



Legal and Constitutional Affairs Legislation Committee

Family Law Amendment Bill 2024

September 2024

Advocacy to improve access and equity

Royal Australian and New Zealand College of Psychiatrists submission

Family Law Amendment Bill 2024

About the Royal Australian and New Zealand College of Psychiatrists

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) is a membership organisation that is responsible for training, educating and representing psychiatrists in Australia and New Zealand. The RANZCP has more than 8500 members, including around 5800 qualified psychiatrists.

Introduction

The RANZCP welcomes the opportunity to contribute to the Legal and Constitutional Affairs Legislation Committee's [consultation](#) on the [Family Law Amendment Bill 2024](#) (the Bill).

The RANZCP's response is informed by feedback from RANZCP members involved in a range of expert Committees including the Family Violence Psychiatry Network Committee, the Faculty of Forensic Psychiatry Committee and the Section for Child and Adolescent Forensic Psychiatry Committee. These Committees are made up of community members and psychiatrists with direct working in the field or are individuals with lived experience. As such, the RANZCP is well positioned to provide assistance and advice about this issue due to the breadth of academic, clinical and service delivery expertise it represents.

The recommendations contained within this document are also informed by previous submissions and key RANZCP documents, including;

- [Position Statement 102: Family violence and mental health](#)
- [Professional Practice Guideline 3: Australian Family Court Proceedings](#)
- [Family and domestic violence](#)
- [Senate Standing Committee on Social Policy and Legal Affairs regarding the Inquiry into Family Violence Orders](#)
- [Submission to the Australian Government Attorney-General's Department's Family Law Amendment Bill 2023](#)
- [Submission to the Joint Select Committee's Inquiry into the Australian Family Law System](#)
- [Submission to the Australian Law Reform Commission regarding Justice Responses to Sexual Violence](#)
- [Submission to the Parliament of Victoria Legislative Assembly Legal and Social Issues Committee regarding the Inquiry into Capturing Data on Family Violence Perpetrators in Victoria.](#)

Recommendations

The RANZCP recommends that:

- Courts must take into account the particular vulnerabilities of parties when making determinations regarding financial and economic abuse.
- Mental health to be explicitly stated in the legislation for the Court to consider when making property and separation orders.
- Mental health rather than psychological health be used in the legislation.
- Trauma informed care and culturally safe practices must inform all Court procedures and processes.
- Court modifications and considerations should be available to reduce the risk of re-traumatisation and increase victim-survivor safety and wellbeing.

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Background

The RANZCP commends the proposed legislation for including the need to address the impacts of economic and financial abuse when making property and separation orders under the [Family Law Act 1975](#). The RANZCP welcomes the decision to address dowry abuse in the Bill. This coercive practice affects priority multicultural populations in Australia in culturally specific forms including financial, family and intimate partner violence.[1]

The RANZCP supports the efforts of the Bill to reduce barriers to litigants through clear language updates and providing details of what should and can be considered regarding family violence during property disputes and separations. As noted in our recent [submission](#) to the Senate Standing Committee on Social Policy and Legal Affairs' Inquiry into family violence orders, one of the key barriers to litigants is legislative gaps and current Court procedures.

We note that family violence is an inherently gendered experience. In Australia, 1 in 4 women experience familial or intimate partner violence.[2] Family violence is associated with serious health consequences and puts an enormous financial burden on the country, with estimates as high as \$26B annually.[3] The bulk of this economic cost comes from the immediate and ongoing mental health effects of family violence. Depression, anxiety, suicide and alcohol, drug and tobacco use are the biggest contributors to the economic costs to victim-survivors.[4]

Psychiatrists play an important role in clinical leadership in the treatment of family violence – please see the RANZCP's [Family and domestic violence](#) resource. Pre-existing mental illness and disability are associated with a higher risk of being victimised by carers and intimate partners. The experience of domestic violence in turn exacerbates pre-existing mental illness, suicide attempts, and substance abuse. To better ensure positive health outcomes, the involvement of mental health services and leadership should be part of all systems involved in addressing family violence.

Including mental health in the legislation

The RANZCP recommends the proposed provisions addressing the health impacts of family violence explicitly state that mental health impacts of family violence be taken into consideration. This will support the intent of the Bill, to ensure the language of the legislation is clear and concise. The current usage of 'psychological harm' throughout the Bill and *Family Law Act 1975* does not sufficiently convey the impact of family violence on the broader mental health of individuals, and creates avenues for misinterpretation. The RANZCP recommends that 'mental health' be used instead.

Mental health impacts are the largest ongoing economic cost on health and wellbeing for victims of family violence. It is important that legislation clearly communicates the economic consequences for consideration by the Courts. People who experience family violence have a higher likelihood of experiencing financial stress, and children who witness or experience violence have lifelong impacts on their financial security than individuals who do not.[4] Lifelong fear and anxiety and conditions such as post-traumatic stress disorder are causally linked to family violence and regularly reported.[5]

Given the current workforce shortages, many individuals experiencing high prevalence, low acuity conditions, such as depressive and anxiety disorders, can only access receive treatment through the private health system as highlighted in the most recent RANZCP [2024-2025 Federal Pre-Budget submission](#). It is important to demonstrate to victim-survivors that these costs will be considered, and that mental health is a priority for the Courts and law. This will contribute to addressing barriers of stigma regarding mental health and family law litigation that exist, as outlined below.

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Changes to increase access and equity to the Courts

The RANZCP welcomes the inclusion of Schedule 3 of the Bill for its intention to offer non-adversarial approaches to resolution and the strengthening of protections regarding evidence and disclosure from 'protected confidences' including health professionals. The RANZCP advocates for further clear language changes to increase accessibility.

The nature of the current family law system exacerbates difficulties experienced by victim-survivors and families during proceedings. The extended duration of proceedings, backlog of cases and the ongoing stigma and trauma involved in family court proceedings are significant barriers to those who have, or are currently, experiencing family violence. The adversarial nature of proceedings 'exacerbates conflict and trauma'.^[6] Expectations of delay, drawn out and adversarial proceedings and the expectation of interaction with the perpetrator of violence all work against victim-survivors.

There is also stigma associated with mental health conditions within the court system. There is a perception that an individual's history of mental health issues infers a lack of capacity or trustworthiness. The changes to Schedule 3 highlight and protect the importance of the therapeutic relationship between clinician and consumer. As noted in our [Position Statement 89: Patient-psychiatrist confidentiality: the issue of subpoenas](#), psychiatry involves developing a trusting relationship. Consumers need to feel comfortable discussing relationships, emotions, memories, experiences, and impulses of the most sensitive kind with their psychiatrist. Psychiatrists must feel confident that they are in control of what is disclosed and to whom it is disclosed.

The RANZCP recommends that the terminology 'mental health' rather than 'psychological health' be explicitly used in the amendments proposed in Schedule 3, especially 102BB(5).

Priority populations

The RANZCP welcomes the proposed additions of Section 75(2)(aa), 79(4)(c) and the other provisions moderating property and support payments in light of family violence.

As noted in the [explanatory memorandum](#) to the Bill, priority populations are more likely to experience family violence and the ongoing health, social and financial impacts. Populations that are more vulnerable to experiencing family violence include: women, children and infants, people with disability, older people, First Nations people, people from multicultural backgrounds, LGBTIQ+ and rural and remote communities. Due to the heightened risk of experiencing family violence and exacerbated long-term impacts, the RANZCP recommends that the Bill explicitly cater for priority populations.

Explicitly outlining the need for the Court to consider vulnerabilities when addressing the effects of family violence would strengthen the Bill. Such efforts have already been partially implemented in the suggested amendments through the decision to clearly address dowry abuse for multicultural communities. The RANZCP recommends the legislation enshrine the need to address economic impacts of family violence in the context of the particular vulnerabilities of the victim-survivor.

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Increasing the safety and wellbeing of victim-survivors during Court proceedings

In line with the intention to increase the protections provided to, and safety and wellbeing of family court litigants who have experienced family violence, the RANZCP recommends that Court proceedings and practices be updated to minimise harm.

The importance of trauma-informed practice has been raised repeatedly by victim-survivors and the RANZCP supports their calls for professional training in trauma-informed practice to be made mandatory for all servants of the Court. This training would address the wrongful tendency to equate mental illness with a lack of capacity or dangerous behaviours.

As noted in the RANZCP's [Position Statement 100: Trauma-informed practice](#), recognising diversity in trauma presentation, appreciating the unique experiences of particular communities, and practicing in a manner that supports recovery and limits risks of re-traumatisation

Victim-survivors frequently report experiencing re-traumatisation at multiple stages in the court proceedings often having experiences that make them feel further disempowered, stigmatised, and shamed.

The RANZCP recommends that appropriate training be available to family law professionals and court officers in relation to trauma-informed care, mental health and its interplay with the court system.

The RANZCP also advocates for court modifications and considerations. These include, but are not limited to:

- Reduction of delays in finalising proceedings, which draws out trauma.[7]
- Greater provision and availability of special measures currently available in various specialist domains, such as pre-recordings, screens, removal of wigs and gowns, and closed courts.[7]
- Greater consistency in and utilisation of the legislation and conduct rules designed to reduce the risk of inappropriate questioning by counsel.[7]
- Consideration of whether juries for violence cases are appropriate, particularly when myths and misconceptions about memory and responsive behaviour continue to persist.[8]

Conclusion

The RANZCP welcomes further consultation in the field of mental health and family law in Australia.

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References

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7. Amanda-Jane George VL, Masahiro Suzuki and Nichola Corbett-Jarvis,. Specialist Approaches to Managing Sexual Assault Proceedings: an Integrative Review. Sydney: The Australasian Institute of Judicial Administration Incorporated; 2023.
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