



26 June 2013

Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane QLD 4000

By email: lacsc@parliament.qld.gov.au

Dear Sir / Madam

RE: WOMEN'S LEGAL SERVICE INC. SUBMISSION REGARDING JUSTICE AND OTHER LEGISLATION AMENDMENT BILL 2013

Thank you for inviting Women's Legal Service to consider the *Justice and Other Legislation Amendment Bill 2013*.

The Women's Legal Service (WLS) is a community legal centre that specialises in women's legal issues and in particular on the intersection between issues of violence against women and the legal system. As you may be aware, in July 2012 WLS established a pilot Domestic Violence Duty Lawyer Service which operates at the Holland Park Magistrates Court each Wednesday to provide advice and representation to women who have filed a Domestic Violence Application in that Court. WLS also provides hundreds of advices to women who are self-representing in these matters in Magistrates Courts across Queensland. As you may be aware this is a jurisdiction where there is a low rate of legal representation and a high rate of applicants and respondents acting and appearing on their own behalf.

We have specifically directed our submissions to the proposed amendments to the following legislation:

1. ***Domestic and Family Violence Protection Act 2012*** to provide that when a temporary protection order is made on an application to vary a domestic violence order, the existing domestic violence order is suspended until the variation application is finalised to ensure there is only one order in force and clarity as to the conditions the respondent must comply with;

WLS supports clarity and any measures to improve the safety of people who suffer or fear domestic violence. In circumstances where a variation to an existing domestic violence order is made to include additional conditions of protection, we consider it crucial for the varied order to replace the previous order and to be enforceable as



soon as possible. As the respondent being present/served/told about the varied order is required for the order to be enforceable, we support the inclusion of a wide range of means of communicating the conditions of the order to the respondent.

2. *Domestic and Family Violence Protection Act 2012* and the *Magistrates Courts Act 1921* to provide authority to make stand-alone rules of court for domestic and family violence proceedings.

During the pilot project at Holland Park Magistrates Court, WLS has made a number of observations in relation to the operation of the DFVPA and issues arising from the application of parts of the *Uniform Civil Procedure Rules 1999* (UCPR), *Justices Act 1886* and *Childrens Court Act 1992*.

WLS supports in principle the proposal to have stand-alone rules of Court for domestic violence proceedings and supports the aims of any proposed rules to enhance the efficacy of the DFVA to better protect women from violence and to ensure that legal processes are both efficient and fair. Stand alone rules would minimise confusion and ensure consistent practices and procedures, especially in this area of law which involves high numbers of self represented parties. WLS is very interested in any developments in this area and are happy to provide further submissions on any proposed rules in the future

WLS has identified a number of matters that may be taken into consideration during the development of the domestic violence rules of court. WLS notes that some of the matters raised may be dealt with by future domestic violence court rules or may be more appropriately dealt with by way of amendment to the relevant domestic violence forms or to the DFVPA.

Standard Directions and Procedures

The stand-alone rules should include standard directions or rules around the filing of material prior to Hearing to ensure consistent practices across Magistrates Courts across Queensland. WLS has noted inconsistent practices across Magistrates Courts in relation to standard directions for the filing of material prior to Hearing and allowing requests to attend hearing via telephone (for expert witnesses).

WLS also supports the inclusion of standardised procedural pathways being set out in the rules and also the inclusion of definitions of each court event and other key terms. It can be confusing to self-represented parties as to the pathway for the conduct of proceedings, particularly if there is inconsistency as to the words used to describe different court events such as "Application", "Mention", "Hearing-Review" and "Hearing".

Courts Powers Re: Summary Dismissal and Vexatious Proceedings

WLS supports the inclusion of rules which provide Magistrates the power to summarily dismiss matters that lack merit and/or are vexatious. It is our experience that some matters may unnecessarily proceed but for the lack of this power or a lack of clarity about the existence of this power. This can result in matters which, at best, waste court time, or at worst, are an abuse of process which re-traumatises women who have experienced violence.

WLS notes however, that the current form of the Application for a Domestic Violence Order does not provide sufficient space for the aggrieved to specify their claim and grounds for requiring a domestic violence order. Although the aggrieved can attach additional pages to the application, self-represented parties are often guided by the number of lines in the form to determine how much information to provide.

Oral Applications

Oral applications to the Court in relation to temporary protection orders and other matters are a common occurrence and should be provided for in the stand-alone rules. WLS has noted that many self-represented applicants do not seek a temporary protection order due to not understanding the difference between a temporary and final protection order.

Interlocutory Applications and communication with Judicial officers

At present there are no formal or consistent methods of seeking to have a matter brought before the Court, unless a party is seeking a variation of the Temporary Protection Order.

For example a party may wish to have the matter re-listed to:

- seek that the trial date or trial directions be varied,
- seek leave for a witness to appear via telephone-link, or excuse a party's personal appearance at a mention,
- seek that the Application be summarily dismissed due to the other party's failure to comply with trial directions,
- seek that the next mention of a matter be adjourned with the consent of both parties,
- seek Orders in relation to any other interim matter.

Further, it is not uncommon for a party to telephone the court and leave a message with the registry that is then passed to the Judicial officer, notifying the court that they could not attend their court appearance due to work commitments or sickness etc.

Stand-alone rules should provide a process of communicating with the associate to the Judicial officer which is open, transparent and provides procedural fairness to the other party.

Amended Applications

If a party wishes to change the conditions of the final Protection Order that they sought in the original Application for Protection Order (which may have been initiated privately or by the police), at present there is no formal process for doing so other than by lodging an Application to Vary a Protection Order. Eg: seeking additional orders, or no longer seeking to include named persons. This leaves two Applications on foot for determination at the final hearing, when it may be more properly dealt with by lodging an Amended Application for a Protection Order.

Service

There are inconsistencies between different Magistrates Courts in relation to service of material when directions are made for the filing of additional material. The practice at the Holland Park Magistrates Court is that all documentation filed by a party in that Court is served by the Court on the other party. WLS supports this practice particularly in circumstances where the aggrieved is self-represented and may be required to be in contact with the respondent to serve material that may put the aggrieved at risk of exposure to further domestic violence.

The rules should also include a requirement for keeping the Court advised of the party's address for service (which in some circumstances may be kept confidential from the other party).

Subpoenas / Disclosure

An easy to understand and follow process for issuing subpoenas that also covers conduct monies, service requirements and timeframes is desirable. These issues would include, but not exhaustively:

- a process for seeking leave to inspect and copy subpoenaed documents;
- restrictions on the use and publication of subpoenaed documents; and
- a process for objecting to a subpoena.

The stand-alone rules would also ideally include:

- a duty of full and frank disclosure of all relevant information and documents; and
- consequences of non disclosure.

Representation by Police Prosecutors

WLS supports the inclusion of rules regarding the representation of the aggrieved by police prosecutors. WLS has noted inconsistent practices between the police prosecutors at different Magistrates Courts and between different individual police prosecutors. Prior to the amendments to the DFVPA, the previous Application for a Protection Order form included a question asking the aggrieved if they would like the police prosecutors to represent them. Since the removal of this question from the form the process and procedure for representation has become unclear and inconsistent practices across courts are developing. In the past it has been helpful to be able to advise women about the potential role the police prosecutor could play when they are self-representing. However, this has been made more difficult by the current uncertainty.

Specialised Domestic Violence Courts

WLS views the development of stand-alone rules as an important step in removing ambiguity in the court process and enables the court to develop specialist knowledge and procedures in dealing with matters of domestic violence. As you aware Magistrates are dealing with a wide variety of legal matters in their jurisdiction and it is impossible to have specialised knowledge of every jurisdiction, however a lack of speciality can result in women experiencing violence being further traumatised by the legal process. Issues of domestic violence are not always obvious and clients responses are sometimes counter-intuitive. It is therefore important that there is increased specialisation to ensure that domestic violence matters are dealt with as appropriately and safely as possible and separate rules provides another basis on which this can develop.

3. Amendments to section 67A of the Personal Injuries Proceedings Act 2002 (PIPA), to amend the definition of 'community legal service'

Although WLS does not provide advice in relation to Personal Injuries matters, we are concerned that the proposed definition for 'community legal service' is quite narrow and may exclude legitimate community legal services.

The definition of 'community legal service' in the PIPA is important in ensuring that people who obtain legal advice from community legal services on potential claims are protected. People who attend community legal services are generally disadvantaged or marginalised people, often with little understanding of their legal rights.

Therefore, it is important that these individuals are provided with the time necessary to consult with community legal services to ascertain whether they may have a meritorious claim. These people will only be protected if the definition of

'community legal service' is accurate and encompasses all organisations which may provide such assistance.

The definition of 'community legal service' is also relevant in relation to whether a person may have recourse to the 'fidelity fund', held and administered by the Queensland Law Society under the *Legal Profession Act 2007* (Qld). People who obtain advice through community legal services will only be protected and have recourse to the fidelity fund if the 'associate' who caused the financial loss was from a 'community legal service' as legislatively defined. Therefore, to ensure that clients of community legal services are adequately protected, the definition of 'community legal service' in PIPA must be broad enough to cover all community legal services.


Women's Legal Service supports the definition of 'community legal centre' proposed in its submission by Queensland Association of Independent Legal Services (QAILS), the independent peak body for community legal centres in Queensland.

Further consultation

Please do not hesitate to contact either myself or have a member of your staff contact our Casework Solicitors, Bronwen Lloyd at [REDACTED] or Kara Cook at [REDACTED] or on [REDACTED] if you wish to discuss any of our submissions further.

Thank you again for the opportunity to provide commentary on the proposed amendments. We would be very pleased to provide further assistance in any future consultation with respect to the development of these stand-alone rules and working towards ensuring the safety of victims of domestic violence in Queensland.

Yours faithfully,
Women's Legal Service Inc.


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