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Ms Sophie Dunstone  
Committee Secretary  
Senate Legal and Constitutional Affairs Legislation Committee

***By email only: [legcon.sen@aph.vic.gov.au](mailto:legcon.sen@aph.vic.gov.au)***

Dear Ms Dunstone,

### **Consultation – Family Law Amendment (Federal Family Violence Orders) Bill 2021**

I refer to your email to the Director of Public Prosecutions (DPP) dated 24 May 2021 inviting a submission on the Family Law Amendment (Federal Family Violence Orders) Bill 2021 (**the Bill**). Thank you for the opportunity to provide comments.

Outlined below are comments our office wishes to make by way of a submission to the Senate Legal and Constitutional Affairs Legislation Committee.

#### **Offences – Responsible Prosecuting Agency:**

As there is an indictable offence for persistent contravention of a family violence protection order under Victorian legislation (s 125A *Family Violence Protection Act 2008*) and a breach of a Federal order may also constitute an offence against the relevant State law, there may be ambiguity with respect to the prosecuting agency for each offence. Our office seeks to be included in further consultation with respect to the enforceability of the offence provisions.

#### **Offences – Terms in Orders:**

Section 68AC(8)(g)(iii) allows for a term of the order to include the protected person (or their parent/guardian) to request a person to whom the order is directed to leave the place or area where there is an imminent risk of family violence. We note this term is not reflected in Victorian legislation and it places an onus on the person protected by the order to enforce it which we submit is inconsistent with the reasons for which family violence protection may be needed. The ability to effectively prosecute a contravention of this term is also limited where the variables are so subjective.

#### **Protection for Victims**

Section 113AH of the Bill allows a person 'against whom the order is directed' to apply to a listed court to vary, revoke or suspend an order. This contradicts the Victorian legislation that requires leave to be granted before an application to vary/revoke/suspend can be made pursuant to s 109 *Family Violence Protection Act 2008* (Vic). This protection inherent in the

legislation limits the notifications made to the person protected and can operate to limit baseless or nuisance applications by the alleged family violence offender. The police would not have standing in the Federal jurisdiction to address these applications in lieu of the protected person as they do in Victorian courts.

As a protected person in a Federal Family Violence Order may also be a complainant in a criminal proceeding it is appropriate to ensure all safeguards to ensure their protection from contact from the Respondent is maintained by legislation.

Yours sincerely

**Suzanne Penhall**  
Manager  
Policy and Specialised Legal