

8 September 2016

Our ref BP:MD

Research Director
Health, Communities, Disability Services and Domestic and Family Violence Prevention
Committee
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Dear Research Director

Domestic and Family Violence Protection and Other Legislation Amendment Bill 2016

Thank you for the opportunity to provide comments on the Domestic and Family Violence Protection and Other Legislation Amendment Bill 2016 (the Bill).

This response has been compiled with the assistance of the Society's Domestic Violence Working Group which has substantial expertise in this area.

The Society applauds the Government's commitment to rapid action on the issue of domestic violence and initiatives being undertaken to reduce the impact of this scourge on our community.

For its part, QLS has recently developed best practice guidelines to assist practitioners in dealing with legal matters that are impacted by domestic and family violence. This is a direct response to recommendation 107 of the *Taskforce Report – Not Now Not Ever – Putting an End to Domestic and Family Violence in Queensland*. Additionally, QLS has created a public referral list on our Find a Solicitor service for Queenslanders seeking the assistance of practitioners who specialise in the legal issues associated with family and domestic violence.

Direction to remain or move

The Bill proposes a scheme for a police officer to direct a person to remain or to move to a place and remain for up to 2 hours. In doing so a police officer must inform the person they are not under arrest or in custody during this time under proposed section 134A(5). However, under proposed section 134F it is an offence not to comply with this direction. To properly impart the nature of the force of the order, it is submitted the obligation should be for a police officer to inform the person subject to the direction that:

- The person is being detained subject to the law; and
- It is an offence not to comply with a direction issued under proposed section 134A.

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Further, despite the obligation to make reasonable efforts to inform a person subject to such a direction of the nature of the direction under proposed section 134A(6), a failure to do so appears to have little or no practical effect given proposed s134(7). It is proposed that if the matters in proposed s134A(5) cannot be relayed at the time a direction is made, there should be an obligation on the police officer to do so as soon as is practical following the issuing of the direction for it to remain in force.

Sharing of certain offences post rehabilitation period

Proposed section 169J empowers the sharing of information about a person's criminal history relating to previous domestic violence offences:

- Despite the rehabilitation period having expired under the *Criminal Law (Rehabilitation of Offenders) Act 1986*; and
- The conviction not having been revived as prescribed by section 11 of that Act.

This amendment permits the sharing of information relating to offences which may not be legally disclosed other than by the permit of the Minister. In doing so, the nature of the benefit to rehabilitation in the *Criminal Law (Rehabilitation of Offenders) Act 1986* is lessened. The Society submits that such an amendment should be carefully considered to ensure it does not prevent or hinder rehabilitation of offenders.

Voluntary intervention orders (VIOs)

The Society submits that there may be unintended consequences to proposed amendments, here. Section 37(2) makes with a VIO a relevant consideration to making a protection order. There being significant backlog around partaking in VIO programs, little empirical data exists around compliance, and so difficulties arise in the Court's consideration of this factor.

Additionally, problems may arise in adjourning applications to enable VIO completion or making a final order with a reduced term and making the order for the VIO at that time (so extracting proper consideration of participation in a program at the time of making an order).

Court may impose other conditions (s 57)

The Society supports the transition from 'may' to 'must' in reference to the Court's consideration of conditions. This will prompt the Court to tailor the orders to parties' particular circumstances.

Omission of mention to respondent in s 57(1) removes consideration of the respondent's interests. This is also desirable, given that the paramount principle underpinning this section is the protection, safety and wellbeing of those experiencing domestic and family violence.

S 69(2) – approved provider programs/availability

Amendments here raise concerns due to the lack of approved provider programs being (a) available and (b) within a reasonable timeframe; noting, for example, that Anglicare currently has a 10-month waits on their program.

S 78 – consideration of family law orders

The proposed amendment from 'may' to 'must' in this provision places the onus on the Court to consider these orders as a step towards bridging the gap between jurisdictional practices

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and may assist in removing our members experience of the Court's reluctance to revise, vary, discharge or suspend the family law order.

s 91 - When court can vary domestic violence order

As expressed in relation to s 37, there is little empirical data attending these matters in order properly to inform the Court's proper consideration of these.

s 92(3)(b) Considerations of court when variation may adversely affect aggrieved or named person

The wording 'there are reasons for doing so' in this proposed amendment is neither certain nor sets clear parameters for the Court's consideration and may need to be further particularized in order to assist both parties in making submissions to the Court, as well as the Court's deliberations around this.

S 97 – end of protection order

This provision refers to a transition from 2 to 5 years for a standard order.

The way the legislation is currently drafted:

- (i) 2 years is the standard minimum threshold; and
- (ii) The Court is directed to consider longer timeframes only where special circumstances call for it.

These proposed amendments (in particular, subsection (2)) create uncertainty around minimum timeframes and the considerations to be undertaken in determining these. In particular, it does not seem clear whether s 97(2)(b) intends the duration of protection orders to be 5 years.

The intention around removing 'special' from 'reasons for doing so' in subsection 2 is also unclear (in particular, given the absence of a definition of 'special reasons' in the Act).

S 101 – police officer may issue police protection notice

This amendment receives the Society's endorsement because it allows greater protection in allowing for circumstances where the respondent is not at the same location as the applicant.

Section 101B also receives endorsement for the extension of police protection orders to include a child, relative or associate of the aggrieved.

106A – Other conditions

The Society endorses this amendment as legislative acknowledgement of separation being a high risk time.

Specifically, however, relating to ouster conditions (106A(1)(c) – 106A(2)(d)(i) and (ii)) requiring a police officer at least of sergeant or senior sergeant ranking, this appears a prohibitive and burdensome requirement not previously featuring in s 105 of the Act. The Society is concerned that this higher threshold requirement could act as a deterrent and have a hampering effect on the seeking of conditions of this nature.

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S 107C – return conditions

Parameters setting out the scope of the ‘stated personal property’ pertaining to police protection notices under this section would, in the Society’s submission, usefully be set. This could be effected by setting out examples, by way of a non-exhaustive list, in the provision itself. Alternatively, an amendment throughout the Act which redefines ‘stated personal property’ could be brought into effect. A third alternative is to write into the Act a requirement that items for collection are stipulated in the order itself.

169C(1)(h)- definition of support services

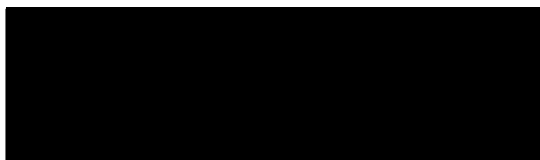
The definition of support services includes legal services in this provision, which concerns information sharing. The Society wishes to draw to the Department’s attention that this may bring unintended consequences where our member obligations (deriving from the regulatory framework already governing lawyers’ conduct in Queensland) conflict, potentially, with provisions of this nature. Following from this, proposed s 169N(3)(a) (concerning protection from liability for giving information) provides an ‘out’ regarding professional conduct breaches. This may unintentionally seek to override solicitors’ professional conduct rules.

Part VI – supporting national recognition of DVOs

The Society endorses this purpose. The process of registering interstate orders was previously prohibitive and subject to unnecessary risk.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Government Relations Principal Advisor, Matt Dunn, on 07 3842 5862 or at m.dunn@qls.com.au.

Yours faithfully



Bill Potts
President