

23 June 2023

Committee Secretary
Senate Legal and Constitutional Affairs Committee
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Submitted online: https://www.aph.gov.au/Parliamentary_Business/Committees/OnlineSubmission

Dear Committee Secretary

Australian Psychological Society Submission on the Family Law Amendment Bill 2023

The Australian Psychological Society (APS) welcomes the opportunity to provide a submission to the Senate Legal and Constitutional Affairs Committee on the Family Law Amendment Bill 2023. As the peak body for psychology in Australia, we are dedicated to advancing the scientific discipline and ethical practice of psychology in the communities we serve and to promote good psychological health and wellbeing for the benefit of all Australians.

As noted in our submission on the Exposure Draft of the Family Law Amendment Bill 2023 to the Attorney-General's Department on 27 February 2023, the APS generally supports this first tranche of proposed changes to the *Family Law Act 1975*. We welcome reforms in the Bill which aim to promote the interests and wellbeing of children, and which strengthen the foundations for an efficient, culturally-informed and trauma-sensitive family law system. Without seeking to repeat our previous submissions, we wish to draw attention to the broader implications of these reforms – or the lack of reform – for psychologists and their clients within the family law system.

1. Regulation of Family Report Writers

The APS supports the policy intention underlying Schedule 7 of the Bill, which would establish a regulatory framework for family report writers. The APS unequivocally asserts that all family report writers, including psychologists, should perform their duties with utmost diligence and integrity. We agree that a system that promotes certainty, consistency and quality across reports and report writers would be good for all participants, including psychologists and their clients.

However, we remain concerned about the ability of the Bill to achieve these objectives. The Bill only enables the regulatory framework and defers the development of substantive provisions to an unspecified later time. Nonetheless, the provisions of the Bill prefigure a traditional regulatory scheme involving top-down powers (including criminal and civil offences) and considerable administrative requirements.

Psychologists, who make up a substantial proportion of family report writers, are already subject to significant regulation and oversight including through the *Health Practitioner Regulation National Law*. The creation of a parallel regulatory process for already highly regulated practitioners would be an inefficient and poorly considered approach to achieving the stated policy objectives. If we are seeking to increase the standards of family report writers, we need meaningful engagement and co-design with the profession and professional bodies from the outset, rather than after key parameters have been fixed in legislation.

The APS believes that the aim of encouraging quality and best practice is best realised through a bottom-up, cooperative and educational approach that incentivises good practitioners to become better, rather than through the creation of additional administrative processes and potential coercive action. We have seen that the imposition of unnecessary regulatory requirements in other settings, including the NDIS, has acted as a significant disincentive for psychologists to engage in these areas of practice. Noting the already considerable pressures on the psychological workforce, effective regulatory design is needed now to ensure a sustainable pool of psychological experts and family report writers into the future.

The APS therefore recommends that the Committee consider the full regulatory impact of Schedule 7 of the Bill, and to encourage the collaborative development of alternative frameworks with affected professions.

2. Protecting Sensitive Information

The APS supported Schedule 6 of the Exposure Draft Bill, which would have strengthened protections for the admission of sensitive information ("protected confidences") in family law proceedings, particularly information disclosed in confidence to a health professional such as a psychologist. We are disappointed that this Schedule of the Exposure Draft Bill was omitted, without consultation, from the Bill as introduced to Parliament.

We understand that concerns were expressed about the necessity of these proposed provisions given the court's existing powers to exclude evidence, although as observed by the Parliamentary Library, no stated reason was given for the omission. Nonetheless, we agree with other submissions on the Exposure Draft Bill, including from Women's Legal Services Australia, that the existence and operation of these discretionary powers is not well-understood by parties and health professionals. Preventing the disclosure of highly sensitive personal information which was shared in an environment of trust and safety should not be dependent on a non-lawyer's knowledge of the intricacies of evidence law.

The APS notes that psychologists' concerns about requests for information and the limits of confidentiality within the family law system are one of the most frequent topics in queries received by the APS Professional Advisory Service. This shows that the law as it stands is not operating to protect against the unnecessary disclosure of therapeutic communications. It also demonstrates that many psychologists are already wary of working with clients involved in (or likely to be involved in) family law proceedings. Psychologists are cognisant of the damage that compelled disclosure of session notes and other therapeutic communications can have not just on the specific therapeutic relationship and the client's mental health, but the client's willingness to engage with and trust mental health professionals in the future.

The Exposure Draft Bill would have gone some way to providing this needed certainty and assurance to psychologists, and more importantly, their clients, that what is shared in confidence remains confidential unless there is a compelling and relevant reason otherwise. The APS stands by its earlier submission which supported the intent of Schedule 6 of the Exposure Draft Bill but recommended that the standard required for admission of a protected confidence be raised further.

We therefore recommend that the Committee consider the urgent need for clear and well-understood legislative provisions which recognise the sanctity of therapeutic communications and safeguard against their unnecessary disclosure in family law proceedings.

Thank you again for the opportunity to provide a submission to the Senate Legal and Constitutional Affairs Committee on the Family Law Amendment Bill 2023. If any further information is required from the APS, I would be happy to be contacted through our National Office on (03) 8662 3300 or by email at: z.burgess@psychology.org.au

Yours sincerely

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