

Submission to the Senate Standing Committees on Legal and Constitutional Affairs

Family Law Amendment (Family Violence and Cross-examination of Parties) Bill 2018

The Centre for Excellence in Family Welfare (‘the Centre’) is the peak body for child and family services in Victoria. 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 150 community service organisations, students and individuals throughout Victoria working across the continuum of child and family services, from prevention and early intervention to the provision of out-of-home care.

We know from our members that a large proportion of children and families assisted by community service organisations have direct experience of family violence, and that some of these children and families are involved or have been involved in family law proceedings.

The Centre welcomes attempts to better protect victims of family violence engaging in family law proceedings. In particular, we welcome section 102NA of the Bill which would prevent a victim survivor of family violence from being placed in a situation where they can be directly cross examined by the alleged perpetrator.

The Bill will impose a ban preventing an unrepresented party from directly cross-examining, or being cross-examined by, another party if there is an allegation of family violence between them and:

- either party has been convicted, or is charged with, an offence involving violence, or a threat of violence, to the other party;
- a family violence order (other than an interim order) applies to both parties;

- an injunction under section 68B or 114 of the Family Law Act applies to both parties;
- the court makes an order not to allow direct cross examination.

The Bill further provides that the court must ensure that there are appropriate protections in place for a victim of family violence who does not satisfy the provisions listed above. The Centre is concerned that the Bill does not include having obtained an interim family violence order as an automatic prohibition on personal cross examination.

The Centre recommends that the prohibition on cross examination be extended to situations when there are allegations of family violence, but no court order, or an interim order. The Victorian Royal Commission into Family Violence has shown that whilst the number of intervention orders in Victoria is increasing, there are still complexities and challenges associated with seeking to obtain an order.

The Centre welcomes the proposed section 102NA(2)(b) of the Bill which provides that when the court prohibits personal cross examination of the parties, any cross examination must be conducted by a legal practitioner. However, the Centre is concerned that unless parties are provided with adequate legal aid many will not be able to afford to obtain legal representation. It is unclear from the Bill what recourse the court will have to allow evidence to be heard in the absence of legal representation.

The potential risks to adult and child victims if unsafe contact is ordered because of an inability to properly cross examine evidence before the court are considerable. In situations where allegations of family violence are present it is vitally important that victim survivors are enabled to participate fully in the proceedings before the court and to have access to the highest level of representation.