



Magistrates' Court of Victoria's Response to Proposed Amendments to Family law Act 1975 to respond to Family Violence

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Family Violence Programs and Initiatives Unit

**The Magistrates'
Court of
Victoria**

www.magistratescourt.vic.gov.au

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1 Introduction and Context

The Magistrates' Court of Victoria (MCV) welcomes the opportunity to respond to the Commonwealth Government's Consultation paper on Amendments to the Family Law Act 1975 to better respond to family violence.

The MCV (and the Children's Court of Victoria) made submissions to the Family Law Council's Inquiry into Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems and this response should be considered in conjunction with those submissions.

2 Demand on the MCV

The bulk of the volume of family violence matters working their way through courts rests with the MCV and while the MCV has committed to implementing the court related recommendations arising out of the Royal Commission into Family Violence (RCFV), the MCV requires adequate recognition of the resourcing and infrastructure limitations currently impacting on its operations. Currently, the immense workload of the MCV, and its additional work in creating opportunities to drive innovative change, is limited by resourcing constraints.

The MCV is consulted every day in relation to a broad range of proposed reforms flowing from the RCFV and other various proposed areas of development, all of which have the potential to significantly impact the operation and management of the MCV whether directly or indirectly. The MCV has always been concerned about the experiences of court-users in the area of FV and is committed to ensuring that the MCV is a place which reinforces family members' rights to safety, and dignity and holds perpetrators of violence to account. Still, little has been done to adequately address the current pressures which are burdening the courts and impacting on the experiences of court-users.

The MCV supports the reforms arising from the recommendations made in the Family Law Council's interim and final reports, and there are clearly well articulated, strong policy foundations for those recommendations. Careful, sequenced infrastructure development and resourcing support is required for implementation to ensure any risks to the safety of families are mitigated. Failure to implement this approach is likely to aggravate the risks to family safety.

3 Issues concerning Information-Sharing

The MCV is generally supportive of all the proposed areas of amendment in the consultation paper (which we have outlined in the table below). However, until issues of adequate resourcing and the complexities around information sharing are addressed, the MCV will struggle to progress these areas of reform. Proper consultation and planning prior to the enactment of these amendments is required to ensure the amendments are properly achieving their aims. The MCV have already raised with the Family Law Branch of the Commonwealth Attorney-General's Department, some suggested additional consultation exercises, and the MCV looks forward to continuing to engage in this process.

Limitations on the sharing of information is an issue raised several times throughout our comments below. We note that the RCFV report also recommended that Commonwealth agencies could potentially form part of the "prescribed organisations" that would be able to share information under a new Family Violence Information Sharing protocol. Further clarification would be needed in respect of whether the Commonwealth is supportive of this approach.

3.1 Issues with Information-Sharing between Federal and State Courts

As the MCV is moving towards a specialist family violence court (SFVC) model (which is an integrated, multi-jurisdictional, one-judge/one-family model of practice in relation to FV matters), a proper evaluation of the MCV's exercise of family law jurisdiction will need to be conducted, to build a proper evidence-base for broader implementation. Currently the MCV exercises limited and ad-hoc Family Law jurisdiction. Magistrates in regional areas are more likely to exercise these limited powers, primarily in relation to urgent parenting and recovery order applications. There are further limitations with the MCV's ability to extract family law data from these court locations due to inconsistencies in record keeping and different practices between these courts.

The MCV has encountered that presently the Federal Courts on Circuit in these areas are seeing families and hearing their family law matters merely days apart from their family violence related matters in the MCV. This means that prime opportunities to track families coming into contact with the MCV are missed. There is no systematic way for the Federal Circuit Court and MCV to communicate with one another in relation to information relevant to risk, even though the families are accessing the same court building. This highlights that information sharing processes between the Family Law Courts and the MCV needs to be broader than just the sharing of court orders.

4 Conclusion

The MCV provides our in-principle support to the proposed areas of amendment below and welcomes the opportunity to work with the Commonwealth Government further to allow for the proper integration of both jurisdictions in a holistic, measured and appropriate way. This will improve the experiences of families coming into contact with the courts due to family violence, and places families at the centre of reform.

5 Table 1 – Overview of MCV’s comments

Legislative Amendment	Comments
Criminalising breaches of personal protection injunctions	<ul style="list-style-type: none"> • Subject to funding, the MCV would support this proposed amendment • Further clarification should be given to where breach proceedings are brought if Victoria Police will have the power to enforce those breaches as this is likely to also increase the workload of MCV if heard in the Magistrates’ Court • If breach proceedings are enforced by Victoria Police and brought in the MCV, will the MCV have access to the injunctions made? How does the Commonwealth Government propose to allow this type of information sharing between the jurisdictions? • How will this fit in with the Specialist Family Violence Court (SFVC) model?
Strengthening orders issued by state and territory courts	<ul style="list-style-type: none"> • Subject to funding and appropriate resourcing, the MCV supports the removal of the 21 day time limit on an application to vary, revive or suspend a family law order made during interim family violence proceedings • This is, however, likely to significantly increase the workload of the MCV as parties are likely to utilise this provision more readily where there is greater certainty around its application and there are likely to be significant resourcing implications as a result; • In order to effectively make these orders the MCV should therefore have access to existing FLA orders to ensure that in exercising its power to suspend, vary or revive existing FLA orders it is doing so consistently and with regard to those FLA orders, and not relying on parties self-reporting, particularly where there are not represented (typically on an interim basis). The MCV therefore recommends investment in better resourcing for the MCV and requires further clarification around <u>how information is to be shared</u> between the MCV

	<p>and FCC/Family Court</p> <ul style="list-style-type: none"> • It follows that In order to ensure magistrates are making informed decisions in accordance with legislation and from a problem solving approach (where appropriate), the Court needs to be able to have access to (and share) any information, including orders made in other jurisdictions, relevant to the issues before the Court • How will this fit in with the SFVC model?
<p>Increasing the power of court to summarily dismiss unmeritorious claims</p>	<ul style="list-style-type: none"> • The MCV doesn't oppose amendment which would give the Federal Circuit Court/Family Law Courts power to dismiss matters where it is clear they have been initiated for an improper purpose, or where it has no reasonable prospect of success (as opposed to someone who presents as unsophisticated, ill prepared or self-represented) • The MCV has experience of legal proceedings being used as a tool for intimidation and harassment in the FV context. This is consistent with the discussion in the Family Law Council's Final report, June 2016 –Families with Complex Needs and the Intersection of the Family Law and child protection systems
<p>Enabling the court to explain orders in a manner that supports the best interests of the child</p>	<ul style="list-style-type: none"> • MCV supports the proposal to dispense with the requirements to explain the orders to improve the experiences of children who are the subject of these proceedings, and also defers to any comments raised by the Children's Court of Victoria in response to this issue.
<p>Vesting state and territory children's courts as courts of summary jurisdiction</p>	<ul style="list-style-type: none"> • Subject to funding, the MCV supports the proposed reform which would allow the Magistrates' Court to make orders under Part VII, extending beyond those situations where the parties consent to the making of the orders • MCV supports the Children's Court exercising family law jurisdiction where it's already hearing a matter in relation to a family and is already aware of the family's circumstances to avoid or limit duplicity of proceedings • This is, again, likely to significantly increase the workload of the MCV and CCV and there are likely to be significant resourcing implications as a result; the MCV therefore recommends investment in better resourcing for the MCV and CCV and requires further clarification around how information is to be shared between the MCV and FCC/Family Court • Consideration should also be given to clarifying the law as to the power of courts of summary jurisdiction to make final orders in unopposed applications.
<p>Court may give reasons in short form for a decision it makes in relation to an interim parenting order</p>	<ul style="list-style-type: none"> • The MCV seeks further clarity in relation to the following (particularly in the context of appeals from MCV on decisions of fact and law): <ul style="list-style-type: none"> ○ Whether a short form judgement takes the form of a statement around the material findings of fact and an explanation of how they were reached; a statement of the relevant law; and an explanation of how the application of the facts and law results in the decision. In which case, this looks like any other form of judgement; or ○ Whether a short form judgement takes the form of merely stating the facts (and not explaining how a fact was found),

	<p>stating the relevant law and the decision.</p> <ul style="list-style-type: none"> • The MCV notes that stating the facts and relevant law is a relatively straight forward exercise. On the other hand, explaining how facts were found can be a lengthy exercise. • Explaining how facts were found and giving reasons is still a necessary part of the interlocutory process to give effect to the principle that justice must be done and be seen to be done. • Without elaboration in the legislation, the intention behind the provision may well be rendered largely meaningless by a court of appeal or review.
Property jurisdiction of state and territory courts	<ul style="list-style-type: none"> • Subject to funding and appropriate resourcing, the MCV supports amendment to section 46 to remove the \$20,000 monetary limit and provide for the limit to be prescribed by regulations • Again, if the monetary limit is increased to a more realistic amount, it is likely that the Magistrates' Court will be utilised more often to resolve family-property related issues and that without adequate funding and resourcing, the courts are likely to become over-burdened with these disputes thereby leading to risks of delays • Given the prevalence of financial hardship and economic violence and given the pervasive nature in which it is perpetrated/presents, these matters can be highly time consuming and a can be a significant source of stress and anxiety for parties in addition to contested children's matters • While pursuing property orders through the magistrates court will be more accessible for victims of violence than instituting fresh proceedings in the family law courts, it is still a relatively under-utilised and untested area and is likely to place significant pressure on courts and the duty lawyers who work within those courts until there is adequate training provided and adequate resourcing • Where would this fit within the SFVC model?
Non- Legislative Amendment	Comments
Judicial Professional Development	Support
National Domestic and Family Violence Bench book	Support