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Relationships Australia South Australia  
Response to the Public Consultation Paper detailing the  
proposed amendments to the *Family Law Act 1975*

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## Introduction

This response to the Public Consultation Paper detailing the proposed amendments to the *Family Law Act 1975* (responding to family violence) has been prepared by Relationships Australia South Australia and the SA Pathways network. It draws on the extensive experience and the breadth of programs provided in South Australia by community legal and family support services.

South Australian community legal and family support services identify and respond to many families living with family violence. Our services work with all sections of the community and contribute to healthy and safe families through a diverse range of programs including family dispute resolution, legally assisted mediation, post separation counselling, parenting programs, child contact services and relationship education. We are intimately aware of the devastating impact family violence has on South Australian families. A commitment to strengthen family safety and wellbeing underpins all our services and programs.

We recognise the importance of a legal framework that is able to effectively respond to family violence. We believe that protection for victims of violence (mostly women and children) should be underpinned by the law and robustly policed.

It is our view that the proposed changes to the *Family Law Act 1975* are a positive reflection of the general community's desire to ensure family violence is understood as a violation of human rights. The intention to expand the jurisdiction of state and territory courts and criminalise breaches of personal protection injunctions are especially welcome.

We offer specific comments as well as provide general comments about direct and indirect impacts we foreshadow the amendments may have on family safety.

## Proposed Amendments

- 1. Extend summary jurisdiction of state courts by:**
  - a. Confirming that State Courts can make parenting orders**
  - b. Increasing monetary limit of what the family law property matters the courts can hear**

Response: Whilst we are not in a position to provide comment from a legal perspective, we raise the following practical concerns:

- We query whether judicial officers in the state court system have sufficient specialised knowledge and training regarding the Family Law Act. For example, we are concerned that making parenting and/or property orders by state courts requires a thorough understanding of the family violence dynamics and its impact. We believe that without additional training complemented with other services, poorly structured orders may put victims of violence at greater risk.
- Judicial officers in the state court system may need to acquire more specialised knowledge and training regarding the intersection of family law and family violence issues in order to make appropriate and effective parenting orders under the Family Law Act.
- Will the state legal system will be sufficiently funded to provide resources for alternative dispute resolution in the same way that such services are offered in the family law courts (for example, a court-based mediation service) if there is an increase in the involvement of state courts in the making of parenting/property orders?
- Will there be additional funding provided to services, such as family support services, domestic violence services and community based legal centres in the state-based system to assist women and children?
- Sufficiently funded behaviour change programs should also be made available for perpetrators of family violence.

## **2. Short form judgments for interim parenting orders made by state courts**

- We support this amendment, provided that the short form judgments are provided in a timely way. Stipulating a timeframe may be helpful in this regard.
- We note that the short form judgment should provide reasons which give each party the opportunity for appeal where necessary.

## **3. Criminalising breaches of Family Court safety injunctions**

- We support the proposed amendment insofar as it enables the Family Court to criminally enforce personal protection injunctions where they were previously unable to do so.
- We consider it important to ensure that the Family Court judicial officers are provided with up to date and ongoing training about family violence.
- We note that victims of violence ordinarily apply for safety injunctions in the state- based courts. Processes for ensuring different courts do not make contradictory order that put victims of violence at further risk need to be established.
- We further suggest that the state and family law courts could be provided with greater access or be provided with more efficient investigative powers to obtain information from non-privileged sources, such as from child protection agencies, the police, medical/mental health organisations, drug and alcohol centres, and other such services.
- We also support the state and family law courts being provided with easier and more effective ways to access other forms of evidence, such as from domestic violence services.

## **4. Removal of 21-day time limit**

- We support this proposed amendment.

## **5. Making it easier to dismiss unmeritorious claims**

- We make comment that whilst we acknowledge the intention of this amendment, insofar as it applies to perpetrators of family violence, we are concerned that it may be used by perpetrators especially where they are self-represented, to seek dismissal of a survivors claim.
- We are concerned the amendment will mean that survivors' claims will be inadvertently dismissed, especially where there may be a lack of knowledge or understanding about the impact of trauma for survivors of family violence by the judicial officers.

## **6. Removal of ability to order that a party perform conjugal rights**

- We support the long awaited repeal of this antiquated provision of the Act.

## General Comments

In the context of addressing the complex issue of family violence, we believe strong collaborative relationships across the entire system remain vital. We believe that effective, multi-disciplinary and cross agency relationships between all of the key players provide opportunities in which to develop common understandings and joined responses to family violence. Collaboration between family support services, the community legal system, the domestic violence sector, the police and the court system enhance the safety and wellbeing of families. Under the proposed amendments, particularly in respect to the proposed expansion of the jurisdiction to the state courts, we envisage that resources and focused efforts will be needed to include additional stakeholders and will therefore require proper funding to operate well.

We remain committed to working collaboratively across all state and federal courts as well as with the many community services implicated in these reforms. We will continue to share ideas and provide joined up services to enable separated or separating families (particularly for women and children who have experienced family violence) a better experience during a difficult time. We believe current initiatives such as the Memorandum of Understanding with the Pathways Network 'Kiosk' at the South Australian family law courts have demonstrated at the Commonwealth level that shared understandings about services currently available, waiting lists and processes involved in accessing the different community based services are of real benefit to the quality and nature of orders made by the court. We continue to be prepared to be involved in this collaborative approach. We would regard a similar collaboration with the state system to be an example of the sort of resourcing necessary to enable the proposed amendments to be effective.

We also believe that a common language and shared approach to risk management across the family law system enable different practitioners and multiple services to confidently identify safety risks including the parenting and mental health difficulties commonly associated with family violence. Professional development that ensures common risk frameworks and shared screening processes are used across the sector, including by the state and federal courts, in our view would create a more effective way to obtain accurate and up-to-date information from families addressing the impacts of family violence (and other risks) for women and children, and enable tailored and effective legal and service responses.

We appreciate the opportunity to provide these comments.