

Quote in reply: 21000340/55: Family and Children's Law Committees

30 September 2011

DV 2011 BILL INQUIRY SUBMISSION 002

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Dear Research Director

DOMESTIC AND FAMILY VIOLENCE PROTECTION BILL 2011

Thank you for the opportunity to provide comments on the *Domestic and Family Violence Prevention Bill 2011* (the "Bill"). This letter has been compiled with the assistance of the Family and Children's Law Committees of the Queensland Law Society ("the Society").

1. Consultation

The Society previously made submissions to the Minister for Community Services, Housing and Women on the Draft Exposure of the Bill. The Society has also made submissions on the Review of the *Domestic and Family Violence Protection Act 1989*.

Domestic and Family Violence Issues

2. Principles for administering the Act

The Society notes that clause 4(2)(c) of the Bill sets out examples of classes of people that "have characteristics that may make them particularly vulnerable to domestic violence". The Society submits that there is a class of persons that is notably absent from the list and this is:

- persons who have previously suffered physical, emotional or domestic abuse or violence.

The Society recommends their inclusion in the Bill.

The Society further notes that clause 4(2)(d) of the Bill includes a provision that, where there are conflicting accounts of domestic violence or indications that both persons in a relationship are committing

acts of violence, the person most in need of protection should be identified. The Society questions the inclusion of this provision in circumstances where that issue may be difficult to determine and the effect of such a determination is unclear. The Bill contains no guidelines or indications of how this situation is to be addressed by the courts in this kind of complex domestic relationship.

Children's issues

3. Domestic Violence Orders

Clause 22

We are concerned that clause 22 of the Bill is unclear. Clause 22(2) states:

*"a child can only be named as the aggrieved or the respondent if an intimate personal relationship or an informal care relationship exists between the child and the other party named in the application, order or notice."*¹

Informal care relationships exist between 2 persons if 1 of them is or was dependent on the other person (the carer) for help in an activity of daily living. Informal care relationships do not include commercial arrangements.² Commercial arrangements may include arrangements where no fees are paid (volunteer services).³ In some instances, foster care or kinship relationships may be commercial relationships and not "informal care relationships". Therefore, a person relying on the Bill may not easily discern whether the legislation permits a DVO to be made between a child/young person and their informal carers.

Clauses 53 and 54

In relation to Children's issues, the Society has had the benefit of reading the submissions made by the Women's Legal Service Inc.

We agree with their recommendation in part 4.2 which is reproduced below:

That the Court be legislatively required to consider whether a child should be protected by the DVO. Further, a child must be protected by the DVO if they were exposed to violence or the aggrieved or the child reasonably fears that they will be exposed to violence.

Clauses 53 and 54 of the Bill relate to the naming of the child on the DVO. The Society submits that when a child is named on a DVO, the details of the child should be de-identified in order to preserve the identity of the child. It is also our view that in order to preserve confidentiality, that any information concerning the child should not be made publicly available or shared with Government Departments, without the knowledge of the child and done in a manner that is discreet and controlled.

We recommend that Part 5 of the proposed Bill (perhaps near or in clauses 159 or 160) be amended to make provisions for the confidentiality of child information that is recorded on a DVO.

¹ Clause 22(2) of the Bill.

² Clause 20(3) of the Bill.

³ Clause 20 (4)(a) of the Bill.

Clause 164

In respect of the appeal provisions, in particular clause 164, there needs to be clarification as to who is,

“A person who is aggrieved by a decision or order made by a court in a proceeding under this Act may appeal against an order of the court in the proceeding or a refusal of the court to make an order”.

We request clarification on the situation where an order is made in the context of child protection proceedings. Should all parties to the child protection proceedings being considered aggrieved persons for the purposes of an Appeal, such as the Department, young people and separate representative? We note that the definition of ‘aggrieved’ in the dictionary, it refers to clause 21(1), which defines the aggrieved in respect of the a matter at first instance.

Clause 188

Clause 188 deals with the giving of document to child. Clause 188(2) deems:

- (2) *A person responsible for giving the document to, or serving the document on, the child—*
- (a) *must also give a copy of the document to a parent of the child; and*
 - (b) *must not give the document to, or serve the document on, the child at or in the vicinity of the child’s school, unless there is no other place where the giving of the document to, or service of the document on, the child may be reasonably effected.*

Examples of other special circumstances—

- *the child is estranged from the child’s parents*
- *there would be an unacceptable risk of harm to the child if the parent was given a copy of the document*

Under the provisions of clause 188, it seems that there is no opportunity for a young person, to be heard by the Court on whether their parent should be served with either a copy of the document.

If the Act defines a child as someone under the age of 18, there will be young people under the age of 18 who does not want their parents being given access this information. In our view, the Court should be provided with the discretion to dispense with service on parents, or at the very least, have a sub-clause that requires service to only occur on a parent when directed by a Court (that is after the matter has had its first mention).

4. Conditions on contact

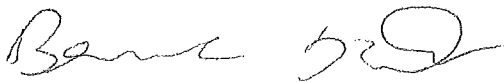
The Society also notes that clause 62 allows a party to apply to the Court for a condition to be imposed on the respondent that would prevent or limit contact between the respondent and the child of the respondent.

The Society is very mindful of the competing issues to ensure the interests of the child are paramount and also that there is not an abuse of process by an aggrieved party. The Society supports clause 62(2) as the most important principle in deciding these matters.

Thank you again for the opportunity to make comments on the Bill.

Please do not hesitate to contact our Senior Policy Solicitor Ms Binny De Saram on [redacted] or
[redacted] or our Policy Solicitor, Ms Raylene D'Cruz on [redacted] or
if you wish to discuss these concepts further.

Yours faithfully



Bruce Doyle
President