

Submissions for the Family Law Amendment (Federal Family Violence Orders) Bill 2021

I inform that I had read the Explanatory Memorandum (“EM”) in conjunction with the Bill which guided my understanding of the Bill.

1. Multiple family violence orders

A listed court is prohibited from granting a federal family violence order (“FFVO”) where a family violence order is already in place. Paragraph 50 of the attached EM sets out the rationale:

“50. If the two orders were in existence at the same time, the family violence order (or any term thereof) that is inconsistent with a federal family violence order (or any term thereof) would be invalid to the extent of the inconsistency. This would create enforcement challenges for police, particularly where multiple orders would need to be compared in order for a police officer to determine which terms of which orders they may lawfully enforce. It can also create confusion for the parties as to which terms are required to be complied with. Prohibiting persons from applying for a federal family violence order where there is already a family violence order in place between the same parties would safeguard against inconsistent orders arising, reduce confusion and reduce the risk of unlawful arrests.”

Further, the proposed section 68AB(2) states:

*“However, a person may not apply under subsection (1) for a federal family violence order to provide for the personal protection of a person (the **first person**) and that is directed against another person (the **second person**) if there is a family violence order in force that applies for the protection of the first person and that is directed against the second person.”*

It is clear that the prohibition will not apply where a FFVO is sought by the **first person** as against another respondent (a **third person**). This can and will lead to a second family violence order being put in place in the same case. Hence the possibility of multiple orders being in place. Paragraph 52 of the attached EM states:

“52. The prohibition in subsection 68AB(2) would only apply where there is a family violence order in place between the same parties for whom the federal family violence order is being sought. It would not apply if the protected person is protected by a family violence order that is directed against a different respondent.”

Also, I direct your attention to the proposed section 68AC(6):

“The court must not make the order, or provide for the personal protection of a protected person under the order, unless:

(a)...

(b)...

(c) the court is satisfied that there is no family violence order in force that is:

(i) for the protection of the protected person; and

(ii) directed against the person against whom the federal family violence order is directed.”

I next turn to the proposed section 68AC(14) which states:

“Failure to comply with paragraph (6)(c) or subsection (7) or (11) does not affect the validity of the order.”

It is, therefore, clear that the Bill does acknowledge the possibility that a FFVO may be granted where an existing family violence order is in place. This will give rise to the existence of multiple family violence orders being in place in the same matter.

2. FFVO to cover a gap

It cannot be the case that an FFVO is used to cover a gap in any family violence order. If a listed court cannot grant or issue an FFVO where there is a family violence order in place, then that proposition must fall away. The proposed legislation does not set out any exception to the non-grant of a FFVO.

Further, should a FFVO be granted even where a family violence order is already in existence, the operation of the proposed section 68AC(14) preserves the validity of the FFVO. This then raises the practical situation where the police, who will be responsible for enforcement, having to decide which family violence order to enforce and what term has been breached.

3. Police not recognising violence when physical violence is not apparent

I suggest that this is not a case of the Police being unable to recognise nonphysical violence which you refer to as coercive controlling violence (“CCV”). Police are unable to take action in cases of nonphysical violence for the simple reason that they do not have the power to do so in the absence of apparent physical violence. The *Criminal Code* (here in Western Australia) only recognises family violence where an actual offence against a person has occurred. I think that this might be the case in the other States and Territories and if so, then the legislation must change to be able to allow police to take action.

4. Additional matters

It is recognised that the listed courts need proper access to information. I point to proposed sections 68AC(7) and 68AI(7), for example. The 12 month period is critical for implementing systems for the sharing of sources of information and allowing access to those sources.

5. An Alternative Approach

An alternative approach that could simplify the granting of family violence orders is to have such orders granted and registered under the National Domestic Violence Order Scheme. It brings all family violence orders under a single umbrella. There will be a single name for such orders. There will be a single database of information accessible to all courts (Federal, State and Territory). Enforcement will be simpler.

Additionally, the protections and advantages now espoused by the current Bill.

Yours faithfully,

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