

Relationships Australia

22 December 2010

Public Consultation: Family Violence Bill
Family Law Branch
Attorney-General's Department
3-5 National Circuit
Barton 2600

Family Law Amendment (Family Violence) Bill 2010 **Submission on exposure draft**

Introduction

This submission is written on behalf of the federation of Relationships Australia organisations. It represents our common view about elements of the *Family Law Amendment (Family Violence) Bill 2010* (the Bill). Relationships Australia welcomes the opportunity to provide comment on the exposure draft.

Each Relationships Australia organisation provides a range of family services. These include, but are not limited to, counselling, family dispute resolution (relating to living arrangements for children, property settlement and other areas of family dispute), family violence programs (for those using, and those subjected to, family violence), post-separation support for children, children's contact services and other wrap-around support services for children and families. Services are funded by the Commonwealth Departments of Attorney-General, and Families, Housing, Community Services and Indigenous Affairs, as well as State and Territory Governments.

We are committed to social justice and inclusion, and respect the rights of all people, in all their diversity, to live with dignity and safety, and to enjoy healthy relationships. Those affected by family violence, and particularly children, are vulnerable and need support if they are to lead safe and fulfilling lives. We also believe that those using violence in family relationships are in need of support if they are to make changes to create fuller and safer lives for themselves, their families and their communities.

Relationships Australia provides services from 23 of the 65 family relationship centres funded by the Commonwealth Attorney-General's Department, and is a partner in many others. We also provide a

range of services from 19 children's contact centres. Family dispute resolution is an important part of our core business, as is the prevention of family violence.

Submission

Relationships Australia notes several key elements of the Bill:

(a) expanded definition of family violence (Item 3)

We support a revision of the definition of family violence, to better reflect the range of destructive behaviours that cause fear and impact on the capacity of children and other family members to lead full and healthy lives.

However, we would propose that the definition in the Bill be focussed on the impact of behaviours that constitute family violence, rather than an exhaustive list of behaviours. This was well articulated in the recently-released Australian and New South Wales Law Reform Commissions' report *Family Violence – a National Legal Response*, which caveated a list of behaviours with the following: *family violence is violent or threatening behaviour, or any other form or behaviour, that coerces or controls a family member or causes that family member to be fearful...*

While family violence as defined in the Bill broadly includes elements of both family and domestic violence, it is the resulting fear and the deprivation of victims' rights to liberty and their ability to lead full and healthy lives that are our principal concerns, as are the impacts on the children of parents unable to function effectively in their parenting role because of that fear.

(b) recognition of the United Nations *Convention on the Rights of the Child* (Item 13)

In line with Australia's broader international human rights obligations articulated in COAG's *National Framework for Protecting Australia's Children*, we very much welcome the acknowledgement of the rights of the child in the Bill. We believe the Convention appropriately and firmly underpins the principles set out in the draft legislation.

(c) protecting children from physical and psychological harm (Item 17)

While, in normal circumstances, it is beneficial for a child to have a meaningful relationship with both parents following separation, we fully support primacy being given to the protection of children where abuse, neglect or family violence is present.

(d) removal of *friendly parent* provisions of the *Family Law Act* (Items 18 and 20)

We welcome the disincentive to parties' disclosure of family violence as currently set out in the Family Law Act. We believe this dissuades many from disclosing the presence of family

violence, in the fear that they would appear to be 'unfriendly', with the potential consequences of that.

(e) requiring parties to disclose family violence (item 29)

Relationships Australia has a number of concerns relating to Item 29, requiring parties to report all cases of family violence to the court through its inclusion in the *Family Law Act*.

In providing family dispute resolution and counselling services, Relationships Australia practitioners conduct continuous risk assessments throughout the relationship with their clients, particularly where family violence is – or has been - present, and work with clients to develop safety plans, providing them with – or referring them to - support services and for legal advice. We build relationships with organisations and networks that promote the safety of those who are, or have been, affected by violence. Each client is rigorously assessed for appropriateness for dispute resolution, particularly in respect of family violence, safety and child abuse. In the post-separation period in particular, we are aware that there is a heightened risk of family violence and are concerned that the proposed reporting regime in the Bill should not result in increased risks for disclosing clients.

We recommend that a clarification of thresholds and/or the types and level of impact on those who are affected by family violence be the trigger for reporting to the court and that there be some discretion on the part of the practitioner about disclosure. In this model, reporting would be required in cases where there is real fear of imminent behaviour of coercion or violence, in order that the court's limited resources can be applied to those cases where real benefit can be gained by one or both parties, and, importantly, their children. This model pre-supposes that rigorous and ongoing risk assessment with associated wrap-around services are applied in all family dispute resolution cases, and that dispute resolution only proceeds in appropriate cases, where safety of all parties, particularly children, has primacy.

Thank you for the opportunity to provide our feedback on the Bill. We look forward to continuing our work as an integral part of the family law system around Australia.

Alison Brook
National Executive Officer
PO Box 313, Curtin, ACT, 2605
(02) 62854466