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14 June 2023

Committee Secretary
Senate Legal and Constitutional Affairs Committee

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

FAMILY LAW AMENDMENT BILL 2023

Thank you for the opportunity to comment on the Family Law Amendment Bill 2023. Following a series of reviews and inquiries into the family law and adjacent systems, Relationships Australia welcomes the Government's introduction of this legislative package as an instalment of the comprehensive suite of evidence-based measures that is vital to address the serious concerns that have been expressed by diverse stakeholders over several years, and which continue to put at risk the safety and wellbeing of children and young people. We also welcome the use of simplified outlines as improving the readability of the Act.

Part 1 Framing principles

This submission is informed by the various submissions which Relationships Australia has made in recent years, and which can be found at https://relationships.org.au/what-we-do/#advocacy. These include our submissions responding to the:

- ALRC Issues Paper 48
- ALRC Discussion Paper 85
- 2020 inquiry by the House of Representatives Standing Committee on Social Policy and Legal Affairs into family, domestic and sexual violence
- inquiry by the Senate Standing Committee on Legal and Constitutional Affairs Committee into the Federal Circuit and Family Court of Australia Bill 2019, and
- inquiry by the Joint Select Committee on Australia's Family Law System.

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. In this regard, Relationships Australia welcomes the inclusive language used throughout the Bill.

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 fully 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.

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Relationships Australia welcomes the increasing emphasis, on the face of the statute book, on safety, and the universal rights to be safe from violence, abuse and neglect. The last decade has seen exponential leaps in understanding of the drivers, dynamics, nature and prevalence of domestic and family violence. While the 2011 amendments reflected important advances to reflect then current knowledge, rapid advances since have created an imperative for ongoing modernisation. These include:

- recognition of children as rights-bearers
- recognition of children as primary victim survivors – not just witnesses – of domestic and family violence
- recognition of coercive control and the harms it causes to adults and children, and
- understanding of the multi-faceted opportunities for systems abuse afforded by the family law and adjacent systems.

Principle 3 – a system that genuinely centres children is not one that harms them

The existing family law system derives from how common law civil disputes have traditionally been resolved and has been consistently and unequivocally shown to harm children. That harm is intrinsic to the nature of the system, which assigns innately combative roles to parents. Nearly half a century of 'retrofitting' the Act to centre children, and to soften the edges of win/loss litigation dynamics, has failed to mitigate this harm. Children and young people suffer from entanglement in this system, and continue to suffer in their adult lives and relationships – including the relationships that they develop with their own children.

The Exposure Draft puts forward a number of proposals which, taken discretely, Relationships Australia supports as likely to improve the *status quo*. But these improvements do not alter the fundamental problem, which is that the future best interests of a child is not a question that can ever be answered by legal argument or analysis. If Parliament's purpose is to centre children, protecting them from harm, supporting them to flourish, and listening to their voices, then the Family Law System, even with the improvements of recent years and the proposed amendments, will remain signally unfit for that purpose.

Principle 4 – Cultural responsiveness

Relationships Australia is committed to working with Aboriginal and Torres Strait Islander people, families and communities. Relationships Australia is also committed to enhancing the cultural responsiveness of our services to other culturally and linguistically diverse individuals, families and communities.

Principle 5 – Accessibility: simplification, transparency, fragmentation, cost, and geographic equity

Relationships Australia is committed to promoting accessibility of its services, and advocating for accessibility, including by:

- reducing fragmentation and ensuring that the burden of fragmentation is not borne by those least able to navigate fragmented and siloed service systems

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- reducing complexity of the law and its supporting processes, to benefit not only those families who require a judicial disposition of their matters, but also families who will 'bargain in the shadow of the law'
- ensuring high quality service delivery, accompanied by robust accountability mechanisms, and
- reducing barriers to access arising from financial or economic disadvantage, as well as other positionalities and circumstances that create barriers to accessing services (including by promoting geographic equity).

Part 2 Recommendations

Recommendation 1 Replace the Family Law System with a Family Wellbeing System

Establish a Family Wellbeing System centred on Family Wellbeing Hubs.[1]

Piecemeal reforms every few years are insufficient to centre children or to support families experiencing the multiple co-morbidities that can be causes, characteristics and consequences of family separation. It is past time for governments to commit to transformational change focused on creating and maintaining conditions in which children are safe and supported to flourish. It is past time to recognise that the law, while an indispensable element, is not the answer to the psycho-social, economic and environmental circumstances experienced by families, and that Ch III of the Constitution poses what have been interpreted as insuperable barriers to a federal family court dealing safely and effectively with matters relating to the protection and support of children. Society cannot police its way out of a domestic, family and sexual violence crisis and it cannot litigate its way to addressing the multi-faceted and time sensitive needs of children caught up in family separation.

Recommendation 2 Establish Family Wellbeing Hubs as the primary agency of service delivery

Create Family Wellbeing Hubs to be the primary agency of service delivery, as a unified and multi-disciplinary point of first contact, with which courts with appropriate powers would be co-equal pillars. The nature and function of such Hubs are explored in detail in previous submissions, and would offer the fullest expression of FRS and FASS functions, to implement recommendations made by the ALRC Report 135 and the Joint Select Committee in its inquiry into the family law system. Relationships Australia notes that, in its response to the Joint Select Committee recommendations, Government has indicated that 'further consideration would need to be given to the capacity for the FASS to provide expanded case management and the overlap with the role of Family Relationship Centres'.[2] Relationships Australia suggests that re-conceptualisation of FRCs as Family Wellbeing Hubs would better recognise the centrality of children, and would allow greater responsiveness to the co-morbidities that we know accompany family conflict and domestic and family violence.

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[1] As recommended in previous submissions to the ALRC and to Parliamentary inquiries: see https://relationships.org.au/what-we-do/#advocacy

[2] See the Government response to PJC Recommendation 26, p 42.

Recommendation 3 Child-related orders

Re-name orders made pursuant to Part VII 'child-related orders', or 'orders about children', to better reflect the paramountcy of children's best interests.

Recommendation 4 Section 60CC (Best interests)

Further refine proposed section 60CC so that:

1. paragraph 60CC(2)(e):
    a. refers to 'any benefit', rather than 'the benefit'
    b. includes 'meaningful' before 'relationship', and
    c. omits 'where it is safe to do so'
2. an additional factor is included in subclause 60CC(2) to require the court to take into account any history of domestic or family violence or child maltreatment affecting the child, and
3. paragraph 60CC(3)(a) include references to 'kin' and 'kinship'.

Recommendation 5 Proposed clause 61CA (Parental responsibility)

Omit the phrase 'If it is safe to do so'.

Recommendation 6 Establish discrete roles for children's advocates and separate legal representatives

To give effect to its policy intention to elevate and amplify children's rights, implement Proposals 7-8 to 7-10 of ALRC DP85.[3]

Recommendation 7 Ensure legal representation of children and young people in applications for special medical procedures

Further amend section 68LA to expressly require that ICLs must be appointed for proceedings related to special medical procedures, and provide appropriate resourcing to support this.[4]

Recommendation 8 Establish a Children and Young People's Advisory Board

To better support Australia's compliance with the Convention on the Rights of the Child, implement Recommendation 50 of ALRC Report 135 by establishing a Children and Young People's Advisory Board, possibly under the aegis of the Family Law Council. This would allow systemic advocacy to complement children's participation in matters affecting them.

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[3] See Relationships Australia's submission to ALRC DP86, pp 90-95, accessible at https://relationships.org.au/wp-content/uploads/ALRCDP86-RA-sub-FINAL-for-email.pdf

[4] See section 67ZC of the Act; see also Family Law Practice Direction – Medical Procedure Proceedings (https://www.fcfcoa.gov.au/fl/pd/fam-medical , accessed 8 February 2023).

Recommendation 9 Restrictions on publication

Confer on the court power to injunct proposed publications. This would support the privacy of affected families and individuals. We also agree that defining 'account' and expanding application to 'any other electronic dissemination process' would assist self-represented litigants to understand the scope and intended operation of proposed Part XIVB.

Recommendation 10 Collect data

Implement a data collection strategy that enables:
- timely capture of quantitative and qualitative data
- sharing data and data insights with service providers and the public,
- ongoing and robust evaluation of the impact of the amendments, and
- informed refinements to legislation and service delivery.

Recommendation 11 Evaluate impact

Government should commit to a comprehensive and ongoing evaluation of these reforms, from commencement until at least five years post-commencement, with annual summative reports to inform timely evidence-based adjustments. Final evaluation should be undertaken no fewer than five years after commencement, to best inform ongoing policy development. The evaluation must be carried out by persons and/or bodies with established specialist expertise.

Part 3 Overarching comments

2.1 Rights of children and young people

Relationships Australia has elsewhere expressed its view that the Australian family law system does not uphold the rights of children as articulated in the Convention on the Rights of the Child.[5] Relationships Australia has previously proposed, in its submission responding to ALRC IP48, that matters about children should be dealt with in an inquiry-like proceeding before which parents or caregivers would be witnesses, not parties, and in which counsel assisting would assist decision-makers by finding and presenting evidence about the nature of the best interests of the child/ren and how those interests can best be promoted.

Conventional civil litigation in common law jurisdictions is designed to, and does, deliver win/loss outcomes. The culture, practices, court craft and the rules that apply in court and to professionals working in courts all derive from that. The Family Law Act and family law courts were, with adaptations, built on this foundation. But the adaptations did not change the nature of the outcomes available to families whose disputes fell within the operation of the Act or the jurisdiction of the courts. Thus, the 'family law system' turns parents into winners and losers, and delivers institutional entrenchment and even encouragement of parental conflict. This is wrong. Parental conflict predicts poor wellbeing

[5] Including its recent response to the Family Law Council.

outcomes for children. Mitcham-Smith and Henry (2007) observed that the win/loss nature of litigation in the family law courts can:

- entangle children in perpetual turmoil, as parents navigate through complex, expensive, emotional, intimidating and too-often prolonged processes
- diminish the role of parents as legitimate protectors of their children
- complicate the child's role identity
- teach ineffective conflict-resolution skills, and
- embed shame and self-blame by children if ongoing parental conflict relates to parenting matters, including contact arrangements and child support.

A win/loss system, embedded in the Act in an era when the future wellbeing of children was not at the forefront of the legislature's mind, is not fit for purpose. Win/lose outcomes do not facilitate, and can entirely thwart, ongoing co-parenting relationships. Just as litigation can poison co-parenting, so too can it damage the parenting capacity of each individual parent.[6] In 2001, Elrod commented that

> The win/loss framework encourages parents to find fault with each other rather than to cooperate. In an attempt to be in the best position to argue for stability, a parent may try to take or maintain possession of the child….When an attorney increases hostility between parents, their parenting ability often decreases. For example, advising clients not to talk to the other spouse, filing for protective orders…

Nor are legal doctrine and methods useful tools for understanding children's needs, and how they might best be met. Children's interests embrace all facets of child development, including attachment, emotional and physical safety, physical and mental health, education, and social development. The inquiry into children's best interests is an inquiry into a dynamic future.

This differs starkly from other litigation because:

- it is an inquiry about an individual who is not only not a party to the litigation but whose views and interests may never be put directly to the decision-maker (even with the proposed amendments about ICLs)
- it is an inquiry about that individual's future, but not from a legal perspective; the Court is not concerned with children's future legal rights or obligations, but their safety, welfare and development, and
- it is not an inquiry about the past and existing legal rights of the named parties to the litigation.

The best interests inquiry most closely resembles a guardianship inquiry. Parents are valuable witnesses, but they should not be positioned, by the state, as contestants.

It would perhaps be useful to revisit the question of whether matters of the kind contemplated by Part VII involve an exercise of judicial power that must be undertaken only by a court established under Chapter III of the Constitution. In 1979, the High Court observed that, in parenting matters, 'Reasons for judgement, necessarily in many cases, especially in a finely balanced case, are a rationalisation of a

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[6] See, also for example, Crockenberg and Langrock, 2001.

largely intuitive judgement based on an assessment of the personalities of the parties and the child'.[7] Such intuitions are, we respectfully suggest, more likely to be sound when formed by professionals with expertise in psychology, child development and relational dynamics, rather than through legal reasoning.

Later, in *M v M*, the High Court recognised that the court's concern is '…promot[ing] and protect[ing] the interests of the child', not enforcing a 'parental right'.[8] The Court emphasised the future orientation of parenting matters, and their distinctiveness from other litigation:

> …the ultimate and paramount issue to be decided in proceedings for custody of, or access to, a child is whether the making of the order sought is in the interests of the welfare of the child….. Proceedings for custody or access are not disputes inter partes in the ordinary sense of that expression: Reynolds v Reynolds (1973) 47 ALJR 499; 1 ALR 318; McKee v McKee (1951) AC 352, at pp 364-365. In proceedings of that kind the court is not enforcing a parental right of custody or right to access. The court is concerned to make such an order for custody or access which will in the opinion of the court best promote and protect the interests of the child.[9]

In 1997, ALRC Report 84 reported that children believed that the family law system was 'dominated by legal strategizing by competing parties to maximise their chances of winning the case…The interests of the child often get lost between the warring parties.'[10] From the binary win/loss outcomes that litigation is designed to produce flow all manner of serious and sometimes irreparable harm to children and their families:

- entrenching and deepening conflict between parents
- incentivising litigation tactics such as burning off and making unfounded allegations
- incentivising other misuse of court processes and other legal and administrative systems, and
- incentivising aggressive behaviours intended by one parent to incapacitate the other parent from co-parenting effectively (as mentioned below, we welcome the proposed harmful proceeding orders as a potentially valuable tool in responding to such behaviours; it will be necessary to see if, over time, these orders prove effective in both hindering systems misuse – and deterring it – against the weight of other countervailing incentives).

This cannot be allowed to continue. Our society, through its elected governments, has a responsibility to current and future families to reject win/loss models and instead to foster decision-making models that support, encourage and expect that children's best interests will be paramount. After nearly half a

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[7] *Gronow v Gronow* (1979) 144 CLR 513, paragraph 6. See also *Brandy v Human Rights and Equal Opportunity Commission (*1995) 183 CLR 245.

[8] *M v M* (1988) 166 CLR 69, joint judgment.

[9] *M v M* (1988) 166 CLR 69, joint judgment, paragraphs 19-20. See also *M v M* (1988) 166 CLR 69, joint judgment, paragraph 24. The Law Council of Australia, in its submission to the ALRC inquiry, referred to the view of the New South Wales Law Society that ' … if interim orders are drafted such that therapeutic intervention was linked to or required as a condition of time with or residency of a child, (that is to say, therapeutic jurisprudence) this practice may not be repugnant to the principle in *R v Kirby; Ex parte Boilermakers Society of Australia…'.*

[10] ALRC Report 84, *Seen and heard: priority for children in the legal process*, paragraph 4.25.

century, it is clear that, despite best efforts to tailor it to the needs of children and their families, a traditional family law system cannot achieve this.

If society can stop institutionalising conflict between parents, and weaponising their emotions, then parents will have a far better chance to be the best parents and co-parents they can be.

2.2 Urgent need for systemic reform

Relationships Australia welcomes the Government's prioritisation of reforms aimed at centring the children's best interests in matters involving them. In submissions to multiple Government inquiries,[11] Relationships Australia has advocated for transformation from a system that:

- centres litigation and privileges legal responses while subordinating the social and psychological dimensions of family dynamics and children's development, and
- tacitly enshrines judicial determination as the 'gold standard' for families.

In place of such a system, we propose a system built around co-equal pillars, of which courts form one pillar, in which the primary response to families is therapeutic in nature.

We recognise that the Bill is one element of a broader package of reforms, and hope that these overarching comments will be considered by Government in its ongoing policy work. We support the ALRC's recommendation that the Act in its entirety be re-drafted.

From its inception, the Family Court of Australia was intended to enable dignified and private dissolution of marriage between adult parties to civil proceedings. It was not designed or intended to function, as it must now do to meet community expectations, as an institution largely concerned with children's safety, welfare and healthy development. Nor was it designed to serve a demographic characterised, as it now is, by complex health, relationship, emotional and social co-morbidities who, as a condition precedent of safe and positive co-parenting, need help that cannot be delivered through court decisions. Indeed, this would not be possible, because of the constraints imposed by Chapter III of the Constitution.

Recurrent appearances before the family courts may make it seem that the families' problems are legal in nature, but focus on this surface presentation can obscure underlying needs, and delay or inhibit referral to specialist therapeutic services that are most effectively delivered outside a court environment. These amendments may well successfully mitigate the cycle of interim applications, enforcement applications, and appeals before multiple courts. However, the cycle can only be halted permanently if underlying health, relationship, emotional and social needs are seen and responded to for what they are. But in a society where courts are seen as the ultimate vindication and the 'gold standard' of decision-making, it is all too easy to imagine that only the courts can – and should - make decisions about arrangements for children in separating families. These are, after all, some of the most

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[11] See https://relationships.org.au/what-we-do/#advocacy

crucial issues that many Australians will ever face in their personal lives – the care and wellbeing of their children.

2.3 Court processes

Relationships Australia has welcomed innovations by the Court to streamline, nationally standardise and centralise its processes. These innovations support improved accessibility and timeliness, and mitigation of stress and trauma for families who need to engage with the Court.

However, the fundamental problem is not that the court processes are not good enough; it is that they are the wrong tool for what successive governments have recognised as the pre-eminent job of the family law courts - to identify and uphold children's best interests and elevate children's visibility. Furthermore, innovations in court processes do not help the majority of children whose parents settle out of court, or make unsafe or impractical consent orders.

What is most urgently required to support decisions that are informed by a rich understanding of individual children, their needs, hopes and aspirations, is universal access to multidisciplinary services that have conventionally been seen as peripheral 'bolt-ons' to the court processes. These include counselling services to parents and children, family group conferencing, mental health services, FDR, Parenting Coordination services, services with expertise in responding to alcohol and other drug misuse and to harmful gambling. Services must be culturally responsive. To this end, Government should revisit the 2012 reports of the Family Law Council for still-pertinent insights to underpin legislative and programme development.[12] While the intervening decade has seen a range of innovations and enhancements (such as re-funding specialist liaison officers, creating specialist lists and contracting with ACCOs), there remains much work to be done. One critical need is for interpreter services. Services should also be trauma-informed and DFV informed. The best, most clearly crafted orders in the world will not 'stick' for people who are facing these obstacles, which is the case for a high proportion of those who need a final determination by the Court.

At some level, governments, courts and professionals working with separating families have always understood the centrality of psycho-social services to actualising the paramountcy of the children's best interests. This understanding can be seen reflected in the profusion, over nearly half a century, of attempts to make the Act and the Court more therapeutic, and to soften the win/loss dynamics of a system based on common law civil litigation. Regrettably, but inevitably, these attempts, while supported by committed and highly skilled professionals from numerous disciplines, have foundered. The 'lowest common denominator' is the default to litigation practices and legalistic formalism that have, time and again, thwarted truly child-centred processes. This will always be the fate of such reforms, because of the innate character of a court, created under Chapter III and able to exercise only judicial functions.

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[12] See the Family Law Council reports on *Improving the Family Law System for Aboriginal and Torres Strait Islander Clients* and *Improving the Family Law System for Culturally and Linguistically Diverse Clients*, at https://www.ag.gov.au/families-and-marriage/family-law-council/family-law-council-published-reports

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2.4 Community and professional awareness and understanding of the reforms

Well-resourced, effective information and education campaigns are indispensable prerequisites for the success of these reforms in centring children and making the family law system safer and more accessible. The mythology generated around the presumption of equal shared parental responsibility, and other aspects of the system, is tenacious, and will be enduringly dismantled only by well-resourced and ongoing information and awareness campaigns that are carefully crafted to resonate with divergent audiences.

These audiences include the general public, users of the system, and professionals working in and adjacent to the family law system. Critically, this includes law enforcement professionals, professionals working in state and territory family violence and child protection system, and professionals in the education and health care systems. Important audiences include, too, cohorts that are marginalised and encounter particular barriers to accessing the family law system.

The Government should leverage, *inter alia*, the Family Law Pathways Network and the FRCs to support information and education campaigns, including through additional funding focused on implementation. FRCs, FLPNs and other networks should be appropriately resourced to update current materials, collateral and resources which may become redundant or irrelevant as a result of the amendments. For example, many of our resources refer to the provisions relating to shared parental responsibility, and costs will be involved in ensuring that they reflect the amendments.

2.5 Evaluation of impact of reforms, and need for supporting data collection

A comprehensive data collection and evaluation plan is needed to inform ongoing legislative reforms and service delivery. In particular, data should be collected to inform an understanding of:

- whether children and young people are safer because of the reforms
- whether children and young people feel that they have sufficient opportunity to be heard, both in their own matters and in systemic advocacy
- whether the amendments have supported, or detracted from, children's capacity to have meaningful relationships with significant people
- whether the amendments have supported, or detracted from, children's access to their culture, community and language
- the impact on service provider resources of the obligation imposed by proposed subsection 70NBD
- how often, and in what circumstances, ICLs are not appointed (ie what has been found to constitute 'exceptional circumstances' and how often)
- how often, and in what circumstances, the court has made harmful proceedings orders and how often, and in what circumstances, the court has granted leave pursuant to proposed section 102QAG
- the impact of proposed section 65DAAA
- community perceptions of the effectiveness of harmful proceedings orders
- ongoing and emerging patterns of systems abuse, to evaluate the impact of the harmful proceedings provisions (including the courts, tribunals and other bodies used to perpetrate systems abuse)

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- user satisfaction with regulatory arrangements for professionals
- nature and prevalence of non-compliance with orders made under Part VII, and
- perceptions of the cultural responsiveness of processes and structures that comprise the system.

Part 4 Detailed comments on specific provisions

Redraft of objects - Schedule 1, item 4

Relationships Australia supports simplification of the objects provisions, which will help our practitioners in explaining Australia's family law system.

Relationships Australia welcomes the efforts to ensure that the paramountcy of children's best interests is reflected in a simplified objects clause. This will support our practitioners' emphasis, to parents, that their children's best interests are paramount, and should be at the forefront of all FDR discussions, and subsequent co-parenting.

To bolster the focus on children's best interests, Relationships Australia suggests re-naming orders as 'child-related orders', or 'orders about children', rather than 'parenting orders'. This would deliver a range of benefits, including explicit focus on the purpose of orders to promote a child's wellbeing. It would also better accommodate the range of family roles, formations and structures in Australian society (for example, grandparent carers and kinship care).

Best interests factors – Schedule 1, item 6 (section 60CC)

Relationships Australia welcomes the removal of the hierarchy of primary and additional considerations, which added to the complexity (and expenses) of applying Part VII, without delivering a proportionate enhancement in the quality of agreements or decisions.

We welcome the inclusion, in proposed paragraph 60CC(2)(c), of a reference to a child's cultural needs, which will apply to all children. This improves the capacity of the Act to promote cultural safety.

Relationships Australia hopes that the inclusion of proposed paragraph 60CC(2)(d) (Schedule 1, item 6) will provide a strengths-based lens through which the Court can view parents with disability. We are concerned that the paragraph, as currently framed, may however inadvertently create opportunities for combative parties (especially those inclined to perpetrate systems abuse) to undermine the parenting capacity of another parent who has experienced an array of physical and mental health challenges and whose geographic location impairs or precludes access to supportive services, whether face to face or online (digital exclusion remains a concern that we have for universal service access). Close attention should be paid, in evaluating the impact of this Bill, to how this provision is interpreted by litigants, the Court and professionals in the system (including ICLs).

We also recommend that proposed paragraph 60CC(2)(e) be recast to:

- refer to 'any benefit', rather than 'the benefit', which tends to assume an outcome in a way that is inconsistent with the Bill's overall intent to focus on the individual circumstances of a particular child
- include the word 'meaningful' before 'relationship'

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- omit 'where it is safe to do so' – the importance of safety is clearly identified in paragraph (a), and the repetition of safety in proposed paragraph (e) may give rise to unnecessary confusion

We recommend inclusion in proposed subclause 60CC(2) of an additional factor, which would complement the provisions in the Family Law (Information Sharing) Bill 2023. The additional factor would require the court to take into account any history of domestic or family violence or child maltreatment affecting the child.

We also recommend that proposed paragraph 60CC(3)(a) be amended to include references to 'kin' and 'kinship'.

Relationships Australia welcomes proposed subclause 60CC(4), as offering a potential mechanism by which the Court can consider whether a proposed consent order is in a child's best interests, while not requiring the Court to 'look behind' consent orders in all cases. We are aware of instances in which 'consent orders' have been made without the Court being aware of, or having reason to believe, that the 'consent' is in fact tainted by coercion, violence, intimidation, harassment or duress, by misapprehension of the law, or by the application of laws that were not informed by the contemporary understanding of the causes, characteristics and effects of domestic and family violence.

In relation to proposed paragraph 60CC(3), Relationships Australia has, in previous submissions, supported amendments that better reflect Aboriginal and Torres Strait Islander connections to community, Country, culture and language, and defers to the views of ACCOs and other First Nations service providers.

Parental responsibility – Schedule 1, item 14 (section 61CA)

Relationships Australia recommends removal of the phrase 'If it is safe to do so'. We agree with Professor Chisolm's view that reference in the chapeau to safety is not only duplicative, but also gives rise to the inference that there are not other valid reasons for not consulting (see pp 18-19 of Professor Chisolm's submission to the Committee).

Removal of equal shared parental responsibility and specific time provisions

Relationships Australia supports removal of the statutory presumption of equal shared parental responsibility and the explicit severance of the concept of parental responsibility from that of time spent. Statutory presumptions are anomalous when the task of the court (or parents, in developing parenting plans) is to identify and promote the best interests of an individual child in their unique circumstances.

Relationships Australia supports the removal of the obligations to encourage parents to consider particular time arrangements, which are conceptually based in generalisations that unnecessarily (and in various circumstances, harmfully) complicate giving advice which is meant to focus on the best interests of an individual child. This can lead to advice being harder to understand, more expensive to obtain, and more confusing to implement. We consider that the new locations of proposed clauses 61DAA and 61DAB will support better understanding by parents of what the law requires (and the courts expect) as they go about co-parenting.

Relationships Australia consider that the 'deeming' provisions in existing subsections 65DAC(2) and (3) do not reflect contemporary understanding of the causes, characteristics and effects of domestic and family violence; nor are they necessarily congruent with trauma-informed practice. Their effect has been to create circumstances in which victim survivors of domestic and family violence, both adults and children, are exposed to ongoing harm. This has been the case for families who were engaged in the Court to the point of final orders and beyond, and for families who were 'bargaining in the shadow of the law'.

The proposed amendments will also simplify what FDRPs need to say to clients and offers a clear and strong statement that parental responsibility does not translate into 'time with'. In particular, the changes will support the impartial and child-focused role of FDRPs by not requiring them to start with giving advice around time arrangements and instead start with what is going on for children and how arrangements best support children and families on a case by case basis. Government should also provide services with support to update resources for practitioners and clients about the reforms and consider how to support parents to shift away from these entrenched presumptions and the language that has supported them. Relationships Australia finds that, even in the absence of DFV or other safety issues, parents benefit from accessing clear guidance about decision-making and parental responsibility. These are often real sources of conflict, where parents struggle to agree on when to consult and when to decide unilaterally.

For the amendment to fully achieve its aims, resources offering guidance in how to share responsibility in the best interests of children will be vital to practitioners and clients. The reforms must be buttressed by large scale, clear and ongoing public education campaigns to inform the community, users of the family law system, and professionals working in and adjacent to that system of the intention and nature of the reforms. The mythology which has grown up around the presumption is well-entrenched, and likely to be tenacious. Practitioners are still educating parents about the shift from terminology such as 'custody and access', and foresee that these changes, too, will take time to permeate the culture of the system. Legal practitioners, FDRPs, family counsellors, family consultants, the Court, self-represented litigants and others should all receive tailored messages and resources to support them in explaining the nature and intent of the reforms. To ensure the best possible service to clients, these messages cannot be one off, 'one and done'; they must be provided continually and refreshed regularly to stay salient and maintain their impact.

Reconsideration of final parenting orders (*Rice & Asplund*) – Schedule 1, item 26 (section 65DAAA)

Relationships Australia is concerned that, despite the discretion conferred on the Court by the chapeau of subclause (2), parties and their lawyers may regard it as necessary, in an abundance of caution, to traverse each item in their application materials, including their affidavits. This will lead to lengthy affidavits, higher costs and potentially more grounds for appeal, potentially undermining other benefits of simplification. We further anticipate that motivated parties will take an expansive approach to interpreting 'significant change', and that Government should monitor this in evaluating the impact of these amendments.

Enforcement of child-related orders – Schedule 2

Relationships Australia welcomes:

- simplification of Division 13A, to overcome longstanding issues, including those identified by AIFS in its 2022 report[13]
- the prominence given to the best interests of the child in proposed section 70NAB
- removal of the distinction between 'less serious' and 'more serious' contraventions, which added complexity without encouraging compliance or deterring non-compliance
- the flexibility of enabling the Court to make an order at any stage and in the absence of a finding about contravention, and
- centralisation of provisions relating to penalties and costs.

Relationships Australia strongly supports retention of the power of the Court to deal with a contravention matter on its own motion, and would not support confining the Court to dealing with such matters only on application by a party. We consider the 'own motion' power to be important to assist, for example, self-represented litigants, victim survivors of domestic and family violence, and other individuals whose positionality and other circumstances may create barriers to engaging with legal systems and processes.

Relationships Australia is, however, concerned that the Bill does not expressly engage with one of the most important findings of the AIFS report: that non-compliance can arise from safety concerns. Given the prominence of the best interests of the child in the Bill, and contemporary understanding of domestic and family violence (and children's experience of it[14]), this is a conspicuous and concerning omission from the legislative package.

Further, the amendments do not appear to engage with another significant driver of non-compliance - inappropriate orders, plans and agreements (reached with or without external assistance). We look forward to working with the Government, the legal profession and other service providers to ensure that arrangements for children are, *inter alia*, clear, DFV *and* trauma informed, safe, and include mechanisms to enable them to 'grow' with a child. This should include support for services that build families' capacities to self-manage, communicate more effectively and de-escalate conflict. In our submission to the Joint Select Committee, Relationships Australia noted the acknowledgement, in the ALRC's final report (ALRC No. 135) of stakeholders' insistence on 'the need for improved measures to support highly conflicted parties to implement parenting arrangements and develop positive post-order communication.'[15] In this regard, Relationships Australia National Office and Relationships Australia Western Australia have, for example, briefed the Department on the use of Parenting Coordination, domestically and overseas, as an innovation that can add to the suite of tools available to services and parents in high conflict families.

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[13] Kaspiew et al, 2022.

[14] See Carson et al, 2018. Fitz-Gibbon et al, 2023.

[15] ALRC report 135, paragraph 11.1.

Recommendations 38 and 39 of ALRC 135 focus on court-based solutions while overlooking innovations that do not require expensive court resources. Post-order and post-agreement services, outside the often-distressing court setting, should be available in accordance with principles of geographic equity and universal access. Further, reliance on the court for post-order/post-agreement services poses the following problems:

- expense will always be a barrier (no matter how well courts are funded, they will always be prohibitively expensive for most people)
- people are at the mercy of court lists (and which are not as flexible or responsive for timing in dealing with day-to-day issues that arise for families), and
- difficulty in physical access, and challenges of digital exclusion, for people in rural, regional and remote areas.

Children and their parents benefit significantly from participation in existing post-order support programmes. Successful participation can minimise repeated court events for matters such as alleged breaches of orders. Even where parents reach agreement through mediation (or without assistance), it is still often difficult to manage implementation (particularly where there is a history of conflict and/or poor communication). At the point of reaching agreement through mediation or a final court order, parents are still processing their emotions, and they can benefit greatly from support before, during and after court orders or mediation agreements.

The benefits of therapeutically-focused services in supporting parents to focus on their child are well-documented in the research literature, as well as in accounts of users of various post-separation services provided by Relationships Australia. For example, client feedback about what they learned from the Focus on Kids program conducted by Relationships Australia Victoria in 2022 included:

> ‘Children’s feelings comes before anything else.’
>
> ‘Keep adult themes and conversations away from children and be a safe harbour.’
>
> ‘How important my children's feelings are. And how I must not show my frustration with their dad in front of them.’
>
> ‘How the happiness, resilience, sense of agency, independence and self-love our children feel is significantly correlated to how well we hold ourselves in their presence - how present we are with them and with each other as their parents. I learnt to look for more of the subtle signs that a child might be struggling internally too. I did also love the safe harbour image.’
>
> ‘I need to be brave and strong for my child be their voice when they don't feel they can talk.’

In a survey following participation in Relationships Australia Victoria’s Parenting After Separation, clients identified the following growth in parenting capacity and capability:

- 91.7% agreed or strongly agreed with the following statement: ‘I have an increased understanding of self-care.’
- 90.9% agreed or strongly agreed that: ‘I have learned new skills that I will apply to my co-parenting relationship.’
- 90.27% agreed or strongly agreed with the following statement: ‘I have a greater understanding of my child(ren)'s behaviour and emotions.’

Definition of 'member of the family' and 'relative' – Schedule 3

Relationships Australia has, in previous submissions, supported amendment of definitions to reflect Aboriginal and Torres Strait Islander kinship systems, and defers to the views of ACCOs and other First Nations service providers in relation to proposed Schedule 3 of the Bill. Concerns have been raised within our federation about how this may affect Aboriginal and Torres Strait Islander clients where the (appropriate) expansion of the definitions of relative and family may inadvertently result in imposition of an unduly broad obligation to disclose that family members have a history of issues around child protection and family violence (for example). This risk could perhaps be mitigated by more closely confining obligations to disclose by reference, for example, to factors such as whether extended family members are even known to the parents, and have contact with the parents and children.

Independent Children's Lawyers Requirement to meet with the child – Schedule 4

The Bill includes a requirement for ICLs to meet with children and provide opportunities for children to express their views. This would - if, and only if, ICLs were properly resourced to do so - be a useful advance in recognising children as rights-bearers in the family law system. Such a requirement would not, however, be sufficient to improve Australia's compliance with the Convention on the Rights of the Child. Parents and children have, over several years, expressed their dismay (and outright disbelief) that ICLs are not required to meet children. In our experience, a key driver of those concerns is misapprehension of the role and function of ICLs, compounded by the limitations on what ICLs, as a cohort and as individuals, can and should be doing. The title, Independent Children's Lawyer, is a misnomer, and leads parents and children to believe and expect that an ICL is to act in some way as a child's lawyer. This misapprehension, and the dissatisfaction it generates, is strongly evident in the 2014 and 2018 AIFS studies.[16]

Compounding this is the 'function creep' imposed upon hard-pressed ICLs. The 2014 AIFS study found that ICLs were increasingly expected, and relied upon, to undertake case management and litigation management functions, especially in matters in which both parties were self-represented. In 1991, Brennan J remarked of the Family Court that

> It seems the pressures on the Family Court are such that there is no time to pay more than lip service to the lofty rhetoric of s. 43 of the Act….It is a matter of public notoriety that the Family Court has frequently been embarrassed by a failure of government to provide the resources needed to perform the vast functions expected of the Court under the Act.[17]

In 2023, this statement applies to many elements of the family law system, including ICLs. Some registries are delaying matters because of the difficulty in accessing ICLs. Expecting ICLs to fulfil the obligations proposed by this amendment, without a transformative overhaul in how they are resourced, risks doing more harm than good and exacerbating the dissatisfaction and distress of children and their parents. At the very least, it is probable that, over time, 'exceptional circumstances' will be found to exist in an increasing range and proportion of cases, simply to ease the pressure on ICLs and legal aid

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[16] See Carson et al, 2018; Kaspiew et al, 2014.

[17] *Harris v Caladine* (1991) 172 CLR 84, 112.

commissions, thus undermining the policy intent of the amendment. In this regard, we note too the comments of the Family Law Council on the Exposure Draft, expressing concerns that the amendments may exacerbate current difficulties in recruiting and retaining ICLs, as well as increasing court workloads as courts are required to make findings about whether exceptional circumstances exist in individual cases.[18]

The seemingly inexorable expansion of the expectations of ICLs illustrates how successive governments have sought to 'retrofit' the Act to give life to the paramountcy of children's best interests. Inevitably, perhaps, their role (and that of their predecessors, the separate representatives) has always been somewhat anomalous within a Ch III court. This has long been recognised by the Court itself. For example, Fogarty J in *Harris and Harris*, in observations that are as applicable to ICLs as they were to separate representatives:

> …such a person occupies the position of an advocate appearing for a particular party in the litigation although [with] certain unusual features including: (i) that he is not appointed by the party whom he represents; (ii) that he may not be removed by that person; and (iii) that he does not necessarily advance what the 'client' wants but what in his view is in the best interests of that 'client' and to that extent exercises an independent judgment quite out of character with the position ordinarily occupied by an advocate.[19]

In *Bennett and Bennett*, the Full Court of the Family Court observed that

> …We think that the role of the separate representative is broadly analogous to that of counsel assisting a Royal Commission.[20]

In *Francesco Pagliarella and Jennifer Pagliarella and N*, Hannon J held that

> …it is apparent from the authorities that a [separate representative] is not bound by the instructions of the 'client'. Although the separate representative must put the child's wishes to the court, he or she may make submissions contrary to those wishes if it is thought to be in the interests of the child to do so.[21]

Reliance on ICLs misconceives the nature of the question to be asked – what is in a child's best interests? This is not a question of law. The central needs of children, which fall within the parameters of 'best interests', are not legal needs. We completely agree that the legal interests and voices of children need to be heard, in accordance with the Convention on the Rights of the Child, and supported the proposals in ALRC DP85 for the establishment of separate legal representatives. But such professionals should be working with, and informed by other experts, as recognised in ALRC DP85, who

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[18] See Family Law Council, 2023, paragraphs 108-109.

[19] *Harris and Harris* (1977) FLC 90-276 at p 76,476.

[20] *Bennett and Bennett* (1991) FLC 92-191 at p 78,529. See also *Wotherspoon and Cooper* (1981) FLC 91-029; *Francesco Pagliarella and Jennifer Pagliarella and N* [1993] FamCA 64; *Re Alex (Hormonal Treatment for Gender Identity Dysphoria)* [2004] FamCA 297, per Nicholson CJ at paragraph 43, noting that the 'hearing was conducted in an inquisitorial rather than adversarial format.' See also *Re Alex* [2009] FamCA 292, which Bryant CJ conducted in accordance with the Less Adversarial Trial provisions in Part XIIA of the Family Law Act (paragraphs 32-34).

[21] *Francesco Pagliarella and Jennifer Pagliarella and N* [1993] FamCA 64, paragraph 18.

are better placed to undertake child-focused and child-inclusive practice. It is difficult, for example, to see how ICLs will determine whether 'exceptional circumstances' apply so that they should not meet children; such a determination goes to a child's psycho-social and developmental circumstances. These are not areas on which legal professionals have sufficient and appropriate expertise. These concerns are shared by the Law Council of Australia. In its submission commenting on the Exposure Draft of this Bill,[22] the Law Council canvasses a range of potential unintended consequences of the amendments proposed in Schedule 4 of the Bill. We note in particular the Council's observations that

> Further, pursuant to proposed paragraph 68LA(5C)(a), the assessment of the possible risk of psychological harm to the child is left with the ICL themselves, and not a psychologist or mental health professional. Constituent Bodies [of the Council] have raised concerns that these provisions require a lawyer to assess psychological harm without any supporting evidence particular to the question of meeting an ICL. This could cause issues of interpretation and expose the ICL to complaints and contravention applications if a parent does not agree with the ICL's assessment of the risk of psychological harm. [at paragraph 135]
>
> This proposal could have the opposite effect of ICLs erring on the side of caution in consideration of the exceptional circumstances and declining to meet with a child where they consider there is a risk of physical or psychological harm. This is also likely to lead to either additional court events or the extension of existing court events, creating delay and cost. [paragraph 137]
>
> The Law Council considers that, by proposing to require ICLs to meet with a child, the Draft Bill fails to acknowledge the other ways in which children are engaged during the process of litigation, for example, in meeting with a Court Child Expert, family report writers and psychologists undertaking child assessments. [paragraph 143]

Governments have suggested that they have not implemented recommendations of this nature because there are already too many professionals involved in this kind of work in the system. However, these professionals have, collectively, been unable to meet children's needs or amplify their voices as required by the Convention on the Rights of the Child, and this shortcoming will not be addressed by imposing additional statutory obligations on professionals who are not professionally equipped to meet children's needs. We support the Law Council's suggestion that

> … greater focus be placed on facilitating interactions between children and an appropriately trained professional (e.g., psychologist or counsellor) to limit the harm which may be subjected to a child who is the subject of family law proceedings. There may also be benefit in the Draft Bill acknowledging the role of other practitioners in engaging children and obtaining their views in order to avoid circumstances where a child becomes repeatedly engaged unnecessarily in their parents' litigation. [paragraph 146]

ICLs are not necessarily equipped with the knowledge and skills necessary to determine risks of harm in these circumstances. We have, in other submissions concerning family law and family violence reforms, recommended the utilisation of children's advocates (where a skilled and experienced workforce is already in place) as the primary point of contact with children and young people, and who can support

[22] See https://lawcouncil.au/resources/submissions/family-law-amendment-bill-2023 .

ICLs/separate legal representatives in fulfilling the range of functions for which they are best equipped.[23] A separate children's advocate could provide particularly valuable support for ICLs working with children with more complex needs, including children from culturally and linguistically diverse backgrounds and children living with disability. For these reasons, we have advocated to the ALRC and to Parliamentary inquiries that children be supported through the family law system by both social science practitioners and through separate legal representation.

The absence of an opportunity to express their views is more harmful to children and young people than being afforded a safe space to do so.[24] Children and young people for whom an ICL is appointed are, by definition, children and young people who are already enmeshed in circumstances that require some form of external intervention. In relation to Part VII matters, and as confirmed by AIFS' 2018 report,[25] a conversation with an ICL will not be a child's first exposure to conflict within their family. Silencing children does not protect them from that conflict and is perceived by children and young people as invalidating their experiences; an opportunity to speak is more likely to be protective, as well as affirming children's agency in developmentally appropriate ways. Concerns about the effect that meeting an ICL might have would better be addressed by creation of a role of specialist children's advocates, as we have previously recommended. Such an approach would be consistent with protecting the rights of children and young people, as well as offering scope for DFV and trauma informed practice to support them.

Relationships Australia warmly welcomes the Government's establishment of youth advisory groups in relation to mental health and wellbeing, the promotion of STEM, climate change, and safety, as well as a dedicated First Nations Youth Advisory Group to work with the National Indigenous Australians Agency.[26] Relationships Australia has, in previous submissions to Government, advocated for the establishment of a children and young people's advisory body, to inform policy and programme development, and consider that a similar advisory group should be established, with a specific focus on family law, family violence and child protection. This would implement Recommendation 50 of ALRC 135.

Expansion of the use of Independent Children's Lawyers in cases brought under the 1980 Hague Convention – Schedule 4, Part 2

The proposed expansion of the use of ICLs in Hague matters appears consistent with Australia's shift in policy towards interpretation of the 'grave risk' exception in Article 13(B) of the Convention. We consider that this shift, combined with the proposed amendment, may lead (and perhaps is intended to lead) to the Court treating Hague matters no longer as strict questions of jurisdiction, to be determined

[23] Located at https://relationships.org.au/what-we-do/#advocacy and including submissions to the Australian Law Reform Commission, the House of Representatives Social and Policy Affairs Committee, the Senate Legal and Constitutional Affairs Committee, and the Joint Select Committee inquiring into Australia's family law system.

[24] See Carson et al, 2018.

[25] Carson et al, 2018. For observations from Victorian children and young people aged between 10 and 25 on their sense of invisibility in various legal and justice settings, see Fitz-Gibbon et al, 2023.

[26] See media release, 23 January 2023, by the Honourable Dr Anne Aly MP (https://ministers.education.gov.au/aly/call-young-australians-join-new-youth-advisory-groups-and-have-say-issues-important-them, accessed 8 February 2023).

by reference to the child's habitual residence and consistent with the international law doctrine of 'hot pursuit', but as more closely resembling domestic Part VII matters. This may well lead to other countries preferring to apply their own domestic laws (including laws about domestic and family violence, and other gendered laws) to determine Hague applications from Australia's State Central Authority. This may lead to fewer children unlawfully removed from Australia, or unlawfully retained in another country, being returned to 'left behind' parents in Australia.

An additional circumstance in which ICLs or other child advocates should be appointed – special medical proceedings – Schedule 4

The proposed repeal of subsection 68L(3), which erected obstacles to appointing ICLs in Hague Convention (s 111B) matters, should be complemented by a requirement that ICLs be appointed for all medical procedure proceedings, with any exception to be confined to cases in which there is no dispute about the procedure among concerned parties (including people with parental responsibility for the child, clinicians, and children's advocate and/or (if developmentally appropriate) the child. Such a requirement would provide important human rights protections for children and young people.

This would address a range of human rights concerns about oversight of special medical proceedings, and would constitute significant progress in bringing the Act into alignment with the decision of the High Court in *Re Marion*[27] and Article 12 of the Convention on the Rights of the Child. It would also complement proposed amendments in Victoria and the Australian Capital Territory to better protect children and young people from harmful and deferrable medical practices to alter their sex characteristics.

We consider that the extra workload created by such a requirement would be proportionate to the benefits it would provide in terms of enhancing our compliance with Article 12 of the Convention on the Rights of the Child and, in any event, would be of negligible proportions compared with that created by the new requirements to meet with children in Part VII matters and section 111B matters. This is particularly the case following the 2017 decision in *Re Kelvin*.[28]

Case management and procedure – Schedule 5

Harmful proceedings orders – Schedule 5, Part 1

Relationships Australia welcomes evolving recognition of the many forms of systems abuse, including litigation abuse, and its significance in the context of coercive controlling behaviour. We urge that, from implementation, evaluation be carried out to determine the impact of introducing these orders in terms of reducing harm to victim survivors and deterring systems abuse, while complying with the principles of natural justice and enabling access to the courts. Relationships Australia acknowledges the inclusion proposed subclauses 102QAC(7) and (8) to (respectively) give victim survivors an opportunity to safety

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[27] *Department of Health and Community Services (NT) v JWB and SMB* ('*Re Marion*') (1992) 175 CLR 218.

[28] *Re Kelvin (Case Stated)* [2017] FAMCAFC 258.

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plan around increased risk occasioned by a refusal to grant leave and to assert their agency by communicating to the court their wishes in respect of notification of filings by the first party.

Our practitioners have raised questions about the intended interaction between the proposed requirement to seek the Court's approval before serving a new application and the obligation to attempt to resolve a new dispute in FDR before going to court. Determined perpetrators of systems abuse are likely to try to 'game the system' by confecting 'new disputes' in relation to which they will seek to invite a respondent to engage in FDR, with the goal of harassing the victim survivor. Victim survivors must be 'kept out of the loop' until the Court has determined whether it should grant approval.

Proposed Division 1B of Part XIB should deal with this risk expressly, while not inappropriately precluding parties from engaging in FDR in respect of new proceedings. One way in which to balance these aims, perhaps, is to explicitly provide that if the Court approves a proposed proceeding, it may also require or permit the parties to engage in FDR before filing an application, or exclude the proceedings from that requirement.

We are concerned that this amendment will meet the fate of so many other amendments to the Family Law Act and gradually fall into disuse under the day to day workload pressures in the Court (for example, the Less Adversarial Trial provisions). To mitigate this risk, the ongoing information and education campaigns recommended elsewhere in this submission should include components, accessible to the general community, court users, and court professionals (including judges) about the proposed orders.

Further, while these orders are intended to ameliorate the harms consequent on parental conflict and combative behaviour (including systems abuse), their effect is inevitably blunted because of the conflictual and win/loss dynamics that sit at the heart of the Act. Modest reforms, while not unwelcome, cannot cure the fundamental defect of the Act in how it (fails to) properly reflect the paramountcy of children's best interests.

Proposed subsection 102QAC(3) should be broadened. The subsection should at least allow the Court to have regard to a party's history of use of FDR. It is our experience, for example, that a party will wait until the expiry of a dispute resolution / section 60I certificate, and then restart FDR, or will 'forum shop' among FRCs, forcing the other party to engage repeatedly. Other means of perpetrating systems abuse, which could be reflected in the Act, include unmeritorious and harassing reports to child protection authorities, to regulators (including professional disciplinary bodies), licensing authorities, and complaints handling agencies (eg Ombudsman offices).

Vexatious litigants may also be experiencing circumstances of vulnerability; indeed, our practice experience demonstrates that this is often the case. They may be experiencing mental illness, cognitive impairment, issues with dependence on alcohol and other drugs, or a combination of these and other circumstances. This amplifies the need for co-located therapeutic services, and robust warm referral pathways between Courts and services, that could be accommodated within the Family Wellbeing Hubs recommended in this and previous submissions.

Overarching purpose of the family law practice and procedure provisions – Schedule 5, Part 2, item 16

In relation to proposed paragraph 95(2)(a), it is unclear how the concept of 'just determination' sits with Part VII, in both its existing and proposed forms. A parent will commonly appeal to a concept of 'justice' to justify their position, but pursuit of 'justice' as between the parties to Part VII matters innately obscures and undermines what is meant to be the paramount consideration for the parties *qua* parents rather than *qua* litigants.

Proposed paragraph (a) reinforces the equivocal position of children and young people in relation to the Court: while their best interests are said to be 'paramount', they are not parties, they do not have access to advocates who will ensure that their views are known and considered by the Court, they have no standing to appeal, and their best interests are vulnerable to being undermined by focussing on achieving justice between the parties before the Court.

Protecting sensitive information - express power to exclude evidence of protected confidence – Schedule 6 of the Exposure Draft

We understand from the Attorney-General's Department that Schedule 6 of the Exposure Draft has been withdrawn in response to concerns about operationalisation and risks of unintended consequences. Relationships Australia had expressed some concerns in this regard, but supported the intent of the proposed amendments. We look forward to engaging further with the Department in developing amendments to deliver appropriate protection of sensitive information.

Clarifying restrictions around public communication of family law proceedings – Schedule 6

Relationships Australia welcomes clarification of the policy intent underlying current section 121. This provision was never intended to shield professionals from accountability and oversight. Nor should it deny access to emotional and psychological support networks of individuals engaged in proceedings. Expressly allowing communication with regulators and disciplinary bodies is consistent with principles of transparency and accountability, and will support ongoing integrity of the family law system. It is helpful also to clarify that communications that are private in nature are not captured by the prohibition.

Relationships Australia agrees with the Law Council that Government should consider conferring on the court power to injunct proposed publications; this would support the privacy of affected families and individuals. We also agree that defining 'account' and expanding application to 'any other electronic dissemination process' would assist self-represented litigants to understand the scope and intended operation of proposed Part XIVB.

Establishing regulatory schemes for family law professionals Family Report Writers schemes – Schedule 7

Relationships Australia welcomes the proposed definitions of family report writers and designated reports.

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The regulation and oversight of family report writers is long overdue. Relationships Australia supports the approach to legislating for such matters, and looks forward to reforms that will achieve like regulatory outcomes for Children's Contact Services and child consultants. In some locations, however, there is a scarcity of FRWs, and we are concerned about the adverse impact on geographic equity if care is not taken to attract and nurture skilled FRWs. We have heard many accounts of clients being ordered to obtain a report, and having to pay considerable amounts because the court report writer is unavailable. This may occur, for example, because of workload and conflict of interest considerations. Relationships Australia would welcome regulation of costs to be charged.

Conclusion

Thank you for the opportunity to comment on these important proposals, and for the opportunity you provided for an earlier briefing. Relationships Australia would also warmly welcome opportunities to be involved in ongoing policy development, as foreshadowed in the consultation paper, about compulsory arbitration, taking domestic and family violence into account in property matters, binding financial agreements, and measures to control costs to families in engaging with these systems.

Should you wish to discuss any aspect of this submission in more detail, please do not hesitate to contact me.

Kind regards

Nick Tebbey
National Executive Officer

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