23 June 2023

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email: legcon.sen@aph.gov.au

Family Law Amendment Bill 2023.

Dear Secretary

Thank you for giving Full Stop Australia the opportunity to provide a submission on the important amendments in the above Bill.

Our submission advocates for the removal of the presumption of shared parental responsibility, along with other key amendments.

About Full Stop Australia

Full Stop Australia (FSA) is an accredited, nationally focused, not-for-profit organisation which has been working in the field of sexual, domestic, and family violence since 1971. We perform the following functions:

- Provide expert and confidential telephone, online and face-to-face counselling to people of all genders who have experienced sexual, domestic, or family violence, and specialist help for their supporters and those experiencing vicarious trauma;
- Conduct best practice training and professional services to support frontline workers, government, the corporate and not-for-profit sector; and
- Advocate with governments, the media, and the community to prevent and put a full stop to sexual, domestic and family violence.

FSA, as a national service, draws upon the experiences of our trauma-specialist counsellors to support people impacted by sexual, domestic and family violence across jurisdictions, as well as our clients and other survivor advocates who are part of our National Survivor Advocate Program, to advocate for victim focussed laws and consistent approaches to family, domestic and sexual violence nationally.

This submission was prepared by Angela Lynch, Advocacy Manager and Emily Dale, Head of Advocacy. If you have any questions in relation to this submission, please do not hesitate to contact Emily Dale at emilyd@fullstop.org.au.

Incorporation of lived expertise into this submission

It is very common for victim-survivors of domestic and family violence to seek support from FSA whilst engaging with the family law system, and we are therefore well placed to provide an authoritative voice on systemic concerns and experiences from the victim-survivor perspective.

In addition, we have sought input on the family law system from victim-survivors in our National Survivor Advocate Program, and FSA's trauma informed counsellors, through a survey released in December 2022 and January 2023 (the Survey). This submission draws on the input provided through the Survey.

The Survey used "purposeful sampling" of FSA's National Survivor Advocate Program database. Purposeful sampling is a non-random sampling technique commonly used in qualitative research, which involves selecting participants based on specific characteristics or criteria that align with the research objectives. Unlike random sampling, purposeful sampling focuses on deliberately selecting individuals or cases that can provide rich data. This approach ensures that the chosen participants possess the knowledge, experiences, or perspectives most relevant to the research question or objectives, even though they may not represent the larger population in statistical terms.

The technique of purposeful sampling resulted in 32 survivor-advocates in FSA's National Survivor Advocate Program responding to FSA's Survey, to provide information on their personal experiences engaging with the Australian family law system. This information has been used to inform the positions in this submission, and survivor-advocate input provided through the Survey is quoted throughout this submission.

Input to FSA's Survey from survivor-advocates is not intended to be statistical information. Rather, it has been used in this submission to give a voice and a platform to victim-survivors. FSA believes strongly in the importance of victim-survivor voices being incorporated into conversations about law and systems reform, to ensure that responses to domestic, family and sexual violence are fit for purpose and meet the needs of a diverse range of victim-survivors.

General comments on the Family Court system

Before commenting on the Bill, FSA wishes to make some general observations and recommendations about the Family Court system. These are important context for our comments on the Bill. We consider that the risks and concerns raised in this section are necessary to frame any discussion about amendment of the *Family Law Act 1975* (Cth) (Family Law Act).

Recent changes to the FCFCOA's approach to safety

FSA strongly supports the numerous changes that have been instituted by the Federal Circuit and Family Court of Australia (FCFCOA) in recent years, concerning the Court's response to family violence, including the Lighthouse case management approach and the Evatt List. The Court has made significant shifts in opening itself to new ideas and to allowing external experts to undertake extensive training of its personnel. FSA commends the Court and in particular, Chief Justice William Alstergren, for this new approach.

Although there are acknowledged positive shifts, the changes required in the family law system to make it truly responsive to family violence and trauma, and ensure safe outcomes for vulnerable child and adult victim-survivors of domestic and family violence, are significant.

Family violence is a policy priority of federal and state governments and there is an increased awareness of its dynamics. Our community expectations about how institutions, such as the police and courts, respond to family violence are now much higher than a decade ago.

Though the practice and approach of the Lighthouse model seem promising, there is still no independent evaluation of outcomes that is publicly available. We would recommend that this be undertaken, as a matter of urgency, to ensure transparency, oversight, and accountability of the project and to identify areas for improvement.

We would also recommend that the FCFCOA consider the institution of a regular court user survey, as a further way for the Court to gather feedback and court users' experience. Though we acknowledge there are many difficulties in implementing such an approach in a court environment, many institutions now incorporate these feedback approaches in their activities, including in very difficult and sensitive areas.

The family law system should be both trauma informed and family violence informed

According to Mental Health Australia:

> *"Trauma Informed Practice is a strengths-based framework which is founded on five core principles – safety, trustworthiness, choice, collaboration and empowerment as well as respect for diversity. Trauma informed services do no harm i.e. they do not re-traumatise or blame victims for their efforts to manage their traumatic reactions, and they embrace a message of hope and optimism that recovery is possible. In trauma informed services trauma survivors are seen as unique individuals who have experienced extremely abnormal situations and have managed as best they could.*
>
> *Becoming trauma informed necessitates a cultural and philosophical shift across every part of a service and is applicable to all human and health service systems. Trauma informed systems understand the dynamics of traumatic stress, survivors in the context of their lives and the role of coping strategies. They feature safety from harm and re-traumatisation, emphasise strength building and skill acquisition rather than symptom management, and foster true collaboration and power sharing between workers and those seeking help at all service levels."*[1]

We are aware the FCFCOA has obtained training on trauma informed practice to assist their shift to trauma informed responses. This is, of course, an important first step.

David Mandell, who is the author of the *Safe and Together Domestic Violence Program* and has provided training and ongoing support to FCFCOA, says that "trauma informed" is not "family violence informed" and systemic responses need both.[2] "Family violence informed" means being aware of and alert to perpetrator tactics, such as image management and system abuse, being able to map patterns of abuse and violence, and holding the perpetrator accountable for their violence. Meanwhile,

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[1] Mental Health Australia, *Trauma-Informed Practice,* 12 June 2014, available at: https://mhaustralia.org/general/trauma-informed-practice.

[2] See Mandell, David, "Trauma-informed is not the same as domestic violence-informed: A conversation about the intersection of domestic violence perpetration, mental health & addiction," *Partnered with a Survivor* (Podcast), Season 2, Ep 10, 17 May 2021, available at: https://podcasts.apple.com/za/podcast/partnered-with-a-survivor-david-mandel-and/id1497442027.

"trauma informed" is focused on increasing psychological safety to set the conditions for recovery and empowerment, as set out above.

FSA considers that services responding to domestic and family violence – including the legal system – must be both trauma informed and family violence informed.

When asked about whether their experience in the Family Court system was trauma informed, victim-survivor respondents to FSA's Survey said that:

> *"They claim training, they are not trauma informed or compassionate at all, not in the law firm, legal services, the law society, family law or court generally or in magistrates courts for FVOs where I was treated poorly and disrespectfully by registrars supposedly supporting DV victims get protection orders but often siding with perpetrators to coerce victims to agree to lesser protections in orders. Yet another system failure among legal systems that do not treat victims with any dignity or respect."*

> *"The family court was one of the most traumatising experiences of my life. And I've been in domestic violence. The family court not only allowed my ex to use them to abuse me more, but the court itself facilitated that abuse. If judges, and court workers including lawyers were trauma informed and aware of domestic violence, coercive control etc. They might begin to understand that most of their cases ARE domestic violence and false allegations are almost not existent."*

> *"My experience has been that they just want you out of the Family Court as judges are overloaded (which I understand). The problem with this is there is no understanding of the person you are dealing with nor the situation you are navigating."*

> *"Those employed in the legal system need to be trained in trauma informed practise, DFV and coercive control. At this point most are clueless."*

> *"The courts are not Trauma informed, some police are however they need guidance through processes which takes courage"*

> *"Trauma informed and more about safety. The offending parent should have more responsibility in proving the are a safe parent for children to be with rather than non offending parent proving the the other parent is unsafe."*

> *"I can't stress enough how critical this is. it is absolutely critical. To adequately respond to this question, requires more than this comment box."*

> *"Due to the magistrates, lack of understanding of coercive control, my ex-husband was able to manipulate the system to his advantage. The financial abuse was not understood and continued throughout the family court proceedings with my ex-husband constantly contravening orders with no consequences. It was heartbreaking to see Him abuse and manipulate the court system in the same way he had manipulated and abused me. I was*

powerless to do anything about it due to lack of funds, and inaction by the family court"

"Yes. The processes by nature is adversarial. Where DV is detected, forcing abusers to address their abusive behaviour via behaviour change programs should form part of and link directly to them reconnecting with the children. As it is their own behaviour that is the issue. Family court should be acknowledging this and assisting with behaviour change; instead they create new avenues to prolong and intensify the abuse."

*"YES! It is a horrific experience - and I had a judge, ICL and family report writer who 'got it'. I would have to say the family court system is *not* trauma informed. It is terrifying to hear of stories where judges don't understand coercive control - it is like they are a decade behind. The cross examination process was awful. Revisiting my abuse through each affidavit was horrendous and re-traumatising."*

Inquiry into child sexual abuse in the Family Court system

In FSA's experience working with victim-survivors of gender-based violence, we have become aware of a range of issues regarding how allegations of child sexual abuse are addressed in the family law system. In particular:

- The Magellan list (the specialised pathway for child sexual abuse) is now over 23 years old. There have been significant shifts over this period away from the model's original approach, including in the availability of legal aid funding for participants.
- We are concerned that all relevant evidence may not be provided to the FCFCOA to assist its decision making in relation to child sexual abuse allegations. For example, front-line sexual violence services are often not asked for their professional opinion, or to provide a court report, in cases where child sexual abuse is alleged. These services employ professionals who are experts in responding to issues of sexual assault (including child sexual abuse). Through their work with children and non-offending parents (most often mothers), they are well-placed to provide tangible insights into dynamics, impacts, and ongoing safety in the context of these matters.
- The latest Australian Child Maltreatment Study, a cross-sectional national survey comprising 8500 respondents, found that 28.5% of respondents had experienced child sexual abuse.[3] And this figure is likely to be much higher among people involved in the Family Court system – as only roughly 3% of cases make it to the Family Court, and these involve the most vulnerable people, with allegations of domestic and family violence, and child sexual abuse, being very common. The prevalence of child sexual abuse across Australian society, and in the Family Court system, in particular, is inconsistent with the extent to which allegations are believed by members of the FCFCOA. Research conducted in 2021 found that allegations

[3] Mathews, Ben (coordinating author), The Australian Child Maltreatment Study: National prevalence and associated health outcomes of child abuse and neglect, *Journal of the Australian Medical Association,* Volume 218 No 6 (3 April 2023).

of child sexual abuse were believed by judges in only 14% of contested cases.[4] Of note, the research also found that in 506 judgments, parenting time with the allegedly unsafe parent was increased in 81% of contested cases where allegations had been abandoned and in 63% of fully contested cases.[5]

- Relatedly, we are concerned that some judges and family law professionals, who disbelieve allegations of child sexual abuse, equate the making of those allegations with emotional abuse by the alleging parent – and change the child's living arrangements (placing them with the offending parent) as a consequence. This is extremely dangerous for the vulnerable children who come into contact with the Family Court system.
- The findings by the 2022 New South Wales Parliamentary Inquiry into Child protection and the social services system found that the misalignment between the family law system and NSW's state system of child protection has devastating consequences for children.[6] FSA considers that the issue of misalignment between the Federal family law system, and state and territory child protection systems, is creating child safety risks across Australia.
- We are concerned that, in cases where child sexual abuse is alleged, some court-appointed experts pathologise a mother's own trauma history, to make the assumption that she is over-reacting and cannot separate her own trauma from concerns for her child. This is a drastic system failure, which – in addition to placing vulnerable children at immense risk – is discriminatory towards victim-survivor parents and not grounded in a current evidence base, our understandings of the impacts of trauma and intergenerational trauma.

FSA recommends that a national, wide ranging and independent inquiry be established to consider the issue of how child sexual abuse is responded to in the family law system. In this regard, we note that the former Family Court Chief Justice, the Honourable John Pascoe, has recommended an independent inquiry into the family law system:

> *"We need [a royal commission] because people need to be able to go and give their evidence, their experiences, to an independent body."*[7]

FSA considers that, to be effective, an Inquiry must be led by recognised experts in child sexual abuse and family violence, who have experience considering the family law system from the perspective of victim-survivors of gender-based violence.

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[4] Webb, N., Moloney, L. J., Smyth, B. M., & Murphy, R. L. (2021). Allegations of child sexual abuse: An empirical analysis of published judgements from the Family Court of Australia 2012–2019. *Australian Journal of Social Issues*, 56, 322–343.

[5] Ibid.

[6] Parliament of NSW Committee on Children and Young People, *Child protection and social services system* (Report), December 2022, available at: https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2620#tab-reportsandgovernmentresponses.

[7] Bruce Pascoe was quoted in reporting for the ABC. See Davoren, Heidi, "False Witness," *Background Briefing*, ABC, 19 June 2023, available at: https://www.abc.net.au/news/2023-06-19/family-court-report-writer-recording-expert-witness-ahpra/102185414.

The Inquiry should consider the following issues:

- interactions with state and territory-based agencies, such as child safety and police services, and whether these agencies are reluctant to investigate when there are family law proceedings on foot, or a risk of proceedings commencing;
- the "investigation gap" in family law, including recommendations about how to address this gap;
- attitudes of family law professionals to allegations of child sexual abuse, and whether these inhibit disclosures or affect how cases are presented;
- how well coercive control, the dynamic underlying all gender based violence, is understood and addressed by professionals working in the family law system – including legal professionals, independent experts and judges;
- whether the Magellan model remains fit for purpose and any recommendations for change; and
- whether family law solicitors are advising victim-survivors not to raise issues about child sexual abuse, due to concerns they may lose "custody" of their child.

The FCFCOA should be renamed the 'Family Violence and Family Court'

FSA considers that the FCFCOA should be renamed the 'Family Violence and Family Court.' This would reflect the high number of matters that the Court deals with that involve domestic or family violence, and help to promote more consistent responses to these issues.

Noting the ways the Family Court system has failed vulnerable people, set out above, we consider that the system should be reframed with safety and an understanding of family violence dynamics at its centre.

Removal of presumption of equal shared parental responsibility

FSA strongly supports the landmark decision to remove the presumption of equal shared parental responsibility and its links to equal or substantial and significant time.

The historical context and the need for change

The latest data from the Federal Circuit and Family Court of Australia (FCFCOA) shows that shows that family violence and abuse is the core business of the Court, with family violence alleged in 80% of parenting cases, and child abuse or the risk of child abuse alleged in 70% of parenting cases.[8]

The presumption of equal shared parental responsibility (ESPR), with its links to equal time and shared parenting, was introduced to the Family Law Act in 2006. These amendments were made in response to campaigning by men's rights advocates, which questioned the reality and gendered nature of family violence. This was at a time when the full extent of domestic and family violence in the family law system was unknown.

[8] Federal Circuit and Family Court of Australia, *Media Release: Federal Circuit and Family Court of Australia launches major family law reform to improve safety and support for children and families,* 5 December 2022, available at: https://www.fcfcoa.gov.au/news-and-media-centre/media-releases/mr051222.

In 2012, the Gillard government introduced changes that went a small way towards delivering safer outcomes. However, these reforms did not fully ameliorate the risks to the safety of vulnerable women and children created by the ESPR provisions.

Why the presumption of ESPR is unsafe

The presumption of ESPR, and its mandatory requirement to consider equal or substantial and significant time and other shared parenting outcomes, is a powerful legal tool. Despite the requirement to make decisions in the best interests of children and the availability of exemptions to the presumption, the provisions give power to the perpetrator, establishing a status quo or 'norm' of shared decision making and shared care that can be difficult for the victim-survivor to overcome.

When shared parenting exists in the context of family violence, it provides multiple opportunities for the perpetrator to engage in ongoing coercive control under the guise of following court orders. In a system with such high levels of family violence, the existence and application of the presumption is extremely dangerous, especially when adult victim-survivors and their children are before the courts at the point of separation - the very time they are most in danger of escalating or fatal violence.

When asked about the presumption of ESPR, victim-survivors told Full Stop Australia:

> *"It (the presumption of equal shared parental responsibility) is based on the assumption that both parents have the child's interests at heart. For coercive controllers, the child is an object that can be used to manipulate and control the mother (or other people targeted, in my case it was my perpetrator targeting my first husband, the father of my perpetrator's stepson). In my experience, they pretend they are for the best interests of the child, but the behaviours don't match the talk. So providing equal shared parental responsibility gives the perpetrator a smorgasbord of opportunities (school, medical, dental, holidays) to manipulate, abuse and antagonise the victim - to the detriment of the kids. It continues the tension, walking on eggshells, stopping the victim to heal. It allows the abuse to continue until the child is 18, forcing the victim into continual negotiation and contact. Coercive controllers (and those with NPD) need continual drama, they can't cope with calm, so it gives them ample opportunities to create conflict. The best way for a victim to escape a coercive controller, is through "no contact". This was the only way I successfully escaped (it took 7 attempts). Shared PR would have been an absolute disaster for me, I was terrified the judge would give him shared parental responsibility."*

> *"In theory I do agree with (a presumption of equal shared parental responsibility for both parents) however seeing how it has been applied in practice it must be changed. The first consideration must be if family violence or coercive control is present."*

> *"There are many reasons why this presumption is rebuttable, and many reasons why it should not be applied as a starting point. The onus should not be on survivors to prove their own abuse to a high enough standard to satisfy the court."*

> *"I think violence and safety have to be primary consideration. It needs to be a child centred and safety centred approach, not a parent centred."*
>
> *"I vehemently disagree with this. **It should be what is best for the child that is not necessarily 50-50**. I believe that arrangement is simply to appease parents without really considering the child."*
>
> *"My issue is that people misread (the presumption) this as meaning 50:50 custody when it does not. It means that you have equal responsibility for major life choices such as surgery for example, it does not mean 50:50 custody. Even then, I have had to get Court Orders to allow my children to see a psychologist because the equal shared parental responsibility means he has to consent, and he withdrew it."*
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> *"My ex has shown he won't communicate me, the acknowledged primary carer, and in fact goes out of his way to counter parent rather than coparent. It terrifies me has equal parenting responsibility or major life decisions for our son, as he refuses to talk with me, let alone agree with me."*
>
> *"Unfortunately, there needs to be solid proof of family violence to take the presumption away and even so the courts are more concerned about the right a child has to have a relationship with the other parent OVER their right to be and feel safe."*

When asked about the presumption of equal shared parental responsibility, one Full Stop Australia Trauma Specialist Counsellor commented:

> *"Some children have had most care with one parent for significant time and to change this would be unsettling. Needs to look at historically what the parenting arrangement was and work from this base for normality and stability for children. Some parents don't have the skills or the capacity for shared care. It's not the amount of time with a parent that is important but more the quality of the time, the parenting and the relationship."*

The far-reaching impacts of the presumption of ESPR in family violence matters

The presumption of equal shared parental responsibility and its links to equal time and substantive time has had negative impacts on victim-survivors and their children, outside of family law litigation or engagement with family law services. In the Queensland Domestic and Family Violence Death Review Annual Report 2019-20 it was noted that victims of domestic and family violence were entering into informal shared care arrangements with perpetrators, and these were the majority of cases the Board was reviewing:[9]

[9] Government's response to the Domestic and Family Violence Death Review and Advisory Board 2019-20 Annual Report (courts.qld.gov.au) at page 62.

> *"Post-separation violence and pressure to engage in shared parenting with domestic and family violence perpetrators are recurring themes identified by the Board in prior Annual Reports."*
>
> *"In the vast majority of cases reviewed by the Board across its first term, victims demonstrated willingness to establish and adhere to informal shared parenting arrangements. Victims commonly expressed a desire to ensure that fathers continued to have access to their child/ren, even when it increased the adult victim's risk of harm."*
>
> *"As noted previously, when domestic and family violence is present in the relationship, there is an underlying dynamic of power and control which limits the ability of victims to have full autonomy in negotiating settlements with their abuser. This means that informal arrangements in the context of domestic and family violence are unlikely to be made on an equal basis, as one person (the perpetrator) holds power and control over the other (the victim). This highlights the critical role of service providers to help and support victims of domestic and family violence to navigate the service system post-separation."*

This evidence from the Queensland Domestic and Family Violence Death Review suggests, though the Court may be dealing with many high-risk matters, it is possible that some very dangerous family violence cases are not being dealt with by the Court and arguably the Court is inaccessible to these families. We would recommend this issue be researched to increase our understanding.

In the Women's Safety and Justice Taskforce Report, *Hear Her Voice*, Volume 1, the Queensland Taskforce consulted broadly on the issue of the criminalisation of coercive control in Queensland with victim-survivors, service providers and the community. The Taskforce repeatedly received feedback on the family law system, including the presumption of equal shared parental responsibility and at Recommendation 70, recommended that the Queensland Attorney General raise the need for change with her federal counterpart. Please see the extract from the Taskforce Report relating to family law that supports the need for change and the broad impacts that the presumption has on parenting outcomes.[10]

> "*Although it is beyond the legislative power of the Queensland Government to change the legislation of the Commonwealth Government, the Taskforce has heard repeatedly from victims that perpetrators of coercive control use Commonwealth family law proceedings and outcomes as a mechanism to continue their violence and to exert power and control over their victims. This undermines efforts by states and territories to improve responses to domestic and family violence. Community perceptions about the presumption of shared parental responsibility in the Family Law Act often lead victims of domestic and family violence to wrongly believe they are compelled to offer equal shared care of their children to abusive and coercively-controlling perpetrator parents. Victims also believe that they cannot act protectively for fear that this will be used as evidence of them alienating the child from the perpetrator parent. This is putting the safety of victims and their children at risk. It is important that police, state courts, and lawyers better understand the limitations of family law processes*

[10] volume-1-exectutive-summary-and-introduction.pdf (womenstaskforce.qld.gov.au) at xxv

and how perpetrators can use them to further exert power and control. The existence of family law orders should not dissuade victims from applying for, and obtaining, added necessary protections in the best interests of children through the state-based system. Magistrates need to fully understand their powers and duties to provide protection to victims, including child victims where a family law order is in place, and feel confident to exercise these powers and duties. Likewise, police need to be confident to proactively seek additional necessary protection for a victim, including a child victim who is subject to a family law order. Police also need to know how to respond to threats to children from a biological perpetrator parent even when there are no family law orders in place. "

The presumption of ESPR is not fit for purpose for cases involving family violence

Despite an increased knowledge of family violence dynamics, the existence of the presumption of ESPR, and its links to equal or substantial and significant time and shared care, has contributed to perverse outcomes for vulnerable people.[11] In particular:

- The language of 'equality' and 'sharing' enables perpetrators to manipulate the legal system in order to ensure ongoing access to their victims, and continue established patterns of coercive control. It is important to note that the vast majority of separation agreements are able to be made outside of the Court system – these agreements are usually made amicably, and in circumstances where there are no allegations of domestic and family violence. Meanwhile, it is only roughly 3% of cases that make it to the Family Court system. These cases involve the most vulnerable people – with allegations of domestic and family violence, and child abuse, extremely common. In these cases, maintaining a presumption of ESPR is manifestly inappropriate and extremely unsafe for vulnerable children and adult victim-survivors or domestic and family violence.
- Perpetrators are incentivised to 'pursue their right' to equal time through the Court, which – in addition to creating immense risk to vulnerable people, as outlined above – is also a drain on public resources, and an avenue for perpetrating legal system abuse.
- FSA has observed a 'hardening' of the system towards people who raise concerns about violence and abuse. Victim-survivors who raise such concerns are regularly 'punished', by being found to be emotionally abusive, manipulative or unreliable, which results in them losing time with their children. In addition to this being unjustly punitive to parents who raise abuse allegations, we reiterate that it is very dangerous for vulnerable children.
- We are concerned about the Court taking a misguided 'future focus,' where family violence and abuse concerns are dismissed as 'historical', resulting in them being attributed less weight in professional advice and decision making.

We therefore support the change to make victim-survivor safety the primary focus of legislative and service system responses. Victim-survivors spoke to their experiences, stating:

[11] The family law system is wider than the family court and includes all areas where family law arrangements are resolved including negotiated outcomes, negotiated with assistance from solicitors, legal aid, family dispute resolution services. Indeed, most decision making occurs in these other forums rather than court.

"For myself, continuing trauma from family violence that developed into PTSD. Because this dragged on for years it had a very negative impact on me and resulted in multiple hospitalisations and I even lost my job due to extended absence from work due to stress. My child has experienced behavioural difficulties after the commencement of 50:50 care. The child's father denies any issues with behaviour exist and has refused to allow the child to attend a child councillor at Relationships Australia."

"My former partner has repeatedly engaged in the following behaviours: - degenerating, disrupting, and mischaracterising me, questioning my capacity as a mother, partner, and general decent human being. He did all of these things both during and after the pregnancy. - failing to contribute financially while hiding his true wealth and enjoying a parasitic lifestyle at my expense. - misusing the caveat process to illegitimately lodge a caveat on my home thereby depriving our son of access to a new safe home. - engaging in and prolonging expensive family law proceedings white acting at all times with utter insincerity. That is, failing to meet any requirement set of him by the court other than that which would cause proceedings to continue thereby costing me my savings. In doing these things, he has prevented me from being able to provide a home where me and our son can live independently and securely. - grabbing and pushing me around with our son in my arms. - shouting and going into rages when he experiences some sort of discomfort. This occurred in front of our son. - engaging in risky behaviour including dangerous driving with our son present and then raging at me when I complained. - entering private spaces where I was breastfeeding our son and raging at me using a low voice so as to avoid detection. All other aspects of his affect communicated intense rage. - causing me extreme distress in the days following our son's birth - using court ordered child contact via zoom to make degenerating remarks about me to our son. Remaining fixated on continuing zoom contact despite our son's extreme and repeated distress responses during same. And many other things... all the time... even still now (four years post separation)."

"My then 6-year-old son witnessed violence and was subjected to verbal abuse. My daughter was subjected to violence in utero and impacted by the ptsd I experienced."

"My son saw suicide attempts and was involved in physical altercations with his dad (between ages of 2 and 4!). He also saw coercive control at play daily and learned to be terrified of his father, just like his mother was."

"I was told I would never get sole parental responsibility and no time order. I was told that I had to allow my daughter to see her father unsupervised despite the lawyers knowing the risks to her safety and that she had a disability. The family report writer wrongly wrote that I may be influencing my daughters view on her father despite her psychologist and psychiatrist and GP speaking to my daughter independent of me and having a good understanding of my

daughters fears and why she had formed these views on her own about her father. Yet the court reported never picked up the phone or refer to any of the affidavit material relating to our daughters' disabilities. The court reporter simply write that she cannot comment on how our daughters' disabilities may affect her views on her father. Lawyers need to have some training on family violence and be trauma informed as the trauma they cause clients / victims has long lasting impacts."

""There's no evidence of it". It happens behind closed doors. It went on for 16 years and intensified after we escaped. I have been told it will have no bearing on the case unless he attacks/stalks/threatens me or my daughter. It will be too late then."

"That I would need to provide evidence and that often family violence was not taken into consideration in Family Law matter proceedings."

"Trauma informed and more about safety. The offending parent should have more responsibility in proving they are a safe parent for children to be with rather than non-offending parent proving the other parent is unsafe."

Other changes in the Bill

In addition to our comments above in relation to the Family Court system generally and the Bill's removal of the presumption of ESPR, we have addressed specific aspects of the Bill in the following section.

FSA endorses the submission of Women's Legal Services Australia

FSA fully endorses Women's Legal Services Australia (WLSA)'s submission on the Bill. In particular, we agree that:

- Section 60CC should include a provision that "gives greater weight to safety, over other considerations"; and
- "Sexual harm" should specifically be included as a "best interests" factor (i.e. the drafting of the Bill should be amended as follows: "physical, psychological, *or sexual harm* from being subjected to or exposed to" family violence, abuse, or neglect).

Further proposed amendments to the Bill's "best interests" principles

In addition to the changes to the "best interests" principles proposed by WLSA, FSA also considers that section 60CC factors should be expanded to specifically require consideration of:

- parenting history – i.e., the Court should be specifically required to consider a parent's demonstrated parental responsibility towards a child;
- a history of domestic or family violence; and
- the need for child and adult victim-survivors to recover from domestic and family violence and abuse.

These changes around the consideration of historical issues are necessary because of the current approach which can focus on and overly emphasise future arrangements for the children, rather than what may have happened in the past. To promote a change in approach and to ensure these important

issues that impact on the best interests of children are considered and given appropriate weight, we recommend they are specifically included in the factors for consideration.

Furthermore, FSA recommends introducing specific additional "best interests" principles, which should apply (over and above the principles listed in section 60CC) wherever domestic or family violence, including child sexual or physical abuse, has been alleged. We suggest that in these cases, the Court should be required to consider the following matters in addition to the general "best interests" principles listed in section 60CC:[12]

- the nature and seriousness of the domestic or family violence[13] alleged – including coercive control, noting that coercive control is the underlying dynamic of domestic and family violence;[14]
- the impact of the domestic or family violence on relevant individuals and their relationships;
- how recently the domestic or family violence occurred;
- the likelihood of further domestic or family violence occurring;
- whether any children were subjected or exposed to domestic or family violence;
- the extent of physical or emotional harm caused to any children as a result of domestic or family violence;
- the extent of physical or emotional harm caused to other family members as a result of domestic or family violence;
- the views of the child;
- whether the other party believes the child would be safe if certain parenting orders were made; and
- any steps undertaken by the violent or abusive party to prevent further domestic or family violence from occurring.

These amendments would establish a risk and safety-based framework for making decisions about parenting arrangements. It is important to recognise the reality that there is an extremely high incidence of child abuse in cases that make their way to the Family Court.

Finally, we recommend that shared parenting arrangements involving substantive time arrangements not be considered in the best interest of children where domestic or family violence, including child sexual or physical abuse, has been alleged.

"Safety" and "coercive control" should be defined in the Bill

FSA recommends introducing a definition for "safety" into the Bill, which specifies that this includes both short- and long-term safety from harm, and encompasses safety from physical, sexual and emotional harm.

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[12] This provision was developed by the Women's Legal Service QLD and appeared in their submission to the Finances and Public Administration Committee, in its Inquiry into *"Domestic Violence in Australia*", July 2014. The provision utilised and built on some aspects of the New Zealand Family Law legislation at that time.

[13] For this, and each of the following proposed considerations, we intend for allegations of "domestic or family violence" to incorporate allegations of the physical or sexual abuse of a child.

[14] For this, and each of the following proposed considerations, we intend for allegations of "domestic or family violence" to incorporate allegations of coercive control. FSA considers that coercive control is the dynamic underlying domestic and family violence.

The Bill should also be amended to include a definition of coercive control, which recognises that coercive control is a pattern of behaviour:

> *"Coercive control is a purposeful and sustained pattern of behaviour whereby one person within the relationship (most usually a man) seeks to exert power, control or coercion over another. A range of tactics are used such as isolating the partner from sources of support and social interaction, exploiting their resources (financial and emotional), depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour (Dobash & Dobash, 1993, 2004; Stark, 2006; Johnson, 2006; Hester, 2009)."*

Noting that coercive control is the dynamic underlying all domestic and family violence, it is key that it is defined in legislation. This would improve the understanding of domestic and family violence dynamics of those working in the Family Court system and administering the Family Law Act – most notably, judges and legal practitioners. Without this understanding, allegations of domestic and family violence where there is limited evidence of physical injury risk being ignored, undermined or taken less seriously.

Admissibility of domestic, family or sexual violence admissions in other Court proceedings

FSA recommends amending section 10PA(2) to include an exemption for admissions of domestic, family, or sexual violence (including a threat thereof). At the moment, only admissions of child abuse, or risk thereof, made in post-separation counselling are exempt, and therefore admissible in other Court proceedings.

Harmful Proceedings Orders

FSA recommends that section 102QAC(3)(b) be broadened to include the words "the following non-exhaustive list of factors" – i.e. "in determining whether to make an order under subsection (1), the court may have regard to *the following non-exhaustive list of factors.*"

This would clarify that the list in the Act is not exhaustive, thereby allowing the Court to consider other types of system abuse – for example, complaints to child protection agencies, or erroneous complaints to a victim-survivor's employer or professional body.

To ensure that victim-survivors are not required to provide 'proof of harm' that may negatively impact on their court case, we also recommend that section 102QAC(3)(c) be amended to ensure an objective test is applied. This change could be achieved through the following drafting change (italicised):

> *That a reasonable person would believe* that the cumulative effect, or any potential cumulative effect, of any harm resulting from the proceedings referred to in the paragraphs (a) and (b).

The Bill should address legal system abuse

FSA recommends that section 95(1) be amended to include an additional provision to protect against system and/or litigation abuse. That provision could be drafted as follows:

> *In a way that ensures the safety of families and children from ongoing family violence, including but not limited to financial abuse and system's abuse.*

This provision is required as an additional protection, as the issue of safety (section 95(1)(a)) is often interpreted to only cover immediate physical safety. It is important the proposed provision also covers the broad range of abusive tactics that perpetrators of family violence engage in.

Greater oversight and regulation of independent experts is urgently needed

It is critical that all family law report writers be subject to a high-quality clinical governance framework, with effective regulation and oversight of standards of practice, and a clear and accessible complaints process to ensure that concerns about family law report writers, especially those impacting the safety of vulnerable children, can be dealt with proactively.

The recent broadcast on ABC's Background Briefing ("False Witness")[15] of an alleged unethical intervention by a psychologist (who was a 'family law report' writer) into a family's dispute suggests greater oversight in general is required, as court proceedings had not been commenced in this matter and a "family report" had not been prepared. However, the psychologist established their credentials and expertise to undertake this preliminary work with the family because they were a "family law report writer" and a "person of influence" in the family law profession.

FSA is an accredited counselling service who employ trauma specialists who are expert in responding to sexual, domestic, and family violence. It causes us a deep level of concern that unregulated and untested therapeutic interventions can be undertaken on family law clients, including children, in an environment with little oversight and accountability.

To address current insufficiencies in the regulation of family law report writers, we support the amendments to the Bill recommended in Schedule 7 of WLSA's submission.

In addition to the issues raised by WLSA, we recommend the following measures to improve the regulation of family law report writers:

- The Bill should be amended to specify that, rather than family law reports being prepared in isolation by a single report writer (whose opinion is, in practice, generally accepted by the Court with very little oversight), a panel approach will be taken. This would involve family law reports being prepared by a panel of family law experts – or alternatively, prepared by a single expert and reviewed by others, similar to the peer review of academic work. This would help to ensure that assessments are evidence-based, reflecting up to date clinical standards – and that a single person's bias, or inadequate clinical practice, cannot cause grave safety issues for vulnerable people.
- As the Bill proposes to address the regulation of family law report writers in the Regulations, rather than the Family Law Act – and relevant Regulations have not yet been released – it is not clear to us what specific regulation of family law report writers is proposed. At a minimum, we consider that the Regulations should:
    - set out clinical supervision requirements for family law report writers;

[15] Davoren, Heidi, "False Witness," *Background Briefing*, ABC, 19 June 2023, available at: https://www.abc.net.au/news/2023-06-19/family-court-report-writer-recording-expert-witness-ahpra/102185414.

- provide for the establishment of a regulatory body, which is responsible for enforcing practice and ethical standards of family law report writers;
- establish the process the regulatory body is required to follow to address complaints about independent experts – for example, time periods in which investigations must take place, requirement for escalation, and how outcomes must be notified; and
- specify that decisions of the regulatory body are reviewable, and set out a process for review.

Further, we would support this regulation being extended to other therapeutic interventions, including those that occur outside of court, to ensure the safety of children and other vulnerable people. It is vital that the community can have confidence that psychological interventions are sound, evidence based and principle, and subject to appropriate oversight and accountability.

Further amendments to the Bill are needed to address safety

The following proposed amendments to the Bill are focused on prioritising the safety of vulnerable people:

- The Bill should contain guidance to assist the Court to identify the "person in most need of protection" where there are competing claims of violence and abuse. This provision could be modelled off proposed 22A of the *Domestic and Family Violence Protection Act 2012* (Qld), which would be inserted by clause 34 of the *Queensland Domestic and Family Violence (Combatting Coercive Control) and other Legislation Amendment Bill 2022*.
- The Bill should amend the Family Law Act to mandate evidence-based family violence risk assessments (including specialised coercive control reports) in cases where domestic or family violence is alleged. This would assist the Court's decision-making about risk and safety, and better align the family law system with state and territory-based child protection systems, and their use of risk assessment frameworks.
- The Bill should codify the approach of the WA Court of Appeal in *Barron v Walsh* to litigation abuse, by requiring the Court to, in cases where litigation abuse is alleged:
    - Determine the intention behind the court process or activity (noting a collateral purpose for litigation[16] is not appropriate and is an abuse of process); and
    - Where relevant, consider the bringing of legal proceedings as part of a larger course of conduct.

Related practice changes required to ensure safe outcomes where there domestic or family violence is alleged

The legislative changes in the Bill, especially the removal of the presumption of ESPR, are critical to ensure the safety of vulnerable children and adult victim-survivors of domestic and family violence. However, without broader changes to Court practice aimed at making the safety of vulnerable people the top priority of everyone working the Family Court system, legislative change can only go so far.

[16] For example, engaging in family court litigation to reduce child support, to financially ruin or punish your spouse is a collateral purpose. If lawyers are aware of such intentions, they should not be acting in these circumstances.

As such, FSA wishes to note that the following practice changes are necessary to complement the legislative changes being considered:

- The Court should build on the Lighthouse Project to establish urgent and swift access to the Court for cases involving a risk of serious or lethal family violence to support safe outcomes. There are many steps required to access the Lighthouse program, which can be a barrier to access in urgent and highly dangerous family violence matters.
- The Court should develop earlier and more robust interventions to stop litigation abuse, including:
    - considering and responding to litigation abuse as part of a broader pattern of coercive control;
    - developing a specialised response to litigation abuse, which includes early identification of litigation abuse, and fast tracking relevant matters through the Court process to an urgent final hearing, thereby reducing the number of Court episodes and opportunities for abuse to occur; and
    - introducing training for the judiciary to better identify and respond to litigation abuse.
- All family law professionals should be required to undertake training on the latest research into child sexual abuse dynamics, including perpetrator profiles, from experts in the child sexual abuse field. For example, the latest work by Associate Professor Michael Salter identifies specific coercive control tactics used by this cohort of abusers.
- Case management protocols should be developed, which set out considerations and courses of action where there are concurrent family law and criminal law proceedings. Protocols should specify that criminal charges, especially those relating to domestic or family violence, should be responded to as a significant risk factor in family law proceedings, even if criminal proceedings have not been finally determined.
- The Court should make early determinations about the existence of family violence and make interim orders which address immediate risk and safety issues.
- The Court should develop innovative responses to extremely high risk and potentially lethal family violence, including immediate no contact and moving away orders.
- We support Recommendation 13 of the Family Law Council's 2016 report on intersections between family law and child protection systems,[17] which focused on improving mechanisms for taking children's views and experiences into account in the family law system. The report recommended that the Government should:
    - Establish a young person advisory panel to assist in the design of child-focused family law services that build on an understanding of children's and young people's views and experiences of the family law system's services; and
    - consult with children and young people as key stakeholders in developing guidelines for judges who may choose to meet with children in family law proceedings.

[17] Family Law Council, *Final Report on Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems – Terms 3, 4 & 5* (June 2016), available at: https://www.ag.gov.au/sites/default/files/2020-03/Family-with-Complex-Needs-Intersection-of-Family-Law-and-Child-Protection-Systems-Final-Report-Terms-3-4-5.PDF.

- Decision-making in Family Court proceedings should support compliance with child support legislation by recognising non-payment as both financial abuse of the child and the adult family violence victim.
- Family violence specialist social workers should be embedded in the FCFCOA to assist with court triage and risk assessment, as recommended by the Family Law Council in 2016.[18]

Closing comments

To reinforce the issues raised above, we have ended this submission with comments from victim-survivors of family, domestic and sexual violence who have been through the Family Court system, (as well as some comments from FSA counsellors who have worked with these victim-survivors).

We do this in the hope that, as the Senate Legal and Constitutional Affairs Committee considers the need for urgent reform of the Family Law Act, the experiences of victim-survivors will be kept front and centre.

> *"The presence of DV needs to be ascertained on entry into the family court system and the level of risk should be risk assessed. Where there are issues of DV raised, both parties should be interviewed by an experienced DV psychologist, as many times as is necessary, to determine if DV is present and who is the perpetrator and the victim. This evidence should then be passed to the judge at the first hearing to make a determination of the presence of DV and make interim orders. Where DV is present, there should be an alternate pathway that prevents the abuser from taking advantage of the adversarial nature of the court. The court should make it contingent that the abuser attend behaviour change program in order to regain access to their children, of which access should be withheld until they are able to demonstrate that they are a safe person for their children to be around. The presence of DV should also trigger retraining orders to be put in place over the victim/s. It is far to difficult to obtain a restraining order and i had to endure years of stalking before I was able to obtain one when he made threats against both my own and our childs life. Even then i was told it was too dangerous to get the restraining order over our child as it would likely trigger him to carry out his threats. This was terrifying. Because the family court process is drawn out and provided me with little protection, I ended up agreeing to arrangements that were not good for our child out of fear for our safety. There is little protection provided for victims."*

> *"More so when he files an application in the family court and held me there for 3 years seeking to obtain full custody of our daughter as a way to control me."*

[18] Ibid.

"He transferred the behaviour directly to my daughter who was 4.5 yrs old at the time. She has suffered for years now but the courts do not listen to children until they are 13 years old."

"The children's daily routines and needs were not considered. The children's relationship with their father is based on fear and they are conditioned to please him as a form of self-safety".

"The children were over 21 (when I separated). I stayed in the relationship because he made veiled threats to harm the boys when they were young - in order to control me. It worked. I knew he would get co-custody and i would not risk having him abuse (or threaten to) to control me. He is heartless."

"Children's right to safety needs to be above the right of a parent to see a child. Children need a voice. Children don't need to the pawns in adult disputes. Safety should override all other issues."

"My daughter has disclosed the abuse in detail to a child psychologist, family therapist, court report writer, social worker through contact supervision organisation...to no avail. They are still going to force contact."

"For parenting, the longer you get into separation the less impact what happened in your relationship has. If a perpetrator can show good behaviour for 6 months, regardless of what happened prior, they'll get more of what they want."

"I do think (family violence) was considered (by my solicitor), however there are few avenues to bring up the situation in the family court particularly where there isn't a history to physical violence. The judge won't make an assessment on the presence of family violence until trial and it can take years to get to that point, so there is no protection in the meantime."

"These matters are not adequately considered when providing interim orders. Safety planning does not form a part of interim order creation in situations where there is family violence. I think this is due to judges not making decisions on whether family violence is actually occurring until there can be a trial and evidence can be tested. Therefore, everything is considered an 'allegation'."

Professionals make statements to clients who are adult survivors of child sexual abuse that they imagine their child is being abused because of their own experience, not the reality. Clients framed as having mental health issues (inferring their concerns of child sexual abuse of their children is not a reality)." – Full Stop Australia Counsellor

"Recently, I spoke with a client who is concerned about CSA of their child but due to family court orders, the caller has to send the child to their father. If they withheld the child, they will be in breach of family court orders. The client

was concerned about concerns raised by their child." – Full Stop Australia Counsellor

"There have been instances where the court was decisive and gave orders that protected the children from the perp. At other times, the response was poor and children continued to be exposed to abuse." – Full Stop Australia Counsellor

"Relies on hasty reports from FL counsellors that do not have sufficient time/resources/expertise." – Full Stop Australia Counsellor

"Do not believe, take into account unless conviction or FACS substantiation - also if a perp has sexually abused one child in the family and this is substantiated but no conviction, it seems they are still allowed access of some kind to the other children in the family." – Full Stop Australia Counsellor