

# FAMILY LAW AMENDMENT BILL A STEP IN THE RIGHT DIRECTION AND HOPEFULLY THE FIRST STEP IN FURTHER REFORMS

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The Family Law Section of the Law Council (FLS), chaired by Barry.Nilsson. Lawyers' [Geoff Sinclair](#), recently published its response to the Family Law Amendment (Family Violence) Bill 2010 (the Bill). The Bill was tabled by government in an effort to respond to recent reports into the 2006 Family Law Reforms and how the family law system deals with family violence. The FLS commended this 'first step' taken by the government, but also expressed several reservations.

The FLS is of the opinion that although the Bill responded to those reports, it only did so in an incomplete fashion, by failing to address a number of other serious issues raised in the relevant reports. Until clarification is provided by government as to whether the Bill is indeed merely a first step, or alternatively the whole of the response, the FLS maintains that the Bill is deficient.

That aside, the FLS supports the Bill's proposed repeal of s117AB. This costs provision directs the court, under certain circumstances, to order the initiating party to pay the costs of the other party where the initiating party's allegations of domestic violence were unsubstantiated.

Barry.Nilsson. Lawyers also supports the removal of this provision as it would result in less reluctance by victims to raising genuine domestic violence issues.

## DEFINITION OF FAMILY VIOLENCE

At the heart of the reforms under the Bill is an amendment to the definition of 'family violence' to include a range of non-physical behaviours. Although the FLS agrees with the broadening of the definition, it is concerned with the ripple effect it will have on other provisions in the Family Law Act 1975 (Cth) (the Act) that are affected by the definition.

Two main criticisms are that:

(a) There is no 'overarching requirement' connecting the type of behaviour identified to the effect of that behaviour on the child (raised by Professor Chisholm, author of one of the reports); and

(b) There is no relationship in time between the identified behaviour and the determination being made by the Court.

For example, this could result in it being open to the Court when deciding upon what is in the best interests of the relevant child, to consider an isolated violent incident, several years before the parents' relationship breakdown, even if that incident is not relevant to the current decision.

Although the FLS does not consider that this example is necessarily what government intended, it nonetheless illustrates the potential impact of the broadened definition of 'family violence'.

Barry.Nilsson. Lawyers agree with the criticisms highlighted by the FLS in regards to the broadening of the definition of family violence.

## EXPOSURE OF A CHILD TO VIOLENCE

The Bill also proposes to include a specific definition of what it means for a child to be 'exposed' to family violence. The FLS holds the opinion that Part VII of the Act, in which this new definition will be inserted, is already complex.

Instead of attempting to clarify by adding further definitions, the FLS considers the best approach would be to simplify the legislation so as to make it more logical, both for the benefit of the Courts and the public at large. It may be that a definition of 'exposed' would become unnecessary if Part VII was simplified.

Barry.Nilsson. agrees that Part VII of the Act as it stands, is unnecessarily convoluted and a that a simplification of the provisions would be of great benefit.

## NOTIFICATION PROVISIONS

Another proposed provision under the Bill requires parties to a dispute to disclose:

(a) Whether the child has been the subject of any child welfare order; and

(b) Whether the child has been the subject of notifications to or investigations by child welfare authorities.

This provision extends disclosure obligations to circumstances where another child in the

child's family has been the subject of a child welfare order or notification. The FLS believes that the intent behind this proposed provision was to include orders or notifications about another child living in the same household as the child whom is the subject of the proceedings.

Moreover, because of the use of the terms "a notification or report (however described)" and "an investigation, enquiry or assessment (however described)" a vast range of communications between the relevant family and welfare agencies will need to be disclosed. The FLS believes that this will lead to a great strain on not only the welfare agencies themselves, but also the already limited resources of the courts. Barry.Nilsson. agrees with the FLS' analysis of the proposed notification provisions and that such a provision will indeed hinder court resources.

## FURTHER REFORM

As previously mentioned, it is the view of the FLS, even if the concerns highlighted above are addressed, that the Bill provides nothing more than a first step in the right direction of necessary broader reform of Part VII of the Family Law Act.

The [Family Law team](#) at Barry.Nilsson. is in complete agreement with the FLS' overall response to the Bill and we look forward to government's response.

For further information or to discuss this topic further, please contact [Geoff Sinclair](#).

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