



## **Submission for the inquiry into the Provisions of the Family Law Amendment Bill 2024.**

Tuesday 28<sup>th</sup> October 2024

Senate Standing Committee on Legal and Constitutional Affairs

We thank the committee and the secretariat for their work and efforts to better understand the interactions of protection orders and the Family Law system.

Our submission represents the voices of those with lived experience in this space.

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Domestic Violence Advocacy Australia makes the following submission in response to the Senate Standing Committee on Legal and Constitutional Affairs inquiry into the Provisions of the Family Law Amendment Bill 2024.

We appreciate these steps towards improving the experience of victims of family violence in the family court system, however we have grave concerns for the continued weaponisation of this system by perpetrators. The family law system is inherently dangerous and one of the most complex, expensive and exclusive for victims of domestic violence.

**Figures from the FCFCOA show 83% of cases from 2022-2023 involved allegations of family violence. This is not simply a court where two disagreeing parties engage, this system is one in which one party comes before it who holds significantly more power, control and dominance and where the other is their victim.**

It is from this lens in which we implore the Parliament and the Attorney General to make strides, not steps in ensuring that this court becomes safer for victims where long-term decisions being made do not continue to do harm to victims and their children.

Our key recommendations for the Senate Committee to consider with this Amendment are:

1. Expand the amendment to s75(2)(aa) and s79(4ca) legislating consideration of family violence in property matters to recognise the long-term economic impacts of family violence on victims, and factor the additional future needs of victims when making orders to divide assets, in particular the housing needs of victims and any children.
2. Improved enforcement mechanisms for full and frank disclosure of assets, including an independent forensic audit of all business interests of the parties.
3. Implement a National Risk Assessment to be used early in the court process to correctly identify victims and perpetrators in the family court system so that safety measures can be implemented to keep victims safe from systems abuse.
4. Remove the privatisation of child contact centres. Accreditation alone will not address all the current issues.

There have been at least 65 inquiries or attempts to ‘tweak’ the family law system since 1980. And we note the experiences for victims and children has done nothing to drive down the overall impacts of or instances of family violence occurring. A court system being used by perpetrators to continue to abuse their victim, should provide deterrents for perpetrators not inflict further adversarial episodes onto a victim.

### **Consideration of housing needs of victims of family violence and their children**

It cannot be considered just and equitable for victims of domestic violence to be facing homelessness. Where financial stability is impacted by family violence it must be made clear via a statutory provision that a victim may be entitled to the entire asset pool, or at least the family home, especially when it is required to house any children who are also victims of family violence. A child’s right to a safe place to live must be recognised by the family court system.<sup>1</sup>

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<sup>1</sup> UN Convention on the Rights of the Child, article 27.



We welcome the inclusion of the recognition of domestic abuse in matters of property settlement. We are saddened that this change has come too late for many victims who have engaged in the system for many years without such acknowledgment and the lasting harm which has impacted them recovering from financial abuse, this in many cases has only been reinforced by the Family Law System. We have a significant cohort of growing homeless occurring in women aged 55 and over.

We also acknowledge the victims who 'tap out' of the system due to costs as a barrier to participate in their own justice and to those victims who are paralysed by fear and remain in abusive situations in a desire to avoid a costly legal battle with a perpetrator.

The court needs to completely come to the recognition that an adversarial system in property or parenting matters only serves the abusive party.

### **Full and frank disclosures**

We implore the committee to look at ways to better enforce full and frank disclosure in the court process and penalties for not doing so. And that where a perpetrator has business interest that the court covers the cost of that business to be forensically examined and audited when family violence is identified. These costs could be re-couped by the court during the end stages of settlement.

### **Implementation of a National Risk Assessment**

The court in implementing these changes would be well advised to implement alongside a formal method of identifying the primary perpetrator through the use of a Multi-agency risk assessment management (MARAM) framework which is widely used throughout Victoria.

This would assist the court from the beginning of proceedings to accurately identify a victim, this would remove the ability of the perpetrator to use systems abuse and provide the judiciary with a better understanding of the perpetrators motivation and tactics.

### **Child Contact Centres**

We continue to receive disclosures from workers of privately operated contact centres and victims of family violence. The use of privately operated contact centres who are informing the courts in incredibly complex matters which involve child safety must cease to be privatised. The model only favours an abuser. While establishment of an accreditation process through this Amendment is again another step in the right direction, we fear this will not be enough to stamp out the issues in this aspect of the system.

#### **Case study #1: Worker of child contact centre**

Libby\*, is a worker for a child contact centre in South Australia. She has a background in social work and is a dedicated child advocate. Libby is a child survivor of family abuse and works in the system that failed her as a child. She is qualified, has a deep understanding through her own lived experience and is passionate about children. Her role is to only supervise or witness the visit, not to intervene beyond an emergency safety response.

Libby was on a supervised visit with John\* and his daughters. There were several red flag moments where John was denigrating the mother, using emotional abuse tactics such as telling the children what they were missing out on without him living in their home and on one occasion forced the child to hold hands with him when she was clearly resisting. Libby could



see there were a number of concerns which amounted to coercive control and raised these with the supervisor who was responsible for preparing the report for Family Court.

The supervisor of the centre dismissed these, minimised the child's voice in order to keep the father 'onside' so he would continue to book his supervised visits with this particular provider.

Libby saw this occur often, more often in fact than she saw the truth communicated in reports that were handed to judges, ICLs and report writers. Libby resigned from this position and ceased working in contact facilitation.

For profit models in Family Court ordered contact centres place children in danger, when a perpetrator uses their 'consumer power' to spend money and engage in services.

There was no place for Libby to report this centre nor report her concerns to the courts.

### **Case Study #2: Mother's experience of a child contact centre in WA**

Jackie's\* former partner Brian\* was a heavy user of cannabis. His behaviour was unpredictable and he would become erratic. On one occasion prior to leaving the family home, Brian tied one of their children to his bed with tie down straps used for tying loads of cargo to utes or trailers. This was to stop their child from getting out of bed. On another occasion during Covid he bailed Jackie up in her study while she was working from home. Eventually she left the home, was granted a protection order for her and her children named as protected persons.

Brian lodged with family court for rights to visit with his children. During a hearing he had an angry violent outburst and stormed out of the court, walking past Jackie and her support team calling her names.

Brian was invited back into the court room later that day where he had yet another angry outburst in the presence of the judiciary. Security intervened and he was escorted from the building while Jackie was taken out a separate door to a waiting car to ensure her safety.

Despite this, the judge made orders that Brian could spend supervised time with his children who were aged 10 and 7. One of whom has additional needs and suffers acutely from the abuse witnessed in the home.

The first two supervised visits went ok, Brian was able to maintain self-control however he never adhered to the changeover rules that he wasn't to arrive until 15 minutes after the children had been dropped off and he would stand on a nearby corner staring menacingly at Jackie. On a third visit, he covertly followed the supervisor to the handover location where the mother was and then proceeded to berate her on a public footpath in front of diners at a café.

He routinely violated the boundaries placed on him by the supervisor around drop off and pick ups of the children.

Despite the obvious acts of abuse, violence and intimidation used by Brian, a judge with all of this first hand evidence, from people other than the victim still allowed orders that the children visit and spend overnight time with their Dad.

The children are now 12 and 9. Both have significant anxiety, and behavioural issues and are suffering academically.



If contact centres are used, then the conduct of the abusive parent can not be overlooked. The idea that domestic abuse happens behind closed doors and is subjective to he said/she said can be difficult to adjudicate but when it happens in the presence of a third party so blatantly like Brian did in the court room itself and in front of a child contact facilitator it is a sign of escalation.

This is further ammunition for an abuser and disempowers the victims. If contact centres are to be used, then this legislation must deal with the findings and the evidence when presented to a court and must influence the outcome of proceedings more than a situational one off report of an “expert” who may only see a perpetrator interact for one hour in most cases.

### **Additional Points for Consideration**

We urge the Committee to also consider these additional points raised for further recommendation that are not canvased by this Bill, but are equally important.

#### *Implementation of Robust Evaluation*

There is a significant lack of data available as to the outcomes or successes of any of the changes to reforms in Family Court, of which there have been many. These reforms proposed in this bill need to be evaluated, independently in a monitoring and client feedback process.

#### *Identification of Use of DARVO and Misidentification of Victims*

The Family Law Amendment bill 2024 does not mention nor account for DARVO (Deny Attack Reverse Victim and Offender) tactics used by perpetrators nor how the court can correctly identify and evaluate primary perpetrators within the system. The amendments will only be useful to victims of violence and abuse if the court can correctly understand who the real victim is and who is using DARVO.<sup>2</sup>

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<sup>2</sup> <https://www.domesticshelters.org/articles/identifying-abuse/explaining-darvo-deny-attack-reverse-victim-amp-offender>

