Justice and Electoral Committee
Parliament Buildings
Wellington

Submission to the Family Court Proceedings Reform Bill

Your name
Your organisation
Contact details

We would like to speak to our submsssion.

Key concerns with this Bill

- This Bill will not keep children and women safe from violence and abuse. For example, key provisions in the existing Care of Children Act (COCA), Sections 58 – 62, are being replaced with less robust clauses which do not prioritise the safety of women and children.
- There are no provisions in this Bill to screen and identify domestic violence or risks to children such as neglect and poor parenting.
- The current judicial context prioritises shared care of children. The new process, especially its focus on alternative dispute resolution, will further compromise women's ability to keep children safe from abuse and neglect.
- There is no provision for quality control or training to ensure that the mediation/dispute resolution services will be provided by people who understand the risks and dynamics of violent and abusive relationships.
- The new costs introduced to applicant parties will be a deterrent to going to dispute resolution and/or court. Anyone without funds is likely to abandon or not start the process. This will mean more families, in particular women and children, will continue living in unsafe circumstances. These imposed costs will prevent many women accessing justice and being able to leave abusive relationships.
- The lack of professional legal support will put many women at risk.
- Domestic and sexual violence does not affect everyone equally. Maori women and children in particular are subjected to higher levels of both violence and poverty. Using Maori concepts, this Bill should resource Maori entitlement to live free from violence.

In general this Bill is counter to international evidence and prejudicial to women and children.

Many of the ideas proposed in this Bill were tried in Australia under Commonwealth law changes brought in in 2006.

"In November 2011, the Commonwealth Parliament enacted reforms that amended a number of key sections of the Australian Family Law Act 1975 (Cth). The genesis of the new act emerged from a growing unease among researchers and practitioners across several disciplines, following the radical revision of family law undertaken by the previous government in 2006. In particular, there was substantial concern about the ways in which families experiencing domestic and family violence were being

managed within the new family law system. (ADFVCH 2012)[1]" Many of the provisions have subsequently been repealed, as numerous studies demonstrated that women and children were at greater harm of violence, abuse and death from abusive men as a consequence of the changes[2].

We strongly recommend the comprehensive Australian study by Wilcox, K. Thematic review 2. Intersection of Family Law and Family and Domestic Violence (2012) Australian Domestic & Family Violence Clearinghouse. University of New South Wales Sydney NSW http://www.adfvc.unsw.edu.au/PDF%20files/Thematic%20Review_2_Reissue.pdf

This paper outlines the evidence of harm caused by the implementation of the 2006 legislation.

We question why the Government is proposing to implement these ideas which have been proven not to work; put women and children at risk of emotional, physical and sexual harm; make the systems available to men and women less regulated; and greatly increase costs to women who are trying to escape violence and move their children to a place of safety.

What can the terms 'welfare and best interests of the child' mean if they don't primarily ensure the right to live in safety and, in the long term, the enhancement of a child's resilience and his or her ability to flourish? All of the work on child resilience stresses that for resilience to develop, the violence that the child experiences needs to stop and the non-violent caregiver must be made safe from on-going violence. This Bill will not achieve either of these objectives.

Background to the Bill

Women and children's lives and their emotional, sexual and physical safety have already been put at increased risk by a number of legislation and policy changes that have occurred over the past four years. These changes include:

1. Fewer protection orders being made final

2. New police investigation guidelines and policies which mean that only serious domestic violence will be investigated and fewer cases will be taken to court[3]

3. The changes to the Solicitor General's guidelines for prosecution, 2010, which increased the threshold for evidence for crimes to be prosecuted. This means that in cases where it is he says/she says (domestic and sexual violence) the prosecutor is less

1 Wilcox, K. Thematic review 2. Intersection of Family Law and Family and Domestic Violence (2012) Australian Domestic & Family Violence Clearinghouse. University of New South Wales Sydney NSW http://www.adfvc.unsw.edu.au/PDF%20files/Thematic%20Review_2_Reissue.pdf

2 ibid

3 ODARA: http://www.nzfvc.org.nz/?q=node/561

likely to go forward with the case. We are certain this is a major reason for the decrease in domestic violence prosecutions in the last 2 years, especially in Auckland.

4. The agenda that has been adopted by the courts makes the assumption of shared care the default position for orders in most cases.

5. Family legal professionals and Judges appear to be working with a number of misconceptions about abusive men and the safety of women and children. This erroneous construction of the nature of domestic violence includes the idea that violence stops when women leave abusive relationships, an abusive husband/partner can still be a good father and women who have concerns about their ex-partner's violence or neglect of children (or of their own safety during handovers etc.) are hostile, alienating and obstructive[4].

There is also an assumption that men's poor parenting is just lack of practice that will improve over time and that children's contact with their father outweighs the harm caused by spending unsupervised time with a father with substance abuse or mental health problems or who neglects the welfare of his child and forgets to feed, clean or interact positively with their child during access visits.

6. The absence of any mention of domestic or sexual violence in The White Paper for vulnerable children urgently needs addressing.

7. The changes to Housing New Zealand (a) which make it much more difficult to qualify for a house, (b) Women's Refuge has been told that domestic violence is no longer a priority for the allocation of housing and (c) Housing NZ now make women who hold the tenancy liable for damage done by an ex-partner.

8. Decreased funding to sexual and family violence services, including the loss of funding to sexual violence support services resulting in (nationwide) 1/3 cutting staff or hours.

9. All of the changes to the provision of welfare that disproportionately discriminates against women and children, which serves to further impoverish and marginalise sole parents, including changes that prioritise paid work over parenting.

10. The changes to Legal Aid which make it much more difficult for women to get legal aid and therefore have access to justice.
11.
12. The Crimes Amendment Act which has the capacity to further abuse and punish women who are living in a violent relationship and, as a consequence of living with sexual and domestic violence, are unable to protect themselves and their children, by criminalising them for this failure.
13.
14. The Family Violence Taskforce is no longer providing leadership to the sector or to government.

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4 Elizabeth, V., Gavey, N., Tolmie, & J. (2010). Between a rock and a hard place: resident mothers and the oral dilemmas they face during custody disputes. *Feminist Legal Studies, 18*, 253-274.

15. The review of Community Law services, especially the specialised services such as disability and youth, which appear to be aimed solely at saving money – not to improve access to justice.

16. The Bill to change provisions for child support payments to custodial parents, including shared care measured as two nights a week and fewer sanctions for non-payment.

17.

18. Judicial approaches to parenting orders, which fail to implement the law by instead adopting non-empirically, based "typologies of violence" which trivialise the potential for, and effects of, violence against women and children. Specifically, this refers to the violence that occurs at separation or within 18 months thereof. Based on lethality and serious injury risk assessments, this is the most dangerous time for women and their children, but Courts too often see violence at this time as not indicating a predilection for, or pattern of, violence by the perpetrator.

19. The all too common failure by District and Family Court judges to focus on the safety of children and abused women in sentencing and parenting order cases.

No one who turns to the legal system for protection should be further abused by the processes employed by the Court. There is ample evidence that this has happened, and continues to happen, when court processes do not take account of the complexities of intimate violence, or the experiences of women victims who are caught up in Court processes[5].

Domestic violence legislation and judicial approaches to it give and legitimise messages to police, perpetrators, victims and society about what is acceptable behaviour in both in intimate relationships and with respect to children. The legal system colludes with violence unless it gives clear and unambiguous messages that domestic violence is wrong and will not be tolerated. Section 5 of the Domestic Violence Act (DVA) specifically states that "violence in all its forms is unacceptable behaviour" but this is not the approach commonly taken by our Courts, even in cases of serious physical violence.

Women suffer many mental health/emotional effects as a consequence of living with sexual, emotional and physical abuse. They may also be dealing with children who are themselves victims of domestic violence. These include:

- On-going fear – even after separation
- Lack of volition and extreme exhaustion
- Diminished ability to deal with stress
- Trying to be superwoman
- Hyper-vigilance
- Suspicion
- Ongoing severe trauma responses
- Isolation

5 Coombes L. Morgan M. Blake, D. McGray, S. (2009) Enhancing Safety, Survivors experiences of Viviana's advocacy at the Waitakere Family Violence Court. Massey university, Palmerston North
He's Just Swapped His Fists for the System" The Governance of Gender through Custody Law Vivienne Elizabeth, Nicola Gavey and Julia Tolmie *Gender & Society* 2012 26: 239 - 261

- Disassociation
- Fragile grasp on reality if there has been emotional abuse and manipulation
- Depression
- Increased risk of suicide ideation and attempts

All of these things make it more difficult for women to function and to be perceived as credible and capable. Women may also develop substance abuse problems related to living with abuse. This further diminishes their credibility in the eyes of the judiciary and others.

The manifestation of desperation that takes place when women are battling to find a place of safety for themselves and their children means that many people disregard what women are saying and view them as unstable or obstructive. This increases women's fear and desperation and makes them appear even less credible. Expecting women in this situation to negotiate their own way through a complex and unsupportive system is inevitably denying them safety and justice.

Specific concerns about the Bill

1. The Government has stated that the primary purpose of these reforms is to save the Government money. The results of this Bill will prevent people, especially abused women and poorer people, from being able to access justice via the family court system. While the Bill talks about improved responses to victims of family violence there is nothing in this legislation that indicates how domestic violence will be identified and how victims of violence will be resourced and protected. Overall, these changes are likely to keep more women and children trapped in abusive relationships - they won't be able to afford to leave.

   This in turn will increase inequalities in this country.
   - Maori women will be the most impacted by this Bill – as they experience the highest rates of domestic violence and are often economically marginalised.
   - Already marginalised populations will be further disadvantaged by this Bill, including refugee and migrant women, Pacific women and poor women
   - All abused women risk becoming even more economically and socially marginalised as they will be denied the use of the justice system to leave abusive relationships.

2. The Bill states that part of the purpose of the amendments is to make the proceedings less adversarial. However, for abused women and others it seems that this system will potentially increase danger and stress and prolong the proceedings, as the costs will cause hardship or discourage engagement with the court. The lack of legal representation will increase the time taken to present information, will enable abusers to use court time to question, intimidate and criticise their partners and make it more difficult for judges to understand the information that is being presented. All of this increases the chances of lack of access to justice for abused women and their children.

3. Expecting a woman to go 'one-to-one' against her abuser puts women and children at increased risk of mental, physical and sexual harm. It fails to understand that placation by women, of perpetrators, is a primary strategy that women use to protect themselves and their children and that this will be played out in dispute resolution and court processes. The Australian experience of child homicides has resulted in the strengthening of domestic violence provisions in parenting order legislation. One would have hoped that the deaths of the Bristol children would have been enough of a price for legislation to focuses on and prioritise the safety of children.

4. There are a number of concepts used in the Bill to indicate that the protection of abused and vulnerable people is of prime concern with this Bill. However, there is no substance behind this language.

   a. Page one of the Bill says: ".... children and vulnerable people...." Nowhere does it say who 'vulnerable' people are or how the court and pre-court processes are going to be responsive to these people.

b. ".... to improve the court's response to victims of domestic violence" Nowhere does it say how they are going to do this.

c. Page 2 says "....support children and vulnerable people who most need protection" How is this Bill and the processes it outlines going to support them?

d. Page 3 says " enabling a more flexible and proportionate response to allegations of violence'. What does the Bill mean by a more flexible and 'proportionate' response?

e. Page 4 lists how the Bill will supposedly 'Improve the court's response to domestic violence'

f. "The Bill better supports vulnerable people, including through improving responsiveness to domestic violence. It does this through—
   - expanding the definition of psychological abuse in the Domestic Violence Act 1995 to include financial and economic abuse:
   - increasing the maximum sentence for breaching a protection order from 2 years to 3 years:
   - providing for greater flexibility in the development and delivery of mandatory non-violence programmes."

None of these concepts will protect abused women and children unless the systems that are set up to protect them are more robust – police, courts, crisis services and social service responses. Currently the government is reducing service response to domestic violence in all of these areas.

We are pleased to see that economic and financial abuse is being added to the definition. What will this mean in practice? Does it extend to the non-payment of child support or generally withholding economic support for children? How will this be identified under the current constraints on protection orders and women's testimony about violence and abuse being ignored by courts?

Pre-court dispute resolution and parenting processes

5. The Bill provides a separate pathway where abuse is identified, but this pathway is only available where there is "proof" of physical abuse. With the Police estimating that only 18% of domestic violence is reported (with much less than this actually resulting in a conviction) many mothers in coercive and violent relationships are going to end up in mediation. It is important that professionals, who are trained in the dynamics of domestic violence, carry out systematic screening.

6. Women who experience domestic violence should not be pressured into dispute resolution approaches with perpetrators. Nor should they be expected to attend stopping violence programmes with them (allowed by the Bill). The enforced family resolution and parenting programmes will put women and

children at risk from abusers. Abusers will use these opportunities to disparage their partner's story, parenting, credibility and ability. This is a common tactic that is already frequently used by abusers in counseling and mediation processes. It is also dangerous for some abusers to know where a woman will be at a certain time. Women have been murdered going to and from post separation meetings with their ex-partners. A NZ example is Kathryn Coughlin who was killed emerging from a Family Court ordered counseling session[6]. The centre understood that they were dealing with a separating couple and were not aware of the homicidal risk of the perpetrator/husband.

7. There is no evidence that mediation, especially which fails to recognise power and control, will work. In fact, there is only evidence that it does not. Most recently this has been identified in Australia where the legislation mandating pre-court mediation has been repealed because of the danger posed to women and children[7].

   In his 1993 review of the Family Court, Judge Boshier stated that mediation should not be used in the context of domestic violence because of the inherent power disparities between the parties. Judge Boshier specifically concluded that:

   "Domestic violence, as a reflection of power, is obviously an important concept when it comes to considering how a Court process should operate when domestic violence exists. We believe that mediation should be avoided by the judicial process as a legitimate means of dispute resolution in such circumstances.[8]"

8. The costs of these processes will be prohibitive for many women wanting to leave abusive partners. Many women in abusive relationships have no access to money of their own (as is being acknowledged by this Bill) and therefore have no resources to share the very high costs that this Bill imposes. Many women will have barely enough for themselves and their children. This also provides another avenue for men to abuse women by refusing to pay their share, thus preventing women from being able to make progress with their attempts to leave their abusive partners.

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6 Robertson, N. R. (1999) Reforming institutional responses to violence against women
A thesis submitted for the degree of Doctor of Philosophy, University of Waikato

7 Wilcox, K. Thematic review 2. Intersection of Family Law and Family and Domestic Violence (2012) Australian Domestic & Family Violence Clearinghouse. University of New South Wales Sydney NSW Accessed on January 24th, 2013 from http://www.adfvc.unsw.edu.au/PDF%20files/Thematic%20Review_2_Reissue.pdf

8 Boshier, P. (1993). *The review of the Family Court: A report for the Principal Family Court Judge.* Auckland, at p. 119

9. Who will run the dispute resolution and parenting programmes? How will the providers be selected and what training will they be required to have? It is very concerning that the Bill does not set standards regarding the providers and the processes they will employ.

10. We are concerned about how well children will be treated in these processes if they have no voice and no opportunity for representation. The Bill does not make provision for who will decide what the best outcomes are for the children.

11. Clause 27: requires parties to obtain the court's leave to commence proceedings if it is less than 2 years since a judgment on similar proceedings. This would mean that women have to go through a longer procedure to challenge a decision which may put children at risk. This relates to a recent trend in New Zealand, which was also specifically used in Australia, to grant custody to the parent who will facilitate shared custody - the 'Friendly parent'. In Australia this provision was found to deter women from disclosing violence[9]. This practice, whether legislated or informal policy, will have the same effect in New Zealand.

The voices and safety of children

12. "New section 4, which provides for the paramountcy of a child's welfare and best interests, makes it clear that, in respect of a person who is seeking to have a role in the upbringing of a child, account may be taken of that person's conduct to the extent that it unnecessarily delays decisions, is obstructive, or is otherwise relevant." This section may seem to be constructive as it seemingly prevents men from using the courts to further harass and abuse their partners. However, if we examine the way this concept is being used in the courts it is increasingly used to paint women, who are concerned about their own and their children's safety, as obstructive and alienating[10]. How, therefore, are women's voices to be heard regarding the safety of their children? Will they be branded as "obstructers" or "alienators" if they continue to articulate

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9 Wilcox, K. Thematic review 2. Intersection of Family Law and Family and Domestic Violence (2012) Australian Domestic & Family Violence Clearinghouse. University of New South Wales Sydney NSW p 4/5 Accessed on January 25th, 2013 from http://www.adfvc.unsw.edu.au/PDF%20files/Thematic%20Review_2_Reissue.pdf

10 See for example:
Elizabeth, V., Gavey, N., Tolmie, & J. (2010). Between a rock and a hard place: resident mothers and the oral dilemmas they face during custody disputes. *Feminist Legal Studies, 18*, 253-274. See also Harrison, C. (2008). Implacably hostile or appropriately protective? Women managing child contact in the context of domestic violence. *Violence Against Women, 14*(4), 381-405.

Tolmie, J., Elizabeth, V., & Gavey, N. (2010). Is 50:50 shared care a desirable norm following family separation? Raising questions about current family law practices in New Zealand. *New Zealand Universities Law Review, 24*, 136.

Tolmie, J., Elizabeth, V., & Gavey, N. (2009). Raising questions about the importance of father contact within current family law practices. *NZ Family Law Journal*, 659-694.

concerns about the safety of their children when they are with their abusive fathers during unsupervised contact? Men's bad parenting is seemingly increasingly acceptable to judges while women are penalised and criminalised for trying to keep their children safe.[11] In what must surely not be in accord with the paramountcy principle, various reports demonstrate how a violent father's contact "rights" trump safety concerns about the child. Examples of unsafe contact orders in the name of the father's right to "a normal relationship with his child" are A v X and B v M[12]. These are two High Court judgments that dealt with this phrase as used by a Family Court judge in justifying unsupervised contact to a recidivist abuser.

13. Section 5. "The principles relating to a child's welfare and best interests are that—
"(a) a child's safety must be protected and, in particular, a child must be protected from all forms of violence as defined in section 3(2) to (5) of the Domestic Violence Act 1995:
"(b) a child's care, development, and upbringing should be primarily the responsibility of his or her parents and guardians:
"(c) a child's care, development, and upbringing should be facilitated by ongoing consultation and co-operation between his or her parents, guardians and any other person who has a role in his or her care:
"(d) a child should have continuity in his or her care, development, and upbringing:
"(e) a child's relationship with his or her parents, family group, whānau, hapu or iwi should be preserved and strengthened:
"(f) a child's identity (including without limitation, his or her culture, language, and religious denomination and practice) should be preserved and strengthened."

These are all good aims; however, there is frequently a contradiction between ensuring the safety of children and the assumption that parents should collaborate and consult with each other.

When there is violence in a relationship ongoing contact between parents can be dangerous for women and harmful for children. Indeed, the Ontario Domestic Violence Fatality Review has found repeatedly that the most dangerous time for a woman is when she leaves an abusive relationship and takes her children. This is what Sections 58 – 62 of the existing Act were intended to address. This Bill is potentially very dangerous without these provisions and it appears that putting the safety provision first is not significant. Neither is the word "must" rather than "should". Kacem v Bashir[13], a recent Supreme Court case, has found that none of these subsections takes precedent over the others. Therefore, the on-going

11 ibid

12 A v X [2005] NZ Family Law Review 123 (HC)
B v M [2005] NZ Family Law Review 1036 (HC)

13 Kacem v Bashir [2010] NZ Family Law Review 884 (SC)

relationship is weighted as being as important as the safety of the child. Section 5 should highlight the safety provision as predominant- as it now does in Australia.

14. "New section 7 provides for the appointment of a lawyer to represent a child in proceedings. An appointment may be made in any case where the court has concerns for the safety or well-being of the child and considers that an appointment is necessary." How will this lack of safety be ascertained? If there is no protection order, or if the parents are trying to represent themselves, this becomes a "he said, she said" argument in front of the judge. As we know, abused women often seem more chaotic and less credible than abusive men. – As a result women are more likely to be labeled as obstructive and to have their concerns minimised or ignored. Can children ask for a lawyer? The present rule is much wider, and calls for the appointment of a lawyer to represent the child in all contested cases. This is a real cut and appears to be done just to save money. There are now tighter age restrictions for children to appeal a decision affecting them, than in the current COCA. How will this impact on children's wellbeing, sense of agency, and ability to keep themselves safe?

    Perhaps most worrying is the Bill's intention to delete clauses in the Care of Children Act known as the "Bristol clauses". In New Plymouth in 1995 Christine Bristol was trying to escape from the on-going violence of her husband. Christine had had three Protection Orders against Alan Bristol who the police had just charged with sexual assault. Despite being known as a violent spouse, he was thought of as an excellent parent; indeed, the Family Court had awarded him sole custody of the three girls. In a case that horrified the nation, Mr. Bristol murdered their three young children and then killed himself. Christine demanded a Ministerial Inquiry into why the Family Court had awarded a violent parent custody of his children.

    In response to the Bristol murders the Government introduced a law requiring judges to undertake careful risk-assessments before allowing abusive parents day-to-day care of their children. These measures have been constantly undermined since their introduction and today are often ignored altogether by the Courts. The Bill will abolish these clauses and leave children at risk. Christine Bristol has spoken out against the Bill emphasising that the law must prioritise children's safety over violent parent's access to their children. Given that New Zealand has the highest rates of child homicides in the OECD; it is amazing that one cost saving measure in the Bill is to remove the rebuttable presumption against unsafe contact arrangements with violent parents, generally fathers. Rather than reinforce the focus on the safety of children (as required by the UN Convention on the Rights of the Child, of which NZ is a signatory) this Bill will further allow father's rights to triumph over children's welfare.

    Recent research highlights unequivocally the close links between domestic violence and child abuse. Under the NZ Domestic Violence Act 1995, abuse is defined as both the direct abuse of the child and the harmful effects on the

child of living with and witnessing domestic violence[14]. Depending on the context, methodology and definitions used, it has been found that between 30% and 65% of the children of abused women are themselves abused. Therefore, many of these children sustain the psychological "double whammy" of being both witnesses to violence against their mother and themselves being the targets of their father's violence.

Abuse, whether a child is abused directly or victimised by exposure to the abuse of the other parent, is de facto poor parenting. Any arrangement that gives the abusive parent shared parenting or unsupervised contact will create unacceptable risks for both the children and the abused parent and provide the abusive parent with too many opportunities to continue a pattern of intimidation and control. This means that requiring on-going negotiations between the parents over major decisions involving the children is unacceptable, allowing the abused parent and children to remain hostage to the abusive parent's agenda.

Sturge and Glaser, psychologists from whom the UK Solicitor General commissioned a Report on DV and Children asserted: There should be no automatic assumption that contact with a previously or currently violent parent is in the child's interests; if anything, the assumption should be in the opposite direction and the case of the non-residential parent should be one of proving why he can offer something of such benefit not only to the child, but to the child's situation, (i.e. act in a way that is supportive to the child's situation with his or her resident parent and able to be sensitive to and respond appropriately to the child's needs), that contact should be considered[15].

This is what sections 60 and 61 mandate to our Judges. With their repeal, the rebuttable presumption against shared parenting and/or unsupervised contact will be eliminated from our law with no guidance to Judges for how to deal with cases where children are either the direct targets and/or witnesses to domestic violence against a parent or caregiver.

What is more important to the functioning of the State than the safety of its citizens? NZ guarantees this under the NZ Bill of Rights Act as well as by being signatories to UNCROC and CEDAW. Given our OECD record on child homicides, providing safety to our children and their mothers needs to be

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14 Hamby S, Finkelhor D, Turner H, Ormrod R. The overlap of witnessing partner violence with child maltreatment and other victimizations in a nationally representative survey of youth. Child Abuse and Neglect. 2010;34:734–41.
http://www.unh.edu/ccrc/pdf/CV200.pdf

Edleson JL. The overlap between child maltreatment and woman abuse. VAWnet Applied Research Forum: National Online Resource Center on Violence Against Women, 1999.
http://www.vawnet.org/applied-research-papers/print-document.php?doc_id=389

15 Sturge, C.,& Glaser, D. (2000). Contact and domestic violence: the experts' court report. *Family Law*, 615-629.

of paramount concern to the Family Court. So why are sections 59-61 being repealed, except to save money, or as a concession to father's rights groups?

15. "Clause 22 replaces section 133, which allows the court to request the preparation of a cultural, medical, psychiatric, or psychological report on a child who is the subject of an application for guardianship or a parenting order. The new provisions—
    - limit the court's power to request reports;
    - enable the court, when requesting a report, to make directions regarding the child and parties meeting with the report writer;
    - limit the matters that may be covered in a court-requested psychological report;
    - prohibit the preparation and presentation of critiques of court-requested psychological reports or second reports on the same matters;
    - allow the court, in exceptional circumstances, to approve the preparation and presentation of critiques of court-requested psychological reports or second reports on the same matters.

    This provision is about restricting the information that can be provided to the court. How is a judge to have robust information about the circumstances of a family if very little information can be provided and if reports cannot be critiqued? As judges have no training in the psychological evaluation of people, how will they determine the validity of the information that is presented to them? This is not enabling access to justice for the parties involved and also can play into the hands of abusers if the report writer has no understanding of the dynamics of violence.

    Principal District Court Judge Jan Doogue has written recently on behalf of the retention of these specialists. Moreover, Judge Doogue underscored how inadequately trained experienced judges were to interview children and ascertain their wishes.

    A more constructive approach would be to set up mandatory training for judges, report writers and all other professionals associated with the courts to ensure that all professionals associated with Family Court proceedings are trained to recognise and understand the dynamics of domestic violence, and to allow for critiques of all material presented to the court.

Fees

16. Everyone involved "whose income is over the civil legal aid threshold" will have to pay for the dispute resolution and parenting classes. There is no negotiation of fees. This means that many low income people will no longer be able to access the Family Court process to resolve their disputes. This will increase violence and abuse, prevent women from leaving abusive relationships and result in more women and children being harmed or murdered.

17. "The contract between a private client and an approved family dispute

resolution provider will deal with the services that the client is paying for. What the services are will depend on what the private client is able and willing to pay for." This clause quite specifically provides for the rich to receive different and enhanced services to those who are poor. This is a violation of fundamental justice and human rights.

In the Australian experiment with pre-court mediation, the Commonwealth government subsidised the process, providing for one free session and then low fees for ongoing sessions. This Bill makes the provision of mediation services entirely privatised, without subsidies or constraints on fees. This privatisation also means that there is no accountability and no statutory oversight of practice, safety, or ethics prescribed. outcomes. This means that getting things sorted out as quickly as possible could be seen to be more important than ensuring the on-going safety of women and children. Agreements made in this pre-court mediation will then be turned into Court orders. If women then want to change them because they are not reflective of the best and safest outcomes for themselves and their children, they may be considered vexatious and have to pay huge court fees.

18. The Bill specifics that there will be caps on the amount of hours that lawyers, when clients have access to them, are able to work on these cases (hours that they will be paid). This restricts the access to justice for those involved in complex and dangerous cases. "Clause 71 amends section 7, which provides that legal aid may be granted for proceedings in a Family Court. The amendment inserts 3 new subsections in section 7. The effect of new subsections (3A) and (3B) is to limit the availability of legal aid in proceedings under the Care of Children Act 2004 in the Family Court." This limits the provision of legal aid even more than in previous legislation and policy changes. Again poor people, especially women, are being denied access to justice.

Legal representation

19. We support and endorse the concerns that lawyers and legal academics have expressed about the lack of access to legal representation in these processes.

    The lack of professional legal support will put women at risk in a number of ways:

    - they may be unable to articulate their level of risk and what they need to keep themselves and their children safe;
    - men may use the court process to question, cross examine, intimidate and harass women;
    - wealthy men will be able to get legal advice prior to entering court, which will disadvantage their partners if they have no access to joint finances during the separation;
    - who will ensure that information is presented to the courts in a coherent manner?

Other concerns

20. One way this Bill aims to increase responsiveness to domestic violence is by "providing for greater flexibility in the development and delivery of mandatory non-violence programmes." What does this mean? What criteria will be used to accredit these programmes? What ideological concepts will be acceptable as programme underpinnings? Who will ensure that the safety of women and children is paramount in these programmes? This proposal is extremely worrying as many (especially men's) groups are no longer accepting that men must be held responsible for men's violence against women. Instead, these groups are talking about reciprocal partner violence, using the Conflict Tactics Scale to demonstrate that women are as violent as men, and implicating women as being causative of men's violence against them.

    Note: In the standardisation of the Conflict Tactics Scale, which routinely finds men equal to women in conflict tactics, when the level of violence and harm was taken into account men were found to be more likely to cause harm than women and to subject women to more serious levels of violence.

21. "New section 46E enables a Judge to refer to counselling parties to a guardianship or parenting dispute for the purposes of—
    - improving their relationship; and
    - encouraging compliance with a subsequent court order or direction.

    A referral can, however, only be made if the Judge considers that counseling is the best means of fulfilling these purposes."

    How will this be determined? Will the judge have an obligation to ensure that robust domestic violence screening has occurred prior to referral to counseling, as evidence suggests that couple counseling is not advisable – and can be dangerous – in cases of domestic violence.

22. Concern has been expressed by women currently using the family court to resolve disputes with wealthy, abusive partners of situations where wealthy men use the court to keep their ex forever in litigation and to 'starve her out' of any matrimonial settlement. This power imbalance of wealthy men being able to hire the best lawyer possible, hide money in trusts, etc –means that a number of women are impoverished and harassed by the current process. This does not mean that men and women shouldn't have lawyers if they want them. It does however mean that the lawyers who work in the Family Court should be specially trained to understand the dynamics of domestic violence and be approved to do this work.

    This Bill also means that poor men who have access to legal aid can use the Court process to ensure that women who have more money, and do not have access to legal aid, are stripped of their financial well-being through ongoing Court processes.

23. There is also a very strong need for advocates or helpers for women and children, to them help navigate their way through the court process and to support them in court when they are worried about their abuser being there. This could help to address the power imbalance between abusers and abused

women and children.

24. “Section 32 Direction to attend assessment and non-violence Programme

“(2) The court need not make a direction under subsection (1) if—

“(a) there is no non-violence programme available that is appropriate for the respondent, having regard to—

“(i) the respondent’s character; and

“(ii) the respondent’s personal history; and

“(iii) any other relevant circumstances; or

“(b) the court considers there is any other good reason for not making a direction.”

This direction provides abusive men with many opportunities for avoiding programme attendance. It also allows for significant issues of injustice, which is being increasingly seen in the Courts where judges seem loath to punish men that they believe are of such ‘good character’ (i.e. from the right side of the tracks) so as not to require a penalty for their offending. As evidenced by the Bristol case, among many others, it is not just men of ‘bad character’ that abuse women and children.

We urge the Government to withdraw this Bill

This Bill is counter to international evidence and prejudicial to women and children and should be withdrawn.