



**Australian Chapter**

**AFCC Legal Issues Subcommittee**

**Submission to Senate Enquiry into Family Law Amendment (Family Violence and Other Measures) Bill 2017**

**February 2018**

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## **About the Association of Family and Conciliation Courts ("AFCC")**

AFCC is an interdisciplinary, international association of professionals dedicated to improving the lives of children and families through the resolution of family conflict. AFCC promotes a collaborative approach to serving the needs of children among those who work in and with family law systems, encouraging education, research and innovation and identifying best practices.

### **Vision**

A justice system in which all professionals work collaboratively through education, support, and access to services to achieve the best possible outcome for children and families.

### **Values**

- Collaboration and respect among professions and disciplines
- Learning through inquiry, discussion and debate
- Innovation in addressing the needs of families and children in conflict
- Diversity in family structures and cultures
- Empowering families to resolve conflict and make decisions about their future
- Worldwide membership of AFCC stands at approximately 6000.



## **AFCC - Australian Chapter**

The Australian Chapter of AFCC has been formed to bring together Australian Family Law professionals including judicial officers, lawyers, psychologists, social workers, other mental health professionals, mediators, educators, researchers, academics, welfare groups and administrators to share in formal and informal opportunities for education, training, research and professional collaboration.

There are many benefits of having a national interdisciplinary association of family law professionals that is also part of a larger international community as the chapter will be forming various committees to focus on different family law issues and facets of professional practice and hopes to encourage the formation of state and local groups around their particular needs and interests.

The chapter also offers a range of professional development activities, conferences and presentations to enhance family law practice and provide opportunities to expand on current knowledge about how best to serve families and children.

Australia wide membership stands at approximately 200 Family Law Practitioners and organisational members including Not for Profit Welfare organisations.

*The Australian Chapter of AFCC is comprised of a number of subcommittees*

*This submission has been formulated by the AFCC Legal Issues Subcommittee and approved for submission to the Senate by the board of AFCC Australia*

The AFCC Australia Legal Issues subcommittee welcomes the opportunity to provide a written submission on the Family Law Amendment (Family Violence and Other Measures) Bill 2017.

The subcommittee recognises the need to enhance the protections offered to those experiencing family violence and navigating the family law system.

The subcommittee welcomes the increase in jurisdiction of the Local Court with respect to property matters with a value not exceeding \$200,000. The proposed amendment to s.46(1) and inclusion of s.46A reflects the practical reality of families needing property adjustment of their assets in a more cost-effective setting where their asset pool is small. The subcommittee is however concerned that an increase of the Local Court jurisdiction will require specialist training of the Local Court judiciary and additional resourcing to ensure that the access to justice remains expedient and cost effective. As an alternative, the subcommittee recommends that consideration be given to a compulsory referral to arbitration for property matters not exceeding \$200,000.

The subcommittee welcomes the proposed amendments with s.69GA to remove uncertainty with respect to the jurisdiction of specialist Children's Courts in those State jurisdictions where those courts are not constituted within the Local Court. The subcommittee recognises that many Children's Court have jurisdiction currently and that the proposed amendment would create national consistency. The subcommittee recommends specialised training for all Courts of summary jurisdiction in which it is proposed that family law matters are to be heard, particularly having regard to the considerable differences in determinations of bests interests of children prescribed in State child protection legislation and the Family Law Act.

The subcommittee recognises the benefits of amendments as proposed by the inclusion of s.45A in the efficient administration of the Court's workload. The subcommittee also recognises that the proposed s.45A essentially crystallises the existing common law position. The subcommittee is concerned however that the lack of funding to assist victims of family violence, and litigants generally, that the risk of such a decree being made as a result of lack of experience and lack of representation is increased.

The subcommittee welcomes the proposed amendment to s.68P(2). This amendment reflects the practical reality of children not being present during the course of proceedings. The amendments also afford an additional protection to children involved in the family law system by allowing appropriately trained Judicial Officers to exercise discretion in determining children's level of involvement in proceedings having regard to their best interests.

The subcommittee welcomes the proposed amendment to s.68T (1) and recognises the additional protection that this amendment provides to victims of family violence and their families. The existing time frame of 21 days fails to reflect the practical reality of delays in accessing the services of the Federal Circuit Court and the Family Court given the persistent lack of resourcing of each of these Courts. This amendment ensures that during acute times of trauma for victims of family violence, they are provided with some certainty of their protection and avoid the need for them to participate in concurrent proceedings

across two Courts. It is submitted that by continuing the limitations as related to interim orders provides sufficient balance between the need to protect victims of violence and the necessity to consider the best interests of children with regard to spending time with each parent as it limits the operation of the provision to periods where a Court exercising summary jurisdiction is case managing and reviewing the families' circumstances.

The subcommittee welcomes the inclusion of the new s.68C providing that a breach of a personal protection order is a criminal offence. The subcommittee sees this measure as a significant advancement of the protection of victims of family violence and as clarifying the position at law with respect to the implementation of personal protection orders. The legal profession has for a long time been concerned with the manner in which State police authorities have interpreted and implemented personal protection orders under the Family Law Act, with many clients reporting that when contacting the Police, they are informed that the State authorities hold no jurisdiction. Whilst it is acknowledged that this was not a correct interpretation at law, it reflects the reality of many clients' engagement with the system. The criminalisation of breaches should, if properly implemented, overcome many of these difficulties although it is suggested that wide consultation and training with State authorities will be necessary for this measure to be effective. Along with the additional enforceability in practical terms, it is suggested that the inclusion of this measure will have the effect of allowing access to justice to victims of violence by facilitating orders for protection and parenting or property orders to be made in one Court and thereby reducing systems trauma that many victims experience participating in proceedings across jurisdictions.

The subcommittee welcomes the offences created by s.68C as applying to orders made prior to the amendments and effectively acting retrospectively, provided that the offence itself occurs post amendment. The subcommittee holds the view that victims of violence protected by existing personal protection orders should receive the benefit of the new provisions related to breaches and should not be required to re-agitate such an application before the Courts. Not only would this lead to many victims re-experiencing trauma and demonstrating reluctance to seek protection, particularly if they have concluded protracted litigation in the family law system, it would create an onerous burden on the Courts in their administration of justice. It may also lead to those litigants and their children being placed directly at risk by continuing contact with the offender through litigation. The current delays and workloads of the Courts that are chronically underfunded would only increase if litigants were required to bring applications to effectively remake an existing order. It would also have the effect of creating confusion amongst State authorities as to enforceability of an order and may create delay in actioning breaches that place victims at immediate risk.