

2 August 2013

**Justice & Other Legislation  
Submission 009  
(Supplementary)**

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

By post and email to: [brook.hastie@parliament.qld.gov.au](mailto:brook.hastie@parliament.qld.gov.au)

Our ref 339/47

Dear Research Director

**Justice and Other Legislation Amendment Bill 2013**

We refer to discussions on 31 July 2013, between the Chair of our Childrens Law Committee and Ms Jarro of your office, in relation to clause 67 of the *Justice and Other Legislation Amendment Bill 2013* (the Bill). This clause inserts a new section 142 into the *Domestic and Family Violence Protection Act 2012*. We note the Society has previously commented on this clause in a submission dated 5 July 2013.

The Children's Law Committee confirm concern, as expressed to Ms Jarro, that the practical operation of proposed section 142(3) in clause 67 may not be consistent with the policy intention for empowering the Childrens Court to make domestic violence orders. We note in this regard the Explanatory Notes for the *Domestic and Family Violence Protection Act 2012*, which set out the intended effect of empowering the Childrens Court to make or vary domestic violence orders on the basis of matters raised during child protection proceedings:

***When Childrens Court can make or vary order against parent of a child***  
Clause 43 outlines when the Childrens Court can make or vary an order against a person involved in child protection proceedings. This provision recognises that matters raised during child protection proceedings can provide a basis for making a protection order or varying a domestic violence order. In other situations, the court may be required to vary the terms of a domestic violence order to ensure consistency between the terms of that order and the order the court proposes to make in the child protection proceedings.

A court making a protection order under this provision must be satisfied that there are grounds for making the order under clause 37 and that the person who would be named as the aggrieved is a parent of the child and a party to the child protection proceedings (subclause 43(2)). If a domestic violence order is already in force against a parent of a child who is party to the child protection proceedings the court must

*consider the order and whether, in the circumstances, the order needs to be varied (subclause 43(3)).*

*The court can make a protection order or vary a domestic violence order under these provisions on its own initiative or on application by a party to the child protection proceedings (subclause 43(4)). There are requirements to give each party a reasonable opportunity to make submissions about the making or varying of the order (subclause 43(5)). As with the clause 42, a court has the power to adjourn the matter of the making or variation of the order and can make a temporary protection order in the interim (subclause 43(6)(b)). There are requirements to explain the consequences for not appearing at the next court date (subclause 43(7)). Those consequences can include making a protection order or varying a domestic violence order in the absence of the parent (subclause 43(8)(a)).*

It would appear that the intention was to allow a Childrens Court Magistrate to make or vary domestic violence orders based on evidence in child protection proceedings. Further, the Childrens Court sitting in child protection proceedings **must** consider varying any existing domestic violence orders.

The Children's Law Committee understand that you are advised that the new section 142 proposed in the Bill, has the effect that the Domestic and Family Violence Protection Rules all apply to a proceeding under the *Domestic and Family Violence Protection Act 2012* in any Court, including the Childrens Court. Subsection 3 goes on to provide that "...the Childrens Court Rules do not apply to a proceeding in a Court under this Act." We are concerned about the practical effect of this in a child protection proceeding, where issues of domestic violence arise and the Court considers making or varying domestic violence orders under the *Domestic and Family Violence Protection Act 2012*. It is unclear if the intended effect of the amendment is that:

- the Childrens Court Rules would no longer apply to a proceeding under the *Child Protection Act 1999* if the Childrens Court when hearing an application for a child protection order considers making or varying domestic violence orders in a child protection proceeding; or
- the issues are dealt with by the same Court in two separate although sequenced proceedings, a child protection proceeding to which the Childrens Court Rules apply and a domestic violence proceeding to which the Domestic and Family Violence Protection Rules apply.

The Legal Affairs Committee perhaps should consider the following:

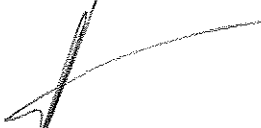
1. If the Childrens Court Rules do not apply to a proceeding in a Court under the *Domestic and Family Violence Protection Act 2012*, including proceedings in the Childrens Court, it may be difficult to define the point at which issues under the *Domestic and Family Violence Protection Act 2012* arise during a child protection proceeding. These issues are not generally held separately. As such, it may also be difficult to define the point at which the Court begins to consider making or varying a domestic violence order under the *Domestic and Family Violence Protection Act 2012* and therefore, which rules are applicable at any point in the proceedings.

2. Should the Childrens Court Rules no longer apply because a domestic violence issue arises in a child protection proceeding and the Childrens Court considers making or varying a domestic violence order, in practice this may mean child protection proceedings would no longer be governed by the Childrens Court Rules. As such, the operation of Childrens Court Rules could be excluded by making an application for a domestic violence order during a Childrens Court proceeding.

The Committee could consider whether child protection proceedings should continue to be governed by the Childrens Court Rules, and that if the Childrens Court in those proceedings considers exercising its powers to make or vary a domestic violence order, the Domestic and Family Violence Protection Rules should also apply for the purpose of that exercise of power only. If this were adopted, consideration may need to be given to which Rules should prevail in circumstances where they were inconsistent. We suggest the Committee consider further the interaction of the rules in practice, and how to deal with any inconsistency which may arise between the Childrens Court Rules and the Domestic and Family Violence Protection Rules.

Thank you for requesting further information on this issue.

Yours faithfully



Annette Bradfield  
**President**