Women's Legal Service

The Research Director
Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee
Parliament House
George Street
Brisbane QLD 4000

Email address: hcdsdfvpc@parliament.qld.gov.au

9 September 2016

Dear Sir/ Madam,

RE: DOMESTIC AND FAMILY VIOLENCE PROTECTION AND OTHER LEGISLATION AMENDMENT BILL 2016

The Women's Legal Service Queensland (WLSQ) is a community legal centre that provides Queensland wide specialist legal information, advice and representation to women in matters involving domestic violence, family law and child protection. We also employ allied domestic violence social workers who assist clients to obtain a holistic response from our service. We offer a range of services including domestic violence duty lawyer services at Holland Park, Caboolture and Ipswich, family law advice at two family relationships centres at Logan and Mt Gravatt and outreach to the Brisbane Women's Correctional Centre. We also employ a specialist rural, regional and remote lawyer who operates a RRR telephone line one day per week. Additionally, we have recently commenced the operation of specialist domestic violence units in Brisbane and the Gold Coast and a health justice partnership with the Logan Hospital. WLSQ has been in existence for 31 years. In 2015/16 we assisted 4777 clients.

In addition to these services, we also provide community legal education on topics including domestic violence and family law to community workers in metropolitan Brisbane and, with the assistance of corporate grants and charitable trusts, to workers in rural and regional Queensland. In 2015, WLSQ provided education forums and client clinics in Mt Isa, Bundaberg, Hervey Bay, Rockhampton and St George.

We thank the committee for the opportunity to provide feedback on the above bill. WLSQ is happy to appear to give evidence before the committee to clarify any points, if required.

In relation to the specific amendments we make the following comments.

1. **Section 84(2)**

WLSQ supports the policy objective of increasing perpetrator education and accountability and the concomitant obligation on the court to ensure that parties understand the type of behaviour that constitutes domestic violence. WLSQ lawyers who appear in Court at domestic violence matters observe that Respondents often appear in Court in an agitated state. It could be anticipated that a respondent being told in specific terms the types of behaviour which are prohibited by a DVO could further increase the tensions within the Court. WLSQ therefore considers that at a practical level consideration be given to the security and safety of the Applicant and that additional security responses be implemented in anticipation of these changes.

Women's Legal Service Inc. www.wlsq.org.au
Address: 8 Ponsonby Street (cnr Ipswich Road) Annerley Qld 4103 | PO Box 119, Annerley Qld 4103
Administration Line: (07) 3392 0644 | **Fax:** (07) 3392 0658
Helpline: 1800 WLS WLS (1800 957 957) or (07) 3392 0670 | **Email:** admin@wlsq.org.au

2. Section 97

WLSQ supports an increase in the duration of Protection Orders. WLSQ notes that an order may be made for a period less than five years if the court is satisfied there are reasons for doing so. WLSQ recommends that the Court must give reasons if an order is made for a period less than five years.

3. Section 100

WLSQ supports the legislative clarity surrounding the investigative powers of the Police and welcomes the mandatory requirement for Police Officers to consider the immediate safety of persons affected by domestic violence, take action with regards to their safety and determine the necessity or desirability of a domestic violence order application/variation or PPN.

4. Amendments to Police Protection Notices

In general, WLSQ welcomes the proposed legislative changes to empower Police Officers to better address the safety and protection of women and children affected by domestic violence.

It is considered that training of Police Officers will be vital to the success of PPN's as a mechanism to improve immediate and longer term safety outcomes for women and children.

Specifically, training will be required in:

i the legislative reforms and the extended police powers in relation to PPN's;
ii new processes to implement the reforms on the ground;
iii identification of the primary aggressor, i.e., party most in need of protection. This is a particular problem for women from culturally and linguistically diverse backgrounds where a lack of English is a real barrier to effective communication with Police Officers.

WLSQ does however consider that several of the proposed clauses as outlined below, will unnecessarily limit the police response.

4. a Section 107D

WLSQ does not support the family court order inquiry process that Police Officers are required to undergo prior to imposing protective conditions for children in a PPN. The level of inquiry:

i. Does not promote the objects or the principles of the Act; and
ii. Is unwieldy and in practice could result in:
    a. Outdated orders being proffered as a mechanism to limit police action;
    b. Conflicting accounts surrounding the Respondent's time with children particularly in circumstances where neither party can produce a copy of the Family Court Order; and
iii. Will in practice limit the safeguards that officers may seek with regards to children and therefore minimises and ignores the risk to children.

WLSQ supports a process whereby Police Officers are able to issue a PPN naming children and providing for limited contact in relation to the children thereby prioritising the safety of the aggrieved and the children. WLSQ recommends that the mandatory family law order inquiry process as proposed in Section 78 remains the domain of applications and proceedings in the Magistrates Court.

4. b Section 108

WLSQ recommends that the accommodation needs of both the aggrieved and the Respondent be considered when assessing an ouster condition in a PPN. Consideration of only the Respondents accommodation needs may and does prioritise the Respondent's circumstances over the safety of an aggrieved.

4. c Section 110

It is noted that the proposed Sections 110(2)(a) and 110(3)(c)-(d) provides a positive obligation on Police Officers to explain to a Respondent:

i. the grounds on which the police officer believes that domestic violence has been committed; and
ii. the reasons the police officer who issued the notice imposed the conditions; and
iii. the behaviour the respondent is prohibited from engage in under the conditions
iv. the type of behaviour that constitutes domestic violence

WLSQ has two concerns in relation to these provisions. Firstly, in circumstances where emotions are running high officers may be unable to impart this information. Secondly, a requirement to provide this information will also require Officers to make contemporaneous notes of the statements made to the respondent. This may limit the effectiveness of the streamlined PPN process and highlights a potential inconsistency with Section 105(1)(f) whereby an officer need only be satisfied that grounds exist for the issuance of a PPN.

Whilst WLSQ notes that Section 110(4) provides that failure to comply Sections 110(2)(a) and 110(3)(c)-(d) does not invalidate the PPN, WLSQ recommends that the obligations imposed on officers under Section 110(2)(a) be limited to reflect that officers are satisfied that domestic violence has occurred and that grounds exist for a PPN.

5. Part 5A – Information Sharing

WLSQ supports the principle of information sharing in relation to issues of safety and risk as a mechanism to provide improved and co-ordinated short and long term safety outcomes for women and children. We also support the ongoing need for clients when approaching agencies about domestic violence to be afforded a confidential service. This is especially important for vulnerable clients and those from vulnerable communities.

WLSQ recognises that information sharing about safety and risk is an emerging tool to provide for the safety of those affected by domestic violence and that there is limited legislative recognition of such in Australia. That is perhaps because the issues surrounding confidentiality and privacy of information are not insignificant as illustrated in the *NSW Department of Justice, Domestic Violence Information Sharing Protocol (2014)* which is 108 pages. It is noted that New South Wales is the only State in Australia to comprehensively address these issues. The objective of the protocols is to ensure that a balance between safety and privacy and confidentiality is achieved. WLSQ has significant concerns that the proposed legislative reforms seem to predate both the common risk assessment framework and the information sharing guidelines which will contain the details required to ensure the difficult issues surrounding confidentiality and privacy are adequately addressed.

The absence of these documents limits our ability to appropriately consider the efficacy or otherwise of the proposed legislation.

Some more specific concerns held by WLSQ:

i. The absence of a co-ordinated framework for information sharing. WLSQ notes that the NSW legislation provides for central referral points and local co-ordination points: see *Crimes (Domestic and Personal Violence) Act 2007* No 80 [NSW], sections 98A, 98F, 98G;
ii. No legislative requirement for information sharing entities to comply with the guidelines once they have been developed: see *Crimes (Domestic and Personal Violence) Act 2007* No 80 [NSW], sections 98J;
iii. Agency training concerning information sharing, especially if these legislative provisions are enacted prior to the guidelines;

WLSQ recommends a staged approach to information sharing.

Stage 1 - the common risk assessment framework and the information sharing guidelines be designed and finalised
Stage 2 – consideration of information sharing legislation
Stage 3 – intensive training on both protocols by the agencies involved in the information sharing
Stage 4 –information sharing legislation enacted

6. National Domestic Violence Order Scheme

WLSQ supports the introduction of a National Domestic Violence Order Scheme and in general is supportive of the provisions to enact this within the Queensland legislation. WLSQ does however the following specific comments.

6. a Section 176D

WLSQ notes that the terms of an order made in another jurisdiction can be enforced in Queensland. WLSQ recommends that the efficacy of the enforcement of cross-jurisdictional orders lies with training of Police Officers and Court staff around the terms and conditions contained within orders made in other jurisdictions.

6. b Section 177

WLSQ notes that it is not a defence to state that a party did not know that it was an offence to contravene a Recognised Interstate Order or that a party did not know that an order could be varied in Queensland.

WLSQ recommends that this provision could be enhanced by either:

1. the Court advising the parties who are present in the Court at the time the Order is made that:

   i. the order is enforceable in all States and territories; and
   ii. they may apply to vary a Recognised Interstate Order in Queensland or in another Australian jurisdiction.

   OR

2. The above statements being included in the hard copy of an Order.

7. Other suggested legislative reforms

WLSQ recommends that the Committee give further consideration to earlier reforms proposed by WLSQ. These include:

7. a Types of Relationships covered by the Act

i. WLSQ considers that the definition of "family relationship" in the Act should cover new partners. It is the experience of WLSQ that some Magistrates believe that an order can be made against A, where A is the new partner of B, who was previously in a relationship with the applicant C. Whilst the new partner may be incited to act abusively by B it is almost impossible to prove this. For our clients, who just want the violence to stop we believe that Section 19(2) of the Act be amended to incorporate these relationships and not limit the definition to those who are related by "blood or marriage". Additionally, this definition should be extended beyond just "marriage" to include other relationships, e.g., defacto.

ii. The definition of "couple relationship" is not sufficient to cover violence in shorter intimate relationships which are becoming more prevalent with the trend towards the use of online dating sites. We believe the Act should cover dating relationships.

iii. We are seeing an increasing number of adult women seeking advice about their legal options regarding violence by their teenage children. The Act does not currently allow for a Protection Order to be taken out against children under 18. This is a significant gap in the overall legislative response to this issue as child safety will not intervene generally due to a child's age and the Peace and Good Behaviour Act has limited effectiveness. WLSQ again advocates for legislative reform in this Act to bridge this gap.

7. b Decisions in the Act to be in accordance with Section 3(b) of the Act

The latest research in this area and our practice knowledge tells us there is a clear overlap between domestic violence and family law matters. Even if there is a clear prospect of family law matters or even if family law matters are on foot, this should not override the Magistrate's obligation to make decisions in accordance with the *Domestic and Family Violence Protection Act 2012*. In particular decisions under the Act should be in accordance with Section 3(b) in the Objects that requires *decisions consistent with reducing or preventing domestic violence the exposure of children to domestic violence.*

7. c Children of the Aggrieved to be Named

Consideration should be given to amending Section 53 so that the court 'must name children' where it is necessary or desirable to protect the child(ren) and when doing so, must consider what conditions are necessary or desirable to the protect the child(ren) from associated domestic violence and/or any exposure to domestic violence. This obligation should be imposed for both police and private applications. Currently, there is a tendency if children are named, to only name them and provide coverage with the mandatory conditions. In most cases this does not provide sufficient protection for children from the well-established harm from ongoing exposure to violence.

7. d Proceedings to be Published

To promote consistent decision making and for precedent, legal jurisprudence purposes, we recommend Magistrates Court proceedings be published with pseudonyms (similar to FCC).

7. e Use of information in other court proceedings

WLSQ recommends an amendment to Section 159(3) to clarify the use of materials from a domestic violence matter in other court proceedings is not a breach of the Act.

7. f Substituted Service

WLSQ recommends that the legislation should provide for substitute service in preference to repeated adjournments for service as this practice is extremely disruptive and further traumatising for the aggrieved.

At the very least the respondent should be asked for an address for service at the time the respondent first appears in Court.

7. g Temporary Protection Order

Section 45 needs to be amended to make the issuance of a Temporary Protection Order mandatory (change *may* to *must)* when the elements as outlined in the Section are satisfied. If domestic violence is disclosed then a temporary order should be made automatically.

7. h Cross Examination

WLSQ recommends that Section 151 be amended to strengthen the protection related to the cross examination of protected witnesses by unrepresented respondents. WLSQ proposes that the Queensland legislation align with the protections contained within Sections 70, 71 and 72 of the Victorian legislation.

Regards,

[redacted]

Angela Lynch
Acting Co-ordinator WLS