

11 August 2023

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600
legcon.sen@aph.gov.au

Dear Committee Secretary,

Family Law Amendment Bill 2023 – Questions on Notice 11/08/23

Introduction

Please find following answers to questions to National Legal Aid (NLA) at the hearing of the Inquiry into the Family Law Amendment Bill 2023, 11 August 2023.

We also kindly request corrections of Hansard as per attachment A to this letter.

Questions

Questions: p. 23 Hansard - Hague Convention on the Civil Aspects of International child Abduction (Hague Convention) Senator SCARR:

Thoughts/views on a recent legal case?

Legal Aid NSW was the solicitor for the Independent Children’s Lawyer (ICL) in this matter.

We are unable to comment on individual cases. Child abduction cases can involve very complex and competing considerations, and the long-term effects on children can be devastating.

“Is there anything more that needs to be done in that space?”

Yes.

We confirm NLA would welcome the removal of the exceptional circumstances provision in the legislation and note the recent Budget 2023-24 announcements.

Budget

Budget 2023-24 provided “\$18.4 million over 4 years from 2023-2024 (and \$5.0 million per year ongoing) to improve safety in international child abduction cases for women and children fleeing violence.”¹ “...This includes:

- \$7.4 million to introduce a financial assistance scheme to enable eligible respondent parents to have equivalent access to legal representation as applicant parents
- \$5.3 million for a package of early alternative dispute resolution intervention measures, designed to divert families from contested Hague Convention proceedings and improve safety outcomes
- \$5.7 million to improve capability in the Attorney-General’s Department to obtain and make evidence about family violence available to the courts in Hague Convention cases.”²

NLA would like to see the role of legal, social support, and mediation assistance in Hague Convention matters expanded and enhanced, as it is considered that there are significant benefits to be achieved. All components and providers of service delivery should be appropriately funded.

The funding did not include funding to Legal Aid Commissions (LACs). NLA is working with the Commonwealth AGD in relation to the development of the Financial Assistance Scheme, however it is currently understood that the Scheme will not be able to assist with the funding of ICLs. In relation to the funding announced for dispute resolution, it is understood that this has/is being provided to the Federal Circuit Court and Family Court of Australia (not the Family Court of Western Australia). NLA is also concerned that the existing important role of LACs in mediating Hague matters should be supported.

Impact on ICLs

Whilst the likely additional appointment of ICLs in Hague matters is anticipated to be relatively contained by the numbers of returning parents, it is an additional unfunded expectation on a system already subject to substantial strain due to funding constraints, and for which significant injections of funding have been sought. The average cost of an ICL is currently estimated to be \$11,000.

Additional expert reports could be required and that these may fall to the ICL to organise and fund. Costs of expert reports can be very high.

Potentially the increased recognition of family violence as relevant in Hague matters and/or awareness of the introduction of the Financial Assistance Scheme may also see an increase in returning parents where family violence is raised as a reason for return.

¹ Budget 2023-24 Budget Measures Budget Paper No. 2, 89.

² Budget 2023-24 Women’s Budget Statement, 53.

Please see responses to questions below in relation to report writers and ICLs more generally.

Question: p. 23 Hansard – Family Report Writers

Senator WATERS: “... Have you turned your minds to what sort of criteria might help ensure that those standards are lifted and that the trauma awareness and the proper training are present?”

The Commonwealth Attorney-General’s Department (AGD) has published [Improving the competency and accountability of family report writers, Summary of submissions to the consultation paper](#). The Summary identifies feedback received in relation to competencies, training, and professional development, suitability for the role, quality assurance, and regulatory approaches and mechanisms. NLA expects that should the Bill be passed that the AGD will continue to consult with stakeholders in the development of the regulations.

[NLA made a submission to the Consultation Paper](#).

NLA is particularly concerned that the pools of people prepared to undertake this work are currently limited. NLA therefore strongly encourages the provision of all necessary supports to the professionals prepared to undertake this extremely challenging and necessary work. If funded LACs could look to enlarge and/or establish a pool of in-house experts employed at the LACs.

Question: p. 24 Hansard – Independent Children’s Lawyers

Senator WATERS: “...How much funding, training or other support is needed to make sure that ICLs can be available to meet the additional demand made by the changes proposed in this bill?”

This question was addressed in relation to training. In the event that it assists in informing Committee further detail follows in relation to training and more generally.

ICL Funding Needs Generally

NLA has been working with AGD in relation to increased funding for ICLs generally.

In 2022 the following was assessed as needed:³

- \$30M per annum to ensure ICLs were appointed in 65% of all children’s matters on the basis of an average cost of \$11,000.
- \$4.4M per annum plus \$900,000 non-recurrent in relation to training and quality assurance.
- \$1.6M per annum for 3 years to pilot a multi-disciplinary model of service delivery.

³ Based on data for the 20-21 Financial Year.

In the event that the Bill is passed, additional direct and immediately pressing needs will be development of the training module for working with First Nations families, and the revision and development of existing materials at a total estimated cost of around \$300,000.

As indicated above and/or in our submissions, the overall direct impact of the Family Law Amendment Bill 2023 on ICLs will be related to the increased expectation of parties that an ICL will be appointed, additional ICLs appointed in Hague, and otherwise will need to be closely monitored to ascertain whether there will be additional court events and associated expense associated with the determination by Judicial Officers in connection with the ICL meeting the child.

Conclusion

Thank you for the opportunity to attend upon Committee, and to provide this further information.

Should you require any further information from us please be in touch with the NLA Secretariat.

Yours sincerely,

Julie Jackson
Director, Early Intervention Services
Legal Aid Western Australia

Alexandra Colquhoun
Director, Family Law
Legal Aid NSW