



Sexual Assault Services Victoria

Family Law Reform
Attorney-General's Department
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Exposure Draft of the Family Law Amendment Bill 2023

Sexual Assault Services Victoria (SASVic) welcomes this opportunity to provide a brief submission to the Attorney-General's Department on the Exposure Draft of the Family Law Amendment Bill 2023 (Exposure Draft).

SASVic is the peak body for specialist sexual assault and harmful sexual behaviour services in Victoria. We work to promote the rights, recovery and respect for victim survivors and other people impacted by sexual violence and harm. We seek to achieve this by working collectively to address the attitudes, systems and structures that enable sexual violence to occur. SASVic's members bring over 30 years of feminist practice and specialist expertise to the task of reforming system responses to sexual violence and harmful sexual behaviours.

SASVic welcomes the prioritising of children and adult victim survivor safety in the family law system in the Exposure Draft. The removal of the presumption of equal shared parental responsibility and requirement to consider specific time arrangements with each parent represents a long overdue step towards preventing violent parents engaging in systems abuse and placing child and adult victim survivors at further risk of harm.

We also note the reforms in the Exposure Draft work alongside broader family law system reforms, such as the Lighthouse model, to support families that have experienced family violence and child abuse to navigate the family law system. We note that the model screens and triage for family violence and child abuse risk and safety, and then supports matters with the highest levels of risk with case management. SASVic is keen to ensure all forms of sexual violence and harm that occur in or outside or adjacent to family violence and child abuse are clearly kept in scope and responded to. This includes recognising and providing a trauma-informed response to all forms of sexual violence experienced by adults and children, as they emerge or are disclosed through the family law process.

SASVic endorses the detailed submission prepared by Women's Legal Services Australia (WLSA) in response to the Exposure draft. WLSA developed the following principles which should guide decision-makers in any reforms to the family law system:

1. Ensuring safety for children and adult victim-survivors who are predominantly women by putting safety and risk at the centre of all practice and decision-making.
2. Promoting accessibility and engagement, including addressing issues of cultural competency and accessibility for Aboriginal and Torres Strait Islander, culturally and

linguistically diverse and LGBTQIA+ people and communities and people with a disability, reducing delay, and availability of legal assistance.

3. Fairness and recognition of diversity, including acknowledging and responding to structural inequalities and bias in the family law system.

In addition to endorsing the WLSA submission and the principles above, SASVic would like to take this opportunity to highlight additional points, reflecting our role and focus as the peak for sexual violence and harmful sexual behaviours in Victoria.

To ensure that reforms reflect the prevalence and unique nature of sexual violence, we submit the following **recommendations**:

- 1) Legislative and broader reforms reflect sexual violence. We provide one example below in responding to Schedule 1.
- 2) All workers in the family law system are able to identify and respond safely, respectfully and sensitively to all forms of sexual violence and harm that occur in or outside or adjacent to family violence and child abuse.

Schedule 1: Amendments to the framework for making parenting orders

Best interests of the child factors

As WLSA contend, prioritising child and adult victim survivor safety can be achieved by retaining the operation of section 60CC(2A): *'In applying the considerations set out in subsection (2), the court is to give greater weight to the consideration set out in paragraph 2(b)'*, with the relevant consideration in the existing *Family Law Act* being *'the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.'*

SASVic agrees with retaining the operation of section 60CC(2A) but proposes amending the language in the current Act to better reflect and include:

- the unique and distinct experiences of children and young people experiencing family violence, child abuse, neglect or other harm
- experiences of child sexual abuse
- the need to protect children and other significant people.

The language of being 'being subjected to' and 'exposed to' minimises the experiences of children and young people and suggests that exposure to violence and harm is different from experiencing violence and harm. Exposure to violence and harm *is* experiencing violence and harm. In addition, the current language can better reflect experiences of child sexual abuse. The 2016 Personal Safety Survey (PSS) found that 7.7 percent (1.4 million) Australian adults experienced childhood sexual abuse.¹ The PSS captures experiences of childhood physical abuse only, childhood sexual abuse only and both childhood physical and sexual abuse. The PSS found that 35.6 percent who experienced sexual abuse only were first abused by family members. Between 2018 and 2019, ten percent of children who received child protection services experienced sexual abuse.² These figures do not reflect the true number of incidents, due to underreporting. We note that the current wording captures physical or psychological harm. However, sexual violence is not reflected.

¹ Australian Bureau of Statistics (ABS), "Characteristics and outcomes of childhood abuse," accessed February 24, 2023, <https://www.abs.gov.au/articles/characteristics-and-outcomes-childhood-abuse>.

² Australian Institute of Health and Welfare (Australian Government), "Child protection Australia 2018-19: children in the child protection system", accessed February 24, 2023, <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-children-in-the-child-protection-system/contents/introduction>.

As WLSA's submission points out, safety provisions should also include the safety of children and 'each person who is significant to the child's care, welfare and development'. We refer you to their submission for more information.

Recommendation:

- 3) Retain the operation of section 60CC(2A) to ensure the best interests of the child is contingent upon prioritising children and adult victim survivor safety, but amend current wording from 'the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence' to 'the need to protect the child, children and each person who is significant to the child's care, welfare and development from physical, sexual or psychological harm from experiencing abuse, neglect or family violence'.

SASVic welcomes the inclusion of the child's developmental, psychological, and emotional needs in the proposed list and recommends including an intersectional lens. This is to account for children and young people from diverse communities, including people with disability, LGBTIQ people, and culturally and linguistically diverse communities.

Recommendation:

- 4) Include an intersectional lens in considering the child's developmental, psychological, and emotional needs

Success of legislative and broader reforms depends on the scope and quality of monitoring and evaluation of the reforms. Doing so would be able to capture evidence regarding implementation. For example, WLSA submission points to evidence regarding non-compliance with parenting orders. A monitoring and evaluation framework should be developed to track and report on the implementation and impact of reforms.

Recommendation:

- 5) Implement a monitoring and evaluation framework with an intersectional gender equity lens and focus on assessing whether and to what extent:
 - the reforms have been utilised
 - they have been effective in achieving their purpose
 - any unintended consequences have arisen, and which should be addressed.

SASVic would like to thank you for the work you have done to ensure children's best interests are paramount in the family law system. We reiterate WLSA's position that legislative reform must be accompanied by proper resourcing and training to ensure everyone in the family law system is family violence-informed, trauma-informed, child-focused, culturally safe, and inclusive for everyone who comes into contact with the system. This should also include the system being cognisant of and able to respond appropriately to all forms of sexual violence and harm, experienced by adults and children. We look forward to working with you in future tranches of reform to promote the rights, recovery and respect for victim survivors and other people impacted by sexual violence and harm.

Yours Sincerely,



Kathleen Maltzahn
CEO
Sexual Assault Services Victoria