



**National Women's
Safety Alliance**

Submission on the Exposure Draft: Family Law Amendment Bill (No. 2) 2023

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Submitted by

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Introduction

The National Women's Safety Alliance brings together brings together 381 individual and organisational members to provide policy guidance, lived experience and frontline expertise to inform national policy and reform on women's safety. We support the work of our members and other frontline services who have made recommendations to this significant reform.

We welcome the opportunity to provide insight to and consult with our members on the *Family Law Amendment Bill (No.2) 2023*. The Alliance notes the excellent work done already this year to reform the Family Law Act to meet the contemporary needs of families, parties, and the evolved dynamics of violence and separation.

The *Family Law Act 1975* (Cth) operated from a premise that proceedings would be reasonable and largely devoid of acrimony, that domestic violence and child sexual abuse were hidden from public discourse and unlikely to be exposed in the court system, and that the court system was used for proper intent rather than to subject parties to a bind of systems abuse and processes.

We understand that these amendments have been put forth because the Government wants to make sure separating couples can better understand the decision-making framework used in family law to resolve their property and financial matters confidently and safely.

In responding to this significant piece of reform the Alliance makes specific comments and reflections on elements of Schedule 4, Part 2 relating to the clarification of inadmissibility. While the NWSA agrees with all other amendments in the exposure draft, Schedule 4 was raised repeatedly in consultation with our members, some of whom consider reform to the *Act* as a decades long professional commitment. The following response reflects direct feedback provided by our members to the Attorney General's Department on the practical operation of the proposed legislation.

Overarching considerations

While the submission makes direct comments on those Schedule(s) outlined above, the Alliance urges that the following considerations must be front of mind in both the drafting and operation of the amended legislation.

- 1) Child safety and the safety of victim-survivors of family violence must be foundational in the legislation and must not be qualified by other objectives.
- 2) The NWSA and its members welcome the amendments in Schedules 1, 2 and 3 in the proposed reforms. We urge these amendments commence immediately after assent. Tailored approaches must be considered as to accommodate parties who have matters currently listed in the FCFCOA.
- 3) Systems-abuse is not confined to the FCFCOA or other court systems. Rather, it permeates through other government systems including welfare support, Child and Youth Protective Services, and the Child Support Agency. The possibility of systems-abuse within the FCFCOA for survivors of domestic or family violence or child sexual abuse must be considered alongside the likelihood of other forms of systems-abuse.
- 4) To ensure these reforms are effective it necessitates the court to improve its identification mechanisms for family violence, and coercive control behaviours. When there are mutual claims of violence, there must be steps to improve identification of the person most in need of protection.

Case Study – Schedule 1; poverty among single parent households with histories of domestic violence

Domestic violence carries disproportionate financial consequences for those who are subjected to it. In 2016, 185,700 women who had experienced physical or sexual violence by a previous partner were living as single mothers with dependent children. Although 60 percent were employed, half of them were not earning enough to support their families. Cash-flow problems were an issue for a significant majority. For women who experience partner violence, they have about the same incomes as mothers who did not experience violence, but after separation those who experienced violence saw a ‘very significantly higher’ drop in income of 34 per cent, compared with the 20 per cent drop for non-PV mothers. In dollar terms, the drop was from \$54,648 to \$35,921 /year. Summers, A. (2022) The Choice: Violence or poverty.

Schedule 4 – Clarification of inadmissibility provisions

The Alliance supports the protective confidences in family law proceedings. We maintain our earlier position that sexual violence counselling notes be explicitly listed as a “protected material”. This will assist in the safeguarding against inadvertent disclosures that may cause significant harm and distress to the complainant¹.

With regards to *Family Law Amendment Bill (No.2) 2023* however, we reject the proposal that these protections apply in the case of a homicide hearing (as is the intention of Schedule 4, Part 2). It is in the public interest that these notes can be available for subpoena, and the practitioner called to give evidence in proceedings. This evidence may be crucial in illuminating a defendant’s state of mind in proximity to an alleged homicide and in establishing the facts necessary to the circumstances.

Case Study – Schedule 4; Clarification of inadmissibility provisions

R – v – Baden Clay (2014) presents a case law example of the significance of counselling notes and their contribution to establishing the facts or circumstances related to a homicide. In the trial noted above, both the accused and his wife (Allison) were receiving relationship counselling because of the defendant’s extra-marital affairs. The counsellor had provided services to both parties three days prior to the murder of Allison, during which the counsellor had asked the couple to set aside time each day for Allison to air her grievances to the accused, every other day. The accused was resistant to this suggestion. Three days later he would go on to murder Allison. Given the proximity of the counselling session to Allison’s homicide, as well as the accused’s noted resistance, it was pertinent that this material be available for subpoena by a court.

¹ [NWSA-Information-Sharing-Comment.pdf](#)