20 January 2017

Family Violence Amendments
Family Law Branch
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

By email: familylawunit@ag.gov.au

Dear Sir/Madam

Re: Proposed amendments to the Family Law Act 1975 to respond to family violence

Thank you for the opportunity to provide the submission of the Aboriginal Legal Service ("ALS") in relation to the proposed amendments to the *Family Law Act 1975* ("the Act") to respond to family violence ("the amendments").

The ALS has had the opportunity to consider the proposed amendments to the Act and their intended operation. This submission is predicated on the needs and experiences of Aboriginal and Torres Strait Islander people from communities across NSW and the ACT.

The ALS notes that there is a strong need for culturally-appropriate support for Aboriginal and Torres Strait Islander clients – including survivors of family violence – in both the state/territory and federal court jurisdictions. The ALS submits that resources should be prioritised for these supports, given that, as at 2015 the rate of reported domestic violence-related assaults for Aboriginal women in NSW was **four times higher** than for the whole population.[1] The ALS submits that funding should be directed to Aboriginal and Torres Strait Islander legal services and community-controlled organisations that provide legal advice, support, healing and guidance for Aboriginal and Torres Strait Islander people navigating the family law system and dealing with family violence.

[1] NSW Government (2015) *Women in NSW 2015: Annual report on progress towards equality in NSW*, Department of Family and Community Services and NSW Health, Sydney, p.77.

Exercise of family law jurisdiction by state and territory courts

Part 1 Division 1 of the Exposure Draft intends to expand the number of state and territory courts vested with family law jurisdiction to include Children's Courts, allowing these courts to make family law orders in the appropriate circumstances. It is suggested that this amendment will reduce the need for families to deal with proceedings in both state/ territory and federal jurisdictions in certain circumstances.

The ALS supports these amendments as processes intended to minimise numerous court attendances in various locations. The ALS submits that this is of particular importance for those Aboriginal and Torres Strait Islander clients who may be reluctant to voluntarily engage in the federal family law system,[2] and may benefit from continuity in the court process. It may also allow for expedited processing of certain applications, such as family law watchlist applications, especially given the current delays in the federal jurisdiction.

However, the ALS stresses the need for further training of judicial officers in the Children's Court to improve their understanding of family law issues, including training in relation to consideration of a child's right to enjoy their Aboriginal and/or Torres Strait Islander culture,[3] whilst noting the resource implications of that training.

The ability of Children's Courts to exercise family law jurisdiction in making parenting orders is likely to be a positive amendment, but only if proper training and information is provided to judicial officers and solicitors. This includes making the proper court forms available on the Children's Court website and ensuring appropriate practice notes are in place. The ALS submits that without the provision of relevant information and training, there is likely to be further confusion, delay and frustration for clients, lawyers and the court.

Summary decrees

The proposed s.45A contained in the Exposure Draft sets out situations in which it may be appropriate for the court to make a summary decree, including in situations where there are no reasonable prospects of successfully defending or prosecuting proceedings.

The ALS supports this amendment, noting that the section does not expand upon the existing powers under legislation, but clarifies and gives extra force to the court's ability to deal with vexatious or frivolous proceedings.

Creation of offence for breaching personal protection injunction

Part 2 of the Exposure Draft intends to make it a criminal offence to breach a personal protection injunction issued under the Act in order to further protect victims of family

[2] See e.g. FVPLS Victoria, Improving accessibility of the legal system for Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault, Paper 3 (June 2010) 9-11.
[3] *Family Law Act 1975* (Cth) s.60CC(3)(h).

violence. This makes breaching a personal protection injunction a private (civil), rather than public (criminal), matter.

The ALS supports this amendment as it sends a clear message about the importance of abiding by personal protection injunctions, and the serious nature of any breach of personal protection injunctions. This may also provide the protected person with additional comfort, satisfaction, and a feeling of security and safety.

The ALS also supports the amendment as it removes the need for the protected person to be involved in enforcement proceedings (although the protected person would still have the option to enact civil enforcement proceedings). However, the ALS echoes the submission of the Law Society of NSW that there must be proper consideration of the potential for concurrent proceedings where an apprehended violence order ("AVO") is in place and has also been breached.[4] It may be beneficial for there to be a notification system, or the establishment of an information-sharing protocol, between courts in order to reduce the potential for confusion. The ALS seeks clarification of how these situations will be dealt with by the courts.

Given that an additional criminal offence will be created, the ALS would support further training for police so as to avoid confusion in handling breaches of injunctions. The ALS would also support further training of police officers around engaging with victims and survivors of family violence, and in particular Aboriginal and Torres Strait Islander victims and survivors. The ALS submits that police would benefit generally from further training in the following areas, and specifically how these factors relate to family violence and trauma:

> *the history of genocide committed against Aboriginal and Torres Strait Islander people, the impacts of racism…white privilege, systemic racism, and acculturation stress.*[5]

Removal of 21 day time limit on state or territory courts' power to vary, discharge or suspend an order

Item 19 of the Exposure Draft would amend s.68T(1)(b) of the Act to remove the strict 21 day time limit placed on the operation of a state or territory court's revival, variation or suspension of an order powers in the context of proceedings to make an interim family violence order or an interim variation of a family violence order.

The ALS supports this amendment as it will eliminate the need to seek a variation of the order in the family law courts within 21 days. Given the current delays in family law courts it is unlikely that this time frame will be met, potentially resulting in two inconsistent orders

[4] See Law Society of NSW, Submission to Attorney-General's Department, *Amendments to the Family Law Act 1975 to respond to family violence*, January 2017, 2.

[5] Leticia Funston, "Aboriginal and Torres Strait Islander Worldview and Cultural Safety Transforming Sexual Assault Provision for Children and Young People" (2013) 10 *International Journal of Environmental Research and Public Health* 3818, 3823.

applying to the same parties. The ALS therefore submits that the removal of the 21 day time limit will assist in ensuring consistency of orders between jurisdictions.

Dispensing with explanations regarding orders of injunctions to children

The proposed sections 68P(2A) and 68P(2B) contained in the Exposure Draft specify that the court is not required to provide an explanation to a child of an order made or injunction granted under the Act if the child is too young to understand the explanation, or it is in their best interests not to receive an explanation.

The ALS supports this amendment. The ALS submits that by allowing judicial officers to determine whether it is in the child's best interests not to receive an explanation of the order, unnecessary stress for the child may be avoided in certain circumstances. In some cases, the child may have met with numerous family report and conference memorandum writers, the Independent Children's Lawyer, and psychologists throughout the family law proceedings. It may be unnecessary, stressful, and even traumatic for the child to meet with another expert or professional in order to receive an explanation of an order or injunction.

Given that family law is a specialised area of law, the ALS submits that judicial officers are best placed to determine whether it is appropriate or necessary to explain an injunction to a child. It may also be appropriate for judicial officers to seek a further opinion from other professionals, such as child psychologists, in certain circumstances to assist in making their determination.

Thank you for the opportunity to respond to the proposed amendments.

Yours sincerely

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