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Public Consultation: Family violence amendments  
Family Law Branch  
Attorney-General's Department  
3-5 National Circuit  
Barton ACT 2600

By email to [familylawunit@ag.gov.au](mailto:familylawunit@ag.gov.au)

Dear Sir or Madam,

**Submission to the Exposure Draft: Family Law Amendment (Family Violence and Other Measures) Bill 2017 - Top End Women's Legal Service Inc.**

Thank you for inviting comments to the Family Law Amendment (Family Violence and other measures) Bill 2017 ('the Bill'). The Top End Women's Legal Service Inc. ('TEWLS') welcomes the opportunity to make a submission to the proposed amendments to the *Family Law Act 1975* (Cth) ('the Act').

About TEWLS

TEWLS is a community legal centre focused on the advancement of women's rights. We are funded by the Commonwealth Attorney General's Department and Department of the Prime Minister and Cabinet to provide legal advice, casework, referrals and community legal education to women in the Top End of the Northern Territory ('NT'). TEWLS provides assistance in a number of areas of law including domestic and family violence, family law, compensation for victims of crime, sexual assault, housing, discrimination, workplace health and safety, employment law, motor vehicles and consumer credit debts. We provide outreach services for culturally and linguistically diverse women, Aboriginal women in the town communities surrounding Darwin and women incarcerated in the Darwin Correctional Precinct.

In 2015 – 2016, approximately 60% of TEWLS clients sought assistance in relation to domestic and family violence matters. In many of these matters, domestic and family violence issues were intertwined with family law issues, including parenting arrangements and property settlements.

## Our Submission

In general, TEWLS supports the Bill and endorses the following amendments:

- Introduction of section 69ZL of the Act should allow for efficiency of State and Territory Courts in proceedings for interim parenting orders;
- Repeal of the 'obligation to provide marital services' provision – this provision is out of date, does not reflect current law in other areas and is against the principles of equality within relationships;
- Introduction of sub-sections 68T(1)(b) and (c) of the Act will bring the section's operation in line with section 68R of Act's provision for family violence orders, as well as acting to mitigate the potential inconsistencies on the face of Court orders and risks to children and their carers; and
- Introduction of subsections 68P(2A), (2B) and (2C) of the Act will focus the operation of section 68P of the Act on the best interests of the child.

TEWLS holds concerns in relation to key issues included in the Bill, where our submission is based on our experience within the Top End of the NT.

### **A Expansion of State and Territory Courts' family law jurisdiction**

TEWLS supports the proposed amendments that will enable State and Territory Courts to deal with parenting and property matters under the Act. These amendments will allow more complex matters involving family violence and child protection concerns to be dealt with in one court, encouraging consistency while discouraging duplication. In addition, the proposed expansion will facilitate increased access to justice for those residing in the rural and remote areas where the Local Court attends on circuit. TEWLS also supports the proposed development of the *National Domestic and Family Violence Bench Book* for judicial officers and training for judicial officers on family violence and family law.

While supporting the proposed expansion, TEWLS holds concerns in relation to funding; specifically, that there is no proposal to increase funding for resources, including court resources, judicial officers and legal advocates, so as to carry the proposal additional workload of the State and Territory Courts. It is also noted that the Public Consultation Paper does not propose to provide training to lawyers, police, non-judicial court staff or to child protection personnel in relation to the amendments. If adequate resources and training are not provided to those professionals who assist the Court to run on a day-to-day basis, there is a risk that the Court will not be encouraged to exercise the proposed jurisdiction, meaning the expansion would become defunct.

### **B Sections 68C and 114AA of the Act – Breaches of injunctions**

While TEWLS welcomes the intent of the proposed sections 68C and 114AA of the Act, it is of some concern that there appears to be no provision for training to State and Territory police in relation to their expanded powers in this area. In our experience, this would be particularly poignant for clients who would have been advised in relation to enforceability but would subsequently be unable to access enforcement through their local police service, who would be unaware of the new powers under the Act. Further, we note that the

proposed restriction of injunctions made under sections 688(1)(c) and (d) of the Act is a potential point of confusion, where the purpose of the injunction would seemingly need to be included on the injunction itself to empower police to exercise their enforcement powers. So as to remedy this confusion, TEWLS recommends that the proposed offence provisions in relation to breaches of injunctions under the Act be broadened to include all actions prohibited by the relevant injunction.

In the NT, the proposed amendments will create inconsistency in penalties provided for breach of a domestic violence order ('DVO') made under the *Domestic and Family Violence Act* (NT) ('DFVA') and those penalties for breach of an injunction as proposed by the Bill. Were the Bill to be imported into the Act, there would exist two penalty schemes for defendants of DVOs and injunctions in the NT:

- Under the DFVA, the current penalty for breach of a DVO is two years imprisonment or 400 penalty units; and
- Under the Bill, the penalty for breach of an injunction is two years imprisonment or 120 penalty units under the Act.

Noting that penalty units differ between the NT and Commonwealth jurisdictions, the Bill would create an offence scheme that is effectively less than that which is available under the current DFVA. As a consequence, protected persons may still feel the need to have orders under both the DFVA and the Act, or may choose not to have an injunction made under the Act. So as to ensure consistency and equal protection for protected persons under both the DFVA and the Act, we recommend that the Act should provide that the penalty for breach of an injunction is the penalty provided under the equivalent legislation of the jurisdiction within which the offence is committed.

**Recommendation 1:** TEWLS recommends that the proposed offence provisions in relation to breaches of injunctions under the Act be broadened to include all actions prohibited by the relevant injunction.

**Recommendation 2:** TEWLS recommends that the Act to provide that the penalty for breach of an injunction is the penalty provided under the equivalent legislation of the jurisdiction within which the offence is committed.

## **C Section 45A of the Act - Dismissal of unmeritorious applications**

While TEWLS welcomes the clarification of the courts' power to summarily dismiss unmeritorious applications, we are concerned that a dominant party may misuse the introduction of section 45A of the Act, particularly where family and domestic violence is an issue. We note that this concern was also raised by Women's Legal Services Queensland and the Australian Women Against Violence Alliance during the consideration of the lapsed Family Law Amendment (Financial Agreements and Other Measures) Bill 2015. An unrepresented party who is experiencing the stress often accompanying applications under the Act may make errors in presenting their case, giving it the appearance of being without merit, frivolous or vexatious. This is particularly concerning given the upcoming funding cuts of 30% to Community Legal Centres, particularly including Women's Legal Services, in the

coming financial year, which will see an increase in self-represented applications coming before the Courts. So as to ensure that section 45A of the Act is able to be used appropriately, we recommend the reconsideration of funding cuts to Community Legal Centres, particularly including Women's Legal Services.

**Recommendation 3:** TEWLS recommends the reconsideration of funding cuts to Community Legal Centres, particularly including Women's Legal Services.

### Conclusion

We thank you for your consideration of the above and would be pleased to be contacted should you wish to discuss this submission further on (08) 8982 3000 or by email to admin\_tewls@clc.net.au.

Yours faithfully,

**TOP END WOMEN'S LEGAL SERVICE INC.**



Vanessa Lethlean  
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