

 telephone: (03) 9269 0247 fax: (03) 9269 0440



15 January 2016

Sophie Dunstone
Committee Secretary
Senate Legal and Constitutional Affairs Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Melbourne Office
350 Queen Street
Melbourne VIC 3000
GPO Box 4380
Melbourne VIC 3001
DX 210646 Melbourne VIC
t: 03 9269 0234
www.legalaid.vic.gov.au
ABN 42 335 622 126

By email: legcon.sen@aph.gov.au

Dear Ms Dunstone

Senate inquiry into the Family Law Amendment (Financial Agreements and Other Measures) Bill 2015

Thank you for your letter dated 9 December 2015 and for inviting Victoria Legal Aid (VLA) to provide a submission in response to the Family Law Amendment (Financial Agreements and Other Measures) Bill 2015.

The following response does not seek to address every aspect of the proposed bill.

About Victoria Legal Aid

VLA is the biggest legal service in Victoria, providing legal information, education and advice for all Victorians, and funding and directly providing legal representation for people who meet eligibility criteria based on their financial situation, the nature and seriousness of their problem and their individual circumstances. We provide lawyers on duty in most courts and tribunals in Victoria, including the state courts dealing with family violence intervention orders and the federal Family Law Courts.

Family Violence – ss.68R/68T

VLA supports the proposal to amend the 21 day time limit currently imposed by section 68T of the *Family Law Act*, to instead provide that a state or territory court's revival, variation or suspension of a family law order under section 68R ceases to have effect at the earliest of:

- the time that state or territory court's interim family violence order stops being in force
- the time specified in the interim order as the time at which the revival, variation or suspension ceases to have effect, and
- the time that the order, injunction or arrangement is affected by an order made by the court.

In our significant practice experience, section 68T incorrectly assumes that a 21 day period is sufficient time for the Family Law Courts to list and consider allegations and vary an existing family law order if required. By contrast, for various reasons it is rare that a matter would be listed within 21 days of the making of a family violence order.

This means that currently, if the matter does not return to the relevant Family Law Court within 21 days, there is confusion and uncertainty about care arrangements for children. Importantly, this can elevate and escalate safety concerns. The proposed amendment would ensure that family violence and family law orders in relation to the one family remain consistent and endure or lapse together, while still providing judicial officers with the flexibility to determine timeframes, vary orders and relist matters to manage cases according to their particular circumstances.

The proposed amendment in the Bill would implement a recommendation of the Family Law Council in its recent interim report on Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems. VLA made a submission to the Family Law Council addressing this issue in further detail, and we support the Council's recommendation to amend section 68T. The Victorian Coroner recently made similar findings in the inquest into the death of Luke Batty. We welcome the Government's response seeking to implement this recommended change.

As we stated in our submission to the Family Law Council, VLA's practice experience and our client data suggests that while most families do not experience legal problems that cut across the jurisdictions, a significant number do, and these are often families with complex needs and vulnerable children. Our data revealed that for legal aid clients in this category, the most common pathway was a state family violence intervention order legal issue in the year prior to their Commonwealth family law parenting legal issue. The proposed amendments to ss.68R/68T recognise the persistent challenges for families arising from the intersection of the federal family law and state family violence jurisdictions.

More generally, we support the broader work of the Family Law Council under this current inquiry and look forward to the Government's response to the various recommendations made by the Council in due course.

Yours faithfully

BEVAN WARNER
Managing Director