



**CHIEF MAGISTRATE'S CHAMBERS
MAGISTRATES COURT
ADELAIDE**

22 December 2015

Ms Sophie Dunstone
Committee Secretary
Legal and Constitutional Affairs Legislation Committee

Legcon.sen@aph.gov.au

Dear Ms Dunstone

**Inquiry into the Family Law Amendment (Financial Agreements and Other Measures)
Bill 2015**

I refer to your letter dated 9 December 2015 inviting the Magistrates Court of South Australia ('Magistrates Court'), to provide a submission addressing the Family Law Amendment (Financial Agreements and Other Measures) Bill 2015 (Cth) ('the Bill'). I submit that the proposed amendments have the potential to create significant difficulties for the Magistrates Court.

In order to understand how the changes to s.68T *Family Law Act 1975* (Cth) will affect us, I need to highlight a current problem we are experiencing with s.68R of the Act. Defendants in family violence proceedings are often unrepresented and may not have court issued copies of Family Court orders.

Presently, there is no mechanism for the direct electronic transfer of orders between the Magistrates Court and the Family Court or the Federal Circuit Court ('FCC'). If a Magistrate requires this information they must initiate a manual request from our registry to the registry of the Family Court and the FCC. We are required to supply the parties' names and dates of birth as a minimum. Assuming this information is readily available, the order will be provided to us in up to ten days.

In this context, making orders to revive, vary or suspend a Family Law order during proceedings for an interim intervention order in our court, will create delays and difficulties.

In South Australia, the *Intervention Orders (Prevention of Abuse) Act 2009* governs the procedure for making or varying interim orders. A preliminary hearing for a court-ordered interim order is held *ex parte*: IO Act s21(1) and therefore the defendant has no opportunity to be heard in relation to the revival, variation or suspension of the Family Law order.

The removal of the 21 day period in s68T of the *Family Law Act* will create difficulties. Presently, the order to revive, vary or suspend has a short-term effect and the protected person is compelled to have their matter relisted expeditiously before the Family Court and/or FCC for a permanent variation. In my view the Family Court and FCC, being a specialist in these matters, would be better placed to consider applications, taking into account the types of resources available to it.

The amendments to s68T appear to be drafted to accommodate parties who cannot have their matters relisted before the Family Court or FCC within the 21 day limit. There are two possible alternatives to address this issue. First, the 21 day period could be extended to allow sufficient time to enable a listing in the Family Court or FCC or secondly, arrangements for these matters to be listed with priority where there is inconsistency.

There is significant risk that if the present 21 day period is removed, parties may choose to lodge their matter at the Magistrates Court instead of the Family Court or FCC. The risk is heightened in regional areas where the Magistrates Court may have a shorter waiting time. This change may involve a substantial shift of the work from the Commonwealth jurisdiction to the State jurisdiction and should this occur a budgetary adjustment would need to occur to ensure the Magistrates Court is sufficiently resourced to discharge this responsibility.

Legislative reform in South Australia has led to a substantial increase in the number of family violence matters listed before the court. This has resulted in additional family violence lists and increased pressure on existing resources.

The proposed amendments in my view will further exacerbate the demand to share information between the Family Court, the FCC and the Magistrates Court. As it currently stands the exchange of information relies on manual effort of employees to provide requested materials. This is a resource intensive and time consuming process, which contributes to unnecessary delays.

To summarise, removing the 21 day period in s.68T of the *Family Law Act* has the potential to create significant practical difficulties for the Magistrates Court.

Yours sincerely

JUDGE MARY-LOUISE HRIBAL
CHIEF MAGISTRATE