

Family Law Amendment Bill 2024

The Centre for Excellence in Child and Family Welfare (the Centre) appreciates the opportunity to provide a submission on the Family Law Amendment Bill 2024 to the Australian Government Attorney-General's Department.

The Centre is the peak body for child and family services in Victoria and Tasmania. For over 100 years we have advocated for the rights of children and young people to be heard, to be safe, to access education and to remain connected to family, community and culture. We represent over 180 community service organisations, students and individuals working across the continuum of child and family services, from prevention and early intervention to the provision of out-of-home care. Many of our members work with children, young people and families experiencing, or at risk of experiencing, family violence.

Introduction

The purpose of the *Family Law Act 1975* is to assist families in dispute resolution and ensure children are protected from harm, supported after family separation, and have decisions made in their best interests. However, family law has become complex to navigate and can cause distress and hardship for many due to the financial cost of litigation and often onerous and time-consuming legal proceedings. In particular, the system does not provide a supportive place for children and young people who are involved in litigation, and who often remain voiceless and lack autonomy over decisions made in their 'best interests'. The Centre supports the review of the proposed amendments as detailed in the Family Law Amendment Bill 2024, and the progress toward a fairer family law system. In particular we support the following:

- Centering the rights of children and young people in family law matters and making decisions in the best interests of the child
- The right of children to be represented by an independent children's lawyer, whose expertise can help make sure the needs and voices of children are heard
- Amendment of the definition of family violence to include its economic impact and acknowledgement of the disadvantage and harms caused by financial abuse.

Rights of the child

Best interests

The amendments made to the Family Law Act 1975 (Cth) from May 2024 are consistent with the Convention on the Rights of the Child which states that the best interests of the child must be a primary consideration in all system settings, including courts of law, where children are involved. The proposed amendments in the Family Law Amendment Bill 2024 recognise the harms associated with family violence and the importance of independent legal consultation for children and young people.

Children's safety

The amendments include the provision of a regulatory framework for Children's Contact Services which will ensure these services are accredited and consistent in relation to delivery. It is pleasing to see this child-focused approach in contact arrangements which will help increase the safety of children where families are unable to make safe contact arrangements themselves.

Housing needs

The Centre supports the amendments to paragraphs which highlight the need for family law courts to consider the housing needs of children under 18, and the responsibility of parents to provide a safe and secure living environment for children. These additions will allow for the child's needs and rights to be upheld by the courts

in a legally binding manner. However, it is important that the courts recognise other relevant factors in the decision-making process. The suitability of living arrangements is not solely dependent on economic resources.

Independent Children's Lawyer

The role of the Independent Children's Lawyer is crucial in allowing the needs of children and young people to be considered when family courts finalise care arrangements in family separation.

The Centre supports the addition of paragraph 114UC and paragraph 112UC(2)(b) concerning the cost involved in this form of representation for children. The amendments recognise that this service should be available to everyone and not only an option for those who can afford it. It also recognises that those parties who are ineligible for legal aid but are experiencing significant forms of financial hardship will not be required to contribute to the cost of an Independent Children's Lawyer. The addition of this paragraph will help protect parties who are subject to financial abuse.

Economic impact of family violence

Research by the Australian Institute of Health and Welfare has shown that children who are impacted by family violence and abuse can experience lifelong impacts.¹ It will be important for the courts to make use of the powers under the amended legislation to take into account the living and housing needs of children when discussing division of property and family law proceedings. The findings of the Australian Child Maltreatment Study show that housing insecurity and financial instability are two long-term impacts following an experience of family violence in childhood.² It was pleasing to see the Explanatory Memorandum refer to the ACMS.

The new amendments to the Family Law Act require the courts to consider the financial impact of family violence on the contributions made by either party to the relationship where applicable. This new addition to the legislation will provide the court with the ability to fully consider the cost of family violence to the relevant party.

Expanding the definition of financial abuse to include the unreasonable withholding of financial support (regardless of dependency), will allow for the courts to recognise the weaponisation of child support as financial abuse. This is a vital amendment to the legislation given the number of women who have experienced this form of family violence – 80 per cent of women surveyed by Swinburne University reported that their ex-partner had replaced physical abuse with financial abuse via the withholding of child support as a way to control them post-separation.³

Overall

The Centre supports the proposed amendments being made and committed to law, to create a fairer, safer, and more child-rights focused family law system in Australia. The Bill promotes the protection of human rights, including those of children. The Centre welcomes the government's commitment through these amendments to the law to prioritise the best interests of children, prevent children's exclusion from property settlement and other discussions which affect their lives materially and psychologically, and to ease the legal burden on victim survivors and their children.

¹ Australian Institute of Health and Welfare (2024). Economic and Financial Impacts. <https://www.aihw.gov.au/family-domestic-and-sexual-violence/responses-and-outcomes/economic-financial-impacts>

² Parliament of Australia, Family Law Amendment Bill Explanatory Memorandum (2024). https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r7234_ems_b743ce40-9aa5-4155-90fb-6374e274d5bf/upload_pdf/JC013850.pdf;fileType=application%2Fpdf p.5.

³ Swinburne University (2023). Financial abuse: The weaponisation of child support in Australia. https://figshare.swinburne.edu.au/articles/report/Financial_abuse_The_weaponisation_of_child_support_in_Australia/26255084?file=47592221 p.23.