

25 January 2018

Our ref: (NDC - Fam)

Mary Devlin
Acting Director, Family Law Section
Law Council of Australia

By email: [REDACTED]

Dear Ms Devlin

Family Law Amendment (Family Violence and Other Measures) Bill 2017

Thank you for the opportunity to provide comments on the Family Law Amendment (Family Violence and Other Measures) Bill 2017. The Queensland Law Society appreciates being consulted on this important legislation.

The Queensland Law Society (QLS) is the peak professional body for the State's legal practitioners. We represent and promote nearly 12,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

This response has been compiled with the assistance of the Family Law Committee who have substantial expertise in this area. We provide the following comments in relation to the Bill:

Broadening of state and territory courts' family law jurisdiction

QLS acknowledges the difficulty litigants may experience in navigating multiple courts, particularly in matters involving family violence. In these circumstances, there are clear benefits in allowing state and territory courts, including children's courts, to make orders under the *Family Law Act 1975*. This will hopefully contribute to greater consistency and, in some circumstances, will better protect families from family violence.

However, the Society has several concerns:

- Family law is a highly specialised jurisdiction and the determination of family law disputes requires considerable expertise. Judicial officers in state and territory courts may not have the expertise necessary to properly hear and determine family law matters. We acknowledge and welcome the development of the National Domestic and Family Violence Bench Book as well as the allocation of funding for judicial officer

Family Law Amendment (Family Violence and Other Measures) Bill 2017

training. The Society is concerned, however, about the limited detail provided in relation to the nature and extent of the training proposed.

- The support services currently provided in the family law courts are essential to the resolution of family law matters and reflect the special nature of family law disputes. This includes family consultants who prepare family reports and conduct child dispute conferences and registrars with necessary expertise to conduct conciliation conferences. These services are not currently available in state and territory courts. It is not clear whether litigants will have access to these important services where family law disputes are heard in state and territory courts and, if so, what additional resources will be provided.
- The proposed amendments are likely to increase the demand for legal assistance services, in particular, assistance from community legal centres and Legal Aid duty lawyers. Access to legal assistance in the early stages of a dispute can prevent or reduce the escalation of legal problems and reduce cost to the justice system overall. However, these amendments are proposed in a context where the legal assistance sector is considerably under-resourced. The Society strongly recommends the Federal Government make additional funding available to the legal assistance sector to respond to the need for family law assistance.
- Appropriate resourcing for state and territory courts will be critical to achieving the policy objectives of the Bill. The demand for state and territory court services is already considerable and the capacity for these courts to deal with a greater volume of family law matters will be limited without additional resourcing.

Monetary jurisdiction of state and territory courts

QLS supports amendments to allow state and territory courts to determine family law property matters where the property pool exceeds \$20,000. In our view, the limit should continue to be capped to include only relatively modest property pools, given these are likely to be less complex cases that require fewer trial days. QLS supports the proposed limit of \$100,000. Further, we agree that the monetary jurisdiction of the state and territory courts should be set by legislation, rather than by regulation.

Summary dismissal

QLS supports legislative amendment that prevents the abuse of court systems, particularly in circumstances of family violence. However, it is unclear how proposed section 45A will better protect victims of family violence, particularly given existing powers under section 118 of the *Family Law Act 1975* (Cth).

QLS acknowledges the purpose of proposed amendment is to allow a court to prevent the use of proceedings as a tool to perpetuate violence. In our view, however, there is a risk that the provision could be used to the detriment of family violence victims. This is particularly concerning where the court may order costs as a result of the summary dismissal.

Family Law Amendment (Family Violence and Other Measures) Bill 2017

As noted in the Explanatory Memorandum,¹ self-represented litigants often lack the capacity to properly gather evidence and draft affidavit material. A victim of family violence, in particular, is also likely to find the court experience stressful and traumatic. These factors will impede a victim's capacity to properly present their case and may contribute to a victim's application appearing to have no reasonable prospect of success. While we acknowledge many judicial officers are experienced at hearing matters involving family violence, the adversarial culture of the family law system means that these litigants are nonetheless disadvantaged.

Time limits on orders issued by state and territory courts

QLS strongly supports the amendment to remove the need for parties to revert to the family law courts within 21 days to continue an order variation. It is not reasonable to expect a litigant to obtain legal advice, prepare all necessary legal documents and file a matter in the family law courts within 21 days and, in practice, is rarely achieved. In cases where assistance from Legal Aid is required, it is not unusual for Legal Aid applications to take 28 to 42 days to process, which exceeds the 21-day limit. Inconsistency between family violence and family law orders poses a significant risk to victims of family violence and their children.

The Society supports the introduction of a 60 day time frame.

Criminalising breaches of personal protection injunctions

QLS supports the policy objectives behind the proposal to make breaches of personal protection injunctions made under the Family Law Act a criminal offence. Family violence is a matter of public concern and it is appropriate that victims of family violence be relieved from the responsibility of initiating enforcement proceedings.

QLS is opposed to the retrospective nature of the provisions. The proposed provisions should only apply to injunctions made after the commencement of the amendments.

Victims of family violence may already have a state or territory court domestic violence order in place. The act or actions which breach a personal protection injunction under the Family Law Act may also constitute a breach of a domestic violence order or a criminal offence, for example, under the *Criminal Code 1889* (Qld). Given breaches of personal protection injunctions are to be prosecuted in state courts, these courts will need to monitor whether any issues arise under section 16 of the Criminal Code or corresponding provisions in other jurisdictions. We note that the practical effect of section 114AB of the Family Law Act may be that personal protection injunctions continue to operate in limited circumstances.

Family Law injunctions will be most effective if coupled with sufficient training and resources for state and territory police to respond appropriately to reports of breaches. The Society recommends that the Federal Government allocate appropriate resourcing for police training in family law and family violence including in relation to the interoperability between relevant state and federal law.

¹ Explanatory Memorandum, Family Law Amendment (Family Violence and Other Measures) Bill 2017 (Qld) 18.

Family Law Amendment (Family Violence and Other Measures) Bill 2017

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Senior Policy Solicitor, Natalie De Campo by phone on [REDACTED] or by email to [REDACTED]

Yours faithfully

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Ken Taylor
President