



17 June 2021

Ms. Sophie Dunstone
Committee Secretary
Legal and Constitutional Affairs Legislation Committee
The Senate
Parliament House ACT 2600

Email: legcon.sen@aph.gov.au.

Dear Sophie

Family Law Amendment (Federal Family Violence Orders) Bill 2021

Community Legal WA (**CLWA**) thanks you for the opportunity to make a submission to the Senate Legal and Constitutional Affairs Legislation Committee in relation to the *Family Law Amendment (Federal Family Violence Orders) Bill 2021*.

Due to resource constraints CLWA has unfortunately not had the capacity to prepare a full submission. We appreciate inclusion in the process, however, and would be obliged if consideration could be given to the matters in this letter.

About Community Legal WA

Community Legal WA is the peak body for Community Legal Centres in WA (**CLCs**). Located throughout the state, Community Legal Centres (**CLCs**) are independent, non-profit organisations which provide legal services to disadvantaged and vulnerable people or those on low incomes who are ineligible for legal aid.

Our member CLC's include those that are specialist and relate specifically to the needs of specified client cohorts including victim/survivors of family and domestic violence (**FDV**). This occurs through a framework of organisations that are:

- specialist, and relate to particular areas of law;
- generalist, servicing areas of the Perth metropolitan region, or regional WA; and
- Aboriginal Community controlled and managed.

CLWA also coordinates the Family Violence Legal Network, which allows around 70 legal and non-legal workers in CLC's to share ideas and experience, increasing efficacy of practice and knowledge of emerging issues in law reform and policy in this area.

CLWA's vision is one of a strong, connected and influential community sector. In advancing a fair and just legal system we are committed to equality and adequacy of access to justice for all. In particular,



we are committed to law and policy that will assist in the safety for victim-survivors of FDV and any approach that will reduce complexities, make perpetrators accountable and/or facilitate access to justice.

We therefore support in concept the introduction of Federal Family Violence Orders and rationale, especially “that family violence is not a private matter, but a criminal offence of public concern.”

CLWA also supports the Federal Circuit and Family Court of Australia (the FCFC)’s arrangements for the use of registrars and broadened use of conferencing beyond those relating to property settlement proceedings, and the additional protection and immunity afforded to Chief Executive Officers and Registrars. These changes are welcomed.

Current legislative arrangements in WA

WA already makes provision according to s.63(2) of the *Restraining Orders Act 1974* (WA) which allows the Family Court of WA (**FCWA**) to make a Family Violence Restraining Order, attended by all sanctions currently available as regards FVRO’s made in WA Magistrates’ Courts:

63(2) “A court hearing proceedings under the Family Court Act 1997 or the Family Law Act 1975 of the Commonwealth may make a restraining order against a party to the proceedings or any other person who gives evidence in the proceedings.” [*Restraining Order* having been defined to include a Family Violence Restraining Order (FVRO)].

It is understood, however, that this provision is rarely used, and that the majority of applications for FVRO’s are made in Magistrates Courts. The reason for this would appear to be around lack of resources in the Family Court of WA, especially in relation to the conduct of final hearings – which involve considerable time allocation for evidence and cross examination and may involve more than one set of proceedings.

The greater expediency with which an FVRO can be obtained through a Magistrates Court, certainty regarding costs and process and unsuitability of the (non-punitive) FCWA environment for the making of FVRO’s generally are also thought to be contributing factors.

We would therefore respectfully suggest that both resource and environment issues be carefully regarded in relation to the introduction of Federal Family Violence Orders. Whilst we do not have access to detailed statistics, a considered evaluation of the WA experience may be more readily available to the Committee and may prove useful.

Adequate resourcing

We note that a “significant investment of over \$140 million in the legal system” has been set aside in the 2021-21 Federal budget in relation to the changes prescribed by the Bill, and that \$1.8 million (over 4 years) will go towards implementation and enforcement.

Whilst this is a welcome contribution, it is important to note with respect to all proposed changes that Legal Aid Commissions, Aboriginal Legal Services, Family Violence Prevention Legal Services and Community Legal Centres are critical stakeholders in the family law system and that legal assistance -

in the form of advice, advocacy and representation - will be crucial to making any new regime a success.

CLC's in particular are facing an increase in demand for services on tight budgets. It is important, therefore, that the extra work which will be associated with the need to accommodate new arrangements attracts a full assessment of need, evaluation and adequate allocation of legal assistance resources. We respectfully request that this matter form part of the Committee's considerations.

We again thank the Australian Government for this legislation and for the attention to detail evident within the Bill and explanatory memoranda. With FDV so sadly prevalent in Australia, exacerbated by the effects of COVID, every initiative that can help keep women and children safe is of unquestionable value.

Resources permitting, CLWA will be happy to participate in any further discussion.

Yours sincerely,

Chelsea McKinney
Chief Executive Officer
Community Legal WA