



Department of Justice and Attorney-General
Office of the Director-General

In reply please quote:

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Dear Committee Secretary

Thank you for the opportunity to provide a submission to the Senate Inquiry into the Family Law Amendment (Financial Agreements and Other Measures) Bill 2015.

The Department of Justice and Attorney-General (DJAG) has reviewed the Bill, and makes the following submission with regards to the proposed amendment to section 68T of the *Family Law Act 1975* (Cth) (the Act).

In broad terms, sections 68R to 68T of the Act empower state domestic violence courts to amend family law orders during domestic and family violence proceedings to avoid inconsistencies between state domestic violence orders and family law orders and ensure that parent contact with a child occurs in a way that does not undermine the protection provided by a domestic violence order. Accordingly, this power is an important mechanism for ensuring that potential inconsistencies in court orders are addressed and victims are appropriately protected under their domestic violence order. The operation of section 68T directly impacts on the enforceability of the protection provided under temporary protection orders made by Queensland Magistrates Courts.

Currently, under section 68T, when amendments to family law orders are made during interim family violence proceedings they lapse at the latest after 21 days (unless otherwise extended by a further interim order made by a state/territory court). The proposed amendment to section 68T is intended to prevent changes made to family law (parenting) orders during interim family violence proceedings from automatically lapsing after 21 days.

The amendment to section 68T in the Bill provides that a change to a family law order made during interim family violence proceedings ceases at the earliest of:

- (a) *the time the interim order stops being in force; and*
- (b) *the time specified in the interim order as the time at which the revival, variation or suspension ceases to have effect; and*
- (c) *the time the order, injunction or arrangement is affected by an order (however described) made by a court, under section 68R or otherwise, after the revival, variation or suspension.*

(2)

The Explanatory Memorandum states that:

'The use of the term 'affected' in new paragraph 68T(1)(c) is intended to include orders made by a court that directly impact on the relevant Order or interim family violence order. The paragraph is not intended to include orders, injunctions or arrangements involving the parties that do not have direct relevance to the Order or interim family violence order.'

Despite the qualification in the Explanatory Memorandum, DJAG has some concerns with paragraph (c) above as there is a risk that interpretation of the term "affected" could result in amendments to family law orders being unintentionally and prematurely brought to an end, leaving the parties with inconsistent family law and domestic violence orders and a victim without necessary protection. DJAG suggests that consideration be given to alternative wording that clearly provides that the amended parenting order may lapse if a state Magistrates Court or a family law court specifically reviews the parenting arrangement, as deemed appropriate by a court in the individual case.

I trust this information is of assistance.

Yours sincerely

David Mackie
Director-General