided the material, or are of the opinion they are not required to provide that material. the information sharing agency must also make clear to the court what type of protected material, as set out in new paragraphs 67ZBF(3)(a)-(c), is applicable.

64. The intention of this provision is to ensure the court is aware of the existence of further material, which in the opinion of the information sharing agency is protected material. The court can then engage with the information sharing agency directly about whether this information is critical for the purposes of decision-making, and if so, what additional protections, safeguards and practices can be applied to support its safe provision to the court.⁴

In relation to both information sharing and protected information, however, we are not clear that suggestions we made in our submission on the Exposure Draft (February 2023) have been noted.

Specifically, we want to see Allied Health practitioners, particularly physiotherapists, osteopaths, social workers, counsellors, pharmacists, optometrists and speech therapists included, as while it may not be very common, we know each of these professions is involved in treating people who have experienced violence along with related injuries and traumas.

We also add **hospitals** to the list as many victims of family violence present to hospital emergency rooms for assistance and that not all of these presentations translate to child protection notifications or any other formal action noting family violence.

We draw attention to the evidence that 40% of the 16,000 victims of family violence attending Victorian hospitals over a ten-year period sustained a brain injury. 31% of victims of family violence attending Victorian hospitals over a ten-year period were children under the age of 15, and 25% of these children sustained a brain injury.⁵

Statutory review

We strongly support the proposed review of the operation of amendments to commence no more than 12 months after commencement.

Outstanding questions

Malicious notifications to Child Protection authorities

Over years we have become aware of some separating parties and/or their extended families, making a notification to local Child Protection authorities in order to force a resolution to the question of the child's home location, in their favour.

We have no data on the frequency of such incidents but have been told by one investigating Social Worker that: "These are quite common. We always have to investigate and where we know it is a family member, say a parent-in-law, raising issues where school and all other bodies have an entirely different view, we try to make the assessment quick and conclusive."

⁴ ibid

⁵ Brain Injury Australia: [The prevalence of acquired brain injury among victims and perpetrators of family violence](https://www.braininjuryaustralia.org.au/download-bias-report-on-australias-first-research-into-family-violence-and-brain-injury/). 2018 Available at: <https://www.braininjuryaustralia.org.au/download-bias-report-on-australias-first-research-into-family-violence-and-brain-injury/>

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Single mothers who have been subject to these allegations tell us that even when the allegations have been found false and deemed vexatious, the emotional toll is ongoing, resulting in years of anxiety and even fear.

Will the new subsection 67ZBH(3) take these situations into account?

- a. the notifier is a party to the proceedings, or
- b. the court is satisfied that the notifier's identity, or information that could identify the notifier, is critically important to proceedings and that failure to make the disclosure would prejudice the proper administration of justice.

Child support

We raise a question about the Information Sharing capacity. Is the FFCOA able to access information from the Australian Tax Office about payment/non-payment of child support? If not, could this be included in this or other legislation as a matter of urgency? The need for such inclusion is illustrated by this quote from a single mother respondent to the draft legislation:

"I do not see enough done to ensure the financial needs of the either the primary carer or only carer are met. Often the primary carer is placed in a terrible situation, including abject poverty or living below the poverty line, even when the other parent is financially more than able to meet the needs for the child. There are many ways within the system where a parent can manipulate finances to the detriment of the child as well as the carer."

Our final comment, as in our submission on the Exposure Draft, is from a child, 16 years of age, who has been through the family court. Our survey of experiences of family law was open only to single mothers (women raising children alone) and children over 18 years of age who had experience of the family court.

"Please help families be healthy and happy instead of destroying them. Even adult kids like me are extremely upset and stressed by the Family Court. I have been feeling very depressed and anxious due to what has happened to my family for the past 3 years. Even though my mum has finished in Family Court my dad sends her very abusive messages and tries to tell me my mum is crazy and a psycho. My dad hit me and my mum and siblings. No one protected us. No one cares about my family."