

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

Family Law Amendment (Family Violence and Other Measures) Bill 2017: Exposure Draft Provisions

Thank you for the opportunity to comment on the Exposure Draft Provisions which seek to amend the Commonwealth *Family Law Act 1975* to improve the family law system's response to domestic and family violence.

Any steps taken in an effort to address family violence are commended and the policy intention of the proposed legislative and practice changes to assist families experiencing violence is appreciated. The changes raise a number of concerns in relation to their impact on the South Australian Magistrate and Youth Courts.

It should be noted that, although courts of summary jurisdiction in each State and Territory already have jurisdiction under Part VII of the Family Law Act, South Australian courts do not currently deal with family law matters. It is our understanding that this is as a result of an arrangement made in 1975 when South Australia provided funding for an additional Family Court judge to the Federal Family Court.

That said, increasing the current limit of state and territory jurisdictions to hear family law property matters, and creating a greater expectation that state courts will deal with family law matters, has the potential to significantly increase the workload of the Magistrates Court. The current limit for property matters is prescribed in the Act and sits at \$20,000. Allowing a new limit to be prescribed in the regulations rather than in the Act is concerning as this limit could be increased in the future without consultation with the States and Territories.

The inclusion of the Youth Court, which would allow the Court, in certain circumstances, to exercise jurisdiction under the Family Law Act when there are proceedings before the Court under the *Child Protection Act 1993*, has the potential to significantly impact on the workload of the Court. The South Australian Courts Administration Authority has advised that the number of applications being made to the Youth Court under the Child Protection Act has increased significantly in the last few years from 794 in 2014-15 to 1,093 in 2015-16. Many of these applications are brought on the basis of the child or children being at risk because of the presence of family violence. Several of these matters also involve proceedings being brought contemporaneously in the Federal Circuit Court by a parent or carer of the child or children, seeking orders with respect to parental responsibility. Adding family law matters to the list of matters to which the Youth Court must attend could add significantly to the workload of the court and greatly increase the complexity of matters to be determined, particularly as South Australian magistrates have little to no experience in family law matters.

The potential increase in workload is extremely difficult to quantify as we have been unable to obtain any statistics from the Family and Federal Circuit Courts. Without sufficient data, the impact on the workload of the court and whether additional resources are required cannot be determined.

It is noted that the proposed changes will be accompanied by non-legislative measures, a National Domestic and Family Violence Bench Book and judicial training, to support state and territory courts to exercise jurisdiction under the Family Law Act. However, it is not clear what level of funding is available for this training and how extensive it will be. Even if South Australian Magistrates receive an appropriate level of training to enable them to confidently exercise family law jurisdiction, additional resources would be required for them to do so as it is not part of the current workload of the Court.

It is also proposed to amend the Family Law Act to make it a criminal offence to breach a personal protection injunction order. It is noted that, at present, contravention of an injunction can only be enforced if the aggrieved party brings a civil enforcement action in a family court. This would appear to limit the effectiveness of such orders. The effect of the new criminal jurisdiction arising from the creation of this new offence is again difficult to quantify as there are no statistics available on the number of personal protection injunctions issued by the Family Court.

The removal of the 21 day time limit on a state or territory court's variation, revival or suspension of a family law order in interim domestic violence order proceedings is supported. If a state or territory court chooses to exercise power under section 68R of the Family Law Act, then it makes sense for the revival, suspension or variation of the family law order to continue to have effect until such time as the matter is resolved or another order is made.

Legislative Services
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