

**SAFE + EQUAL**

Standing strong  
against family  
violence

**FAMILY LAW COUNCIL**  
**CONSULTATION SUBMISSION**  
**SUMMARY**

**23 February 2023**

## **ACKNOWLEDGEMENT OF TRADITIONAL OWNERS**

Safe and Equal acknowledges Aboriginal and Torres Strait Islander peoples as the traditional and ongoing custodians of the lands on which we live and work. We pay respects to Elders past and present. We acknowledge that sovereignty has never been ceded and recognise First Nations peoples' rights to self-determination and continuing connections to land, waters, community and culture.

## **RECOGNITION OF VICTIM SURVIVORS**

Safe and Equal recognises the strength and resilience of adults, children and young people who have experienced family violence and recognise that it is essential that responses to family violence are informed by their expert knowledge and advocacy. We pay respects to those who did not survive and acknowledge friends and family members who have lost loved ones to this preventable and far-reaching issue.

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## **ABOUT SAFE AND EQUAL**

Safe and Equal is the peak body for specialist family violence services that provide support to victim survivors in Victoria. The interests of people experiencing, recovering from, or at risk of, family violence is at the heart of everything we do. Our vision is a world beyond family and gender-based violence, where women, children and people from marginalised communities are safe, thriving, and respected. We recognise the gendered nature of violence in our society, and the multiple intersecting forms of power and oppression which can compound the impacts of violence and limit people's access to services, support, and safety. We work closely and collaboratively with other organisations and support the leadership of victim survivors to amplify their voices and create change.

We provide specialist expertise across primary prevention, early intervention, response and recovery approaches and the inter-connections between them. Our work is focused on developing and advancing specialist practice for responding to victim survivors, building the capability of specialist family violence services and allied workforces, organisations and sectors that come into contact with victim-survivors; building the capabilities of workforces focused on primary prevention; and leading and contributing to the translation of evidence and research, practice expertise, and lived experience into safe and effective policy, system design and law reform.

**We develop family violence practice and support workforces** to ensure that victim survivors are safe, their rights are upheld, and their needs are met. The prevalence and impact of family and gender-based violence will be reduced because we are building a strong and effective workforce responding to victim survivors that can meet the needs of the community we serve, while also having a growing and impactful workforce working to prevent violence.

**We work to strengthen and connect organisations, sectors, and systems** to achieve safe and just outcomes for victim survivors irrespective of entry point, jurisdiction and individual circumstances. Joining efforts across prevention, response, and recovery we work to ensure the family violence system is informed and supported by a well-resourced and sustainable specialist sector. Our contributions to primary prevention workforces, initiatives and alliances contribute to social change for a safer and more respectful community.

**We are building momentum for social change** that drives meaningful action across institutions, settings, and systems for a safer and more equal society. Our workforce and practice development efforts are coupled with a partnership approach that builds community awareness and commitment to change. Our expertise and efforts enable citizens across the community to recognise and respond to family and gendered violence, hold perpetrators to account and support the ongoing recovery and empowerment of victim survivors.

**We are a strong peak organisation** providing sustainable and influential leadership to achieve our vision. The work we do and the way we work are integrated and align with our values. This is achieved through inclusive culture, and a safe and accessible workplace supported by robust systems and processes.

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## INTRODUCTION

Safe and Equal recently responded to an online Family Law Council consultation on the experiences of children and young people moving through the Australian family law system.

The Family Law Council consultation sought to understand:

1. The extent to which the family law system upholds the rights of children and young people under the United Nations Convention on the Rights of the Child.
2. Whether or not particular parts of the family law system manage the participation of children and young people effectively.
3. What, if any, changes would improve the way the family law system upholds the rights of children and young people.

Safe and Equal's response was informed by consultation with member organisations, particularly Djirra, to ensure Aboriginal and Torres Strait Islander-specific issues were included. The points raised in our response reflect both Safe and Equal and Djirra's concerns about the family law system, as well as those of other member organisations and stakeholders.

## CONTEXT

Family violence is a predominant issue in family court proceedings<sup>1</sup>. The Lighthouse Project run within the Federal Circuit and Family Court of Australia found that around 85% of family law cases involve family violence, with around 50% of high-risk matters involving four or more major risk factors.<sup>2</sup> Further, the Victorian Royal Commission into Family Violence found that "family violence is a common feature of family law disputes, particularly those that end up in court"<sup>3</sup> and the final report of the Australian Law Review Commission review detailed studies that found 60% of separated parents report experiencing physical hurt or emotional abuse prior to or during separation; and for parents in the family law courts:

- 85% reported a history of emotional abuse; and
- 54% reported a history of physical violence.<sup>4</sup>

<sup>1</sup> Australian Institute of Family Studies (AIFS). 2019. Parenting arrangements after separation: Evidence Summary. <[https://aifs.gov.au/sites/default/files/publication-documents/1910\\_parenting\\_arrangements\\_after\\_separation.pdf](https://aifs.gov.au/sites/default/files/publication-documents/1910_parenting_arrangements_after_separation.pdf)>; ALRC. 2019. op. cit.; Carline, A. & Easteal, P. 2014. Shades of Grey – Domestic and Sexual Violence Against Women: Law Reform and Society, Routledge, Oxford.

<sup>2</sup> Federal Circuit and Family Court of Australia. 2021. 'Media Release: New court initiatives help uncover higher prevalence of family violence and other risks', Retrieved 29 November 2021 < <https://www.fccoa.gov.au/news-and-media-centre/media-releases/mri01121>>

<sup>3</sup> State of Victoria. 2016. Royal Commission into Family Violence: Summary and recommendations. Parl Paper No 132 (2014–16), p181.

<sup>4</sup> ALRC. 2019. op. cit.; Kaspiew, R., Gray M., Weston R., Moloney, L., Qu., L. 2009. Evaluation of the 2006 family law reforms. Melbourne; Kaspiew, R., Carson, R., Dunstan, J., De Maio, J., Moore, S., Moloney, L. et al. (2015). Experiences of Separated Parents Study (Evaluation of the 2012 Family Violence Amendments). Melbourne.

## **KEY RECOMMENDATIONS**

Based on feedback from victim survivors, our member services and other allied organisations, **Safe and Equal does not believe that the Australian family law system meets its obligations and upholds the rights of children and young people under the United Nations Convention on the Rights of the Child.** The Australian family law system does not provide space and mechanisms for children's voices to be heard and considered in decision making processes.

Further, the Australian family law system does not protect children and young people from physical and/or psychological harm, or from being subjected or exposed to abuse, neglect or family violence when making parenting arrangements.

In order to elevate the safety of children within family law systems, Safe and Equal calls for:

1. Statutory force to be given to Article 12 of the United Nations Convention on the Rights of the Child, which articulates the right for children to be heard and listened to in decisions that affect them.
2. Children to be more actively involved in the decision-making process in family court proceedings, and provided with ongoing information by:
  - a. Refocussing and standardising the processes with an overarching family violence lens for Family Report Writers, to ensure that the voice of the child is heard, validated, and presented to decision makers through verbatim reports.
  - b. Establishing a new, independent professional role which centres the child's experience of family violence and to ensure children have an independent advocate to represent their views and wishes on an ongoing basis in the court process.
  - c. Renaming and reframing the role of the independent Children's Lawyer to make it clear that the lawyer does not represent the child and to include a requirement for Independent Children's Lawyers to meet with the child regularly to understand their views and to provide ongoing information about the process.
  - d. Ensuring when any member of the family identifies as Aboriginal or Torres Strait Islander that all work is undertaken through an appropriate cultural awareness lens and prioritises a connection to culture, including court-funded secondary consultations and support from other relevant Aboriginal Controlled Community Organisations.
3. The National Principles for Child Safe Organisations to be adapted for use by the courts and all players within the family law system.
4. A child's right to safety to take precedence over all other considered criteria, by:
  - a. Ensuring that a family violence lens is incorporated throughout all processes and procedures (including evidence gathering).

- b. Prioritising the assessment and mitigation of family violence risk by utilising the Multi-agency Risk Assessment and Management Framework (MARAM) or the National Risk Assessment Principles for Domestic and Family Violence (NRAP).
  - c. Ensuring all parties within in the family law system receive mandatory family violence training and accreditation (in particular, Family Report Writers and Independent Children’s Lawyers).
  - d. Adopting a family violence lens for fact finding processes.
5. Changes to fees related to family court proceedings, including:
- a. The court or legal aid to bear all costs of funding a Family Report Writer, Independent Children’s Lawyer, or proposed guardian.
  - b. Increased support and funding for victim survivors (with a particular focus upon removing the specific discriminatory barriers for migrant and refugee women) to enable full legal advice and representation throughout proceedings.
  - c. Removing the restrictions imposed by Section 121 (which criminalises the publication of details of a family law proceeding that might identify a party or witness) for the now-adult children of parents involved in family court proceedings.
  - d. Government to fund all legal costs of domestic abuse survivors who seek court permission to speak out about their experiences.

## **PROPOSALS IN THE FAMILY LAW AMENDMENT BILL 2023**

It is important to note the concurrent consultation on proposed amendments to the Family Law Act. Safe and Equal welcomes the long overdue reforms and the focus on establishing and maintaining the safety of both adult and child victim survivors. We support the removal of the presumption of shared parental responsibility; the simplification of the ‘best interests’ principles (including the prioritisation of child and carer safety); the creation of barriers to discourage and prevent vexatious litigation and systems abuse; and the implementation of specified regulations for family report writers.

## **CONCLUSION**

The prevalence of family violence in family court proceedings has a major impact on children. Children and young people are victim survivors of family violence in their own right and can experience family violence directly or indirectly. Family law processes and decisions that expose children to a perpetrator of family violence, even if the violence has not been directly perpetrated against them, can have devastating impacts for children and their welfare. Therefore, decisions made about a child’s future must be safe and based upon family violence expertise and should afford substantially more weight to the wishes and feelings of children than current practice.