Chapter 2

Issues raised and committee view

2.1 This chapter discusses the issues raised in evidence received by the committee, before outlining the committee's views and recommendations.

2.2 The intent of the bill was overwhelmingly supported by witnesses and submitters to the inquiry, as were many of its provisions.[1] However a number of concerns were raised in evidence, including on the:

- timing of the bill;
- need for appropriate training for courts and support services, to assist with potentially increased family law case workloads;
- proposed resolution of family law matters by state and territory courts (including the expanded jurisdiction of children's courts, increasing allowed property values these courts are allowed to make decisions on, and allowing short form judgements); and
- potential implications of strengthening of the powers of courts (including changes to summary dismissal powers, allowing the dispensation of judges' explanations to children, removing the 21-day time limit for jurisdictional court orders, and criminalising family law personal protection injunction (PPI) breaches).

Timing of the bill

2.3 The Commonwealth has commissioned the Australian Law Reform Commission (ALRC) to undertake a review of the family law system, which is due to report on 31 March 2019.[2] Some evidence argued this review should run its course

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1 Commissioner for Children and Young People in Western Australia (CCYPWA), *Submission 1*, p. 1; South Australian Commissioner for Children and Young People (SACCYP), *Submission 2*, p. 1, Professor Patrick Parkinson AM, *Submission 3*, p. 1, Australian Human Rights Commission (AHRC), *Submission 4*, p.3, Salvation Army, *Submission 6*, pp. 2–3, Victorian Women's Trust, *Submission 7* , pp. 2–3, Domestic Violence Victoria (DV Vic), *Submission 8*, p. 1, Australian Association of Social Workers (AASW), *Submission 9*, pp. 1–3, Aboriginal and Torres Strait Islander Legal Service (Qld) Limited (ATSILS Qld), *Submission 10*, p. 10, Victoria Legal Aid (VLA), *Submission 11*, p. 2, 2.20 safe steps Family Violence Response Centre (safe steps), *Submission 12*, p. 3, Law Council of Australia (Law Council), *Submission 13*, p. 5, Royal Australian and New Zealand College of Psychiatrists (RANZCP), *Submission 14*, p. 1, Women's Legal Services Australia (WLSA), *Submission 15*, pp. 3–5, Tasmania Police, *Submission 16*, p. 1, National Aboriginal Family Violence Prevention Legal Services Forum (NVPLS Forum), *Submission 17* (Attachment 1), pp. 14, 17, and 18–19, Association of Family and Conciliation Courts (AFCC), pp. 2–3, National Legal Aid, *Submission 20*, p. 3.

2 *First comprehensive review of the Family Law Act*, Media Release 27 September 2017, available at www.alrc.gov.au/inquiries/family-law-system/terms-reference (accessed 8 March 2018).

before the government initiate any reforms to the family law system.[3] For example, the Australian Human Rights Commission (AHRC) suggested that:

> …while some of the provisions of this Bill may appear urgent and relatively uncontroversial, there are others which raise more complex issues that may benefit from a consideration by the ALRC…[as] some of these amendments will be inconsistent with recommendations from the ALRC review.[4]

2.4 While this was not addressed directly by the Attorney-General's Department (department or AGD), its submission noted that the bill would have immediate benefits for vulnerable families. Moreover, it noted that many of the bill's provisions were Commonwealth responses to a number of expert reports on reform of the family law system.[5]

Resourcing and training to support increased family law case workloads

2.5 Some evidence suggested an increase in family law cases coming before state and territory courts would place significant pressure on an already strained system.[6] For example, the Law Council of Australia (Law Council) submitted:

> State and territory courts are struggling to meet the demands of the caseload arising from their local jurisdiction and most do not have the resources (court time) available to hear and determine, for instance, interim parenting applications. Many judicial officers in state and territory local courts do not have experience or knowledge of the family law jurisdiction, or have only limited knowledge and experience, and are reluctant to exercise their powers as a result.[7]

2.6 A number of submissions advocated for the Commonwealth to provide more training to ensure judicial officers are able to effectively exercise family law, and recognise, understand the dynamics of, and address cases involving family violence.[8]

2.7 Some evidence also drew the committee's attention to some different groups interacting with the family law system, where the capacity and understanding of judges and other staff could be improved, including in children's wellbeing, the needs of people with disabilities, and cultural awareness training on the needs of and barriers

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3 For example, see: ALRC*, Submission 4*, p. 5; DV Victoria, *Submission 8*, p. 2.

4 *Submission 4*, p. 5.

5 *Submission 21*, p. 10.

6 For example, see: AHRC, *Submission 4*, pp. 4–5; Salvation Army, *Submission 6*, p. 2; Victorian Women's Trust, *Submission 7*, p. 1; safe steps, *Submission 12*, p. 4; WLSA, *Submission 15*, p.4; AFCC, *Submission 18*, p. 4; The Chief Magistrate of the Local Court New South Wales, *Submission 19*, p. 2.

7 Law Society, *Submission 13*, pp. 5–6.

8 AHRC, *Submission 4*, pp. 4–5, VLA, *Submission 11*, p.3.

for Aboriginal and Torres Strait Islander communities and individuals participating in the family law system.[9]

2.8 Some evidence noted that any expansion of court powers should be accompanied by an increase in funding, not only to those courts, but also to legal aid, the National Aboriginal Family Violence Prevention Legal Services Forum (NFVPLS), and other relevant support services.[10]

2.9 The department submitted that the Commonwealth was aware that the bill may create additional workloads in some areas, while also driving efficiencies across the family law system. It noted the government would be:

> …working with states and territories to examine the impacts of increasing the exercise of family law jurisdiction, and better inform governments going forward. The department intends to pilot the increased exercise of family law jurisdiction under the Bill. The pilots would gather data on the potential resourcing impacts and system needs of increased jurisdiction, over a 12-18 month period. This will inform the implementation of the Bill in all states and territories. Jurisdictions' resourcing and training needs to support the pilots will be determined as part of the negotiations.[11]

2.10 Regarding training to improve capacity in the family law system, the AGD noted that the Commonwealth has funded the National Judicial College of Australia to develop three programs for state and territory judges to be rolled out in 2018–19, covering family law and the following matters:

- Parenting (including: the substantive law relating to making parenting orders; related issues of child development, risk assessment, and the impact of drugs, alcohol, violence and mental health on decision-making; and the intersection of state and federal laws in the areas of family law, child protection and family violence);
- Property (including: substantive law of property settlement and spousal maintenance; and the important related issues, including superannuation and valuation); and
- Family violence (including: awareness and understanding of family violence, to build on the already-available National Domestic and Family Violence Bench Book; and to promote a consistency in the interpretation and application of laws relevant to family violence across jurisdictions).[12]

2.11 The department noted that the National Domestic and Family Violence Bench Book is due to be updated in mid-2018, which has proved to be a significant:

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9 See respectively AHRC, *Submission 2*, p. 3, People with Disabilities Australia, *Submission 3*, p. 3, and NFVPLS, *Submission 17*, p. 1 and Attachment 1, p. 12.

10 AASW, *Submission 9*, p. 4; VLA, *Submission 11*, p.3; safe steps, *Submission 12*, p. 4; WLSA, *Submission 15*, p.4;NFVLS Forum, *Submission 17*, p.1.

11 *Submission 21*, p. 3.

12 *Submission 21*, p. 3.

> …resource for all judicial officers in Australian jurisdictions to improve their understanding of family violence. It covers the dynamics of family violence, guidelines for courtroom management, information about referrals for victims and perpetrators, and information about family law proceedings.[13]

Resolution of family law matters by state and territory courts

Jurisdiction of children's courts in family law matters

2.12 The bill would allow state and territory courts to have the same jurisdiction in parenting matters as is currently held by Magistrates' Courts (where a children's court is not already considered a court of summary jurisdiction).

2.13 This provision was broadly supported in evidence, as it would drive efficiency in the system and good outcomes for participants.[14] A number of these submitters noted this should be accompanied by training to relevant judicial officers, court staff, child protection workers and lawyers, particularly on where it may be appropriate for Children's Courts to make family law orders.[15] On this matter, the department stated that these courts had some discretion in making and applying their own rules and processes:

> States and territories have indicated a preference for their children's courts to retain their own practice and procedure so that matters can be dealt with efficiently, rather than requiring judicial officers to familiarise themselves with family law rules. The department agrees that it is essential for children's courts hearing a child protection matter to be able to deal with any ancillary family law matters expeditiously. The Bill therefore allows the regulations to prescribe a court's own rules as applying to any family law matters, when that court is prescribed.[16]

Property jurisdiction of state and territory courts

2.14 The bill would increase the monetary value at which the consent of both parties is required for the court to have jurisdiction, which would allow courts of summary jurisdiction to hear more contested family law property matters. The AGD set out how this would improve outcomes for some victims of family violence:

> Already, a victim of family violence can seek to have property orders made in their local magistrates' court, potentially alongside other state or territory matters such as seeking a family violence order. For vulnerable and disadvantaged victims, the property pool may consist only of, for example, a car, some household chattels, and a credit card debt. Currently, if that

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13 *Submission 21*, pp. 3–4.

14 See, for example: AHRC, *Submission* 4, p. 6, VLA *Submission 11*, pp. 7–8, safe steps, *Submission 12*, p. 5, Law Council, *Submission 13*, p. 5, WLSA, *Submission 15*, p. 4, AFCC, *Submission 18*, p. 2.

15 See, for example: VLA, *Submission 11*, pp. 7–8, WLSA, *Submission 15*, p. 6, NFVPLS, *Submission 17*, p. 1, AFCC, *Submission 18*, p. 2.

16 *Submission 21*, p. 4.

> property pool exceeds a total value of $20 000, the perpetrator of family violence can refuse their consent to the magistrates' court exercising family law jurisdiction. This would require the victim to go to the further effort and expense of filing a property matter in a family law court. The more likely scenario for such a minor property pool is that the victim would abandon their claim, which could decrease their financial stability and increase their risk.
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> …Increasing the monetary value at which both parties' consent is required to the court's jurisdiction will reduce the possibility for perpetrators to continue their abuse by denying the victim the ability to have their claim heard. Even where the property pool is over the monetary limit and the perpetrator can refuse consent, the state or territory court can make interim orders before transferring the matter to a family law court. This will keep the matter on foot and assist the victim to have greater certainty about their financial position, and in turn their safety, until their family law matter is heard.[17]

2.15 This was broadly supported by submissions, as it has the potential to reduce time, cost and risk for vulnerable individuals experiencing family violence and their families. Almost all expressions of support, however, stressed this change would need to be accompanied by appropriate training and professional development for judicial officers, so they are able to hear contested property matters effectively.[18] The AGD noted a number of training programs that are currently being developed, including on family law and property, as noted earlier in this report.

2.16 Other concerns were also raised in evidence. The Law Council advised that these provisions would be best placed in the Act with a limit of $100 000, rather than in the *Family Law Regulations 1984* (Cth) to 'enable proper consideration of future proposals (if any) to increase the amount'.[19] On this, the AGD commented:

> States and territories, though, have previously raised concern that it may be difficult to reach national agreement on a uniform monetary value for their courts. Allowing the value to be prescribed in regulations creates flexibility to accommodate different states' and territories' preferences.[20]

2.17 Victoria Legal Aid, while supporting the provision, suggested complex matters would still be more appropriately heard in family law courts.[21] The AGD conceded this point, commenting that it is:

> …working with states and territories to build clear assumptions about when matters might be transferred to a family law court. Piloting the jurisdiction will assist with this consideration.[22]

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17 *Submission 21*, p. 5.

18 See, for example: VLA, *Submission* 11¸ pp. 3 and 8, safe steps, *Submission 12*, p. 5, Law Council, *Submission 13*, pp. 6–7, WLSA, *Submission 15,* p. 3, AFCC, *Submission 18,* p. 2.

19 *Submission 13*, p. 7.

20 *Submission 21*, pp. 5–6.

21 VLA, *Submission 11*, p. 8.

Short form judgements

2.18 The bill would clarify that judgements made in parenting matters can be given in short form. Although this is currently allowed and is common practice, this provision is intended to address the reluctance of some jurisdictional judges to make parenting decisions in short form, and to prevent the lengthy written judgements delaying hearings. This was broadly supported in evidence.[23]

2.19 The committee received a number of comments regarding what factors judges should consider in making short form decisions. For example, the AHRC made the case that the amendments made by the bill '[do] not give sufficient weight to the importance of the interests affected or the rights of children to have an active and informed role in decisions affecting their lives'. To support this assertion, it commented:

> In determining what is in the child's best interests for the purposes of these new subsections, the court is required to consider only the matters set out in existing subsection 60CC(2) of [Part VII] the Family Law Act, but not those set out in subsection 60CC(3). Subsection 60CC(2) includes two matters: the benefit to the child of having a meaningful relationship with both parents, and the need to protect the child from physical or psychological harm from being exposed to family violence. The additional matters which are contained in 60CC(3) includes a list of considerations, some of which could be relevant to whether it is in a child's best interests to receive an explanation for certain court orders or injunctions.
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> In particular, it includes a consideration of 'any views expressed by the child and any factors (such as the child's maturity or level of understanding) that the court thinks are relevant to the weight it should give to the child's views'.[24]

2.20 safe steps Family Violence Response Centre (safe steps) suggested the development of a clear template so that judges would supply 'proper reasons' informing decisions, and so 'mitigate opportunities for appeals'.[25] The WLSA raised a related concern that, where short form judgements are given, appropriate safeguards for procedural fairness must be available, including a record of decisions and reasons provided to facilitate appeals if required, as well as the availability of transcripts and recordings of court hearings.[26]

2.21 The Law Society advised that the proposed amendment may have no significant effects without broader reform to simplify Part VII of the Act, and that:

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22 *Submission 21*, p. 6.

23 Professor Parkinson, *Submission 3*, p. 1; safe steps, *Submission 12*, p. 10, Law Council, *Submission 13*, p. 6, WLSA, *Submission 15*, p. 5, NLA, *Submission 20*, p. 2.

24 *Submission 4*, p. 8.

25 *Submission 12*, p. 10.

26 *Submission 15*, p. 9.

> …encouraging state and territory judicial officers to deliver ex tempore judgments is likely to lead to less error than those judicial officers attempting to deliver short form reasons pursuant to a complex Act….[noting] that judicial officers in specialist family courts have rarely been able to deliver 'short form' judgments in interim parenting cases, and it is unlikely that less experienced judicial officers in the state and territory courts would be able to do so without falling into error.[27]

2.22 On these concerns, the department submitted:

> The amendment is merely intended to clarify what is already common practice, including in the Federal Circuit Court, where many judgments are delivered orally and not settled into writing. Where state and territory courts are exercising family law jurisdiction and delivering interim decisions *ex tempore*, this practice would not need to change based on this provision.[28]

Strengthening powers of courts

The summary dismissal of unmeritorious claims;

2.23 The bill would strengthen the power of family law courts to dismiss unmeritorious cases, and proceedings that are 'frivolous, vexatious or an abuse of process'.[29] This provision was broadly supported by evidence.[30]

2.24 However, some submissions argued that the proposed amendments could have unintended consequences, namely that judges could punish some victims of family violence who merely made mistakes in their case, or that they could be used by perpetrators to undermine proceedings.[31] For these reasons, Ms Liz Snell, Convenor of the Women's Legal Services Australia (WLSA), suggested that this provision should be delayed until further research could be undertaken into its possible effects. She told the committee that there was already provision in the Act under part 11B for dismissal and cost orders to be made for vexatious proceedings, and outlined WLSA's concern that:

> …if there are even further amendments in this area, they may be used by perpetrators and/or their lawyers to threaten a family violence victim survivor with summary dismissal and associated legal costs, including by way of correspondence or prelitigation negotiations without good basis. We're concerned that this will lead to the withdrawal of meritorious claims.[32]

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27 *Submission 13*, p. 6.

28 *Submission 21*, p. 5.

29 *Submission 21*, p. 6.

30 For example, see Salvation Army, *Submission 6*, p. 3, safe steps, *Submission 12* , p . 9, RANZCP, *Submission 14*, p. 1, FVPLS, *Submission 17* (Attachment 1), p. 17, NLA, *Submission 20*, p. 4.

31 DV Vic, *Submission 8*, p. 2, safe steps, *Submission 12*, p. 9, WLSA, *Submission 15*, p. 6.

32 *Proof Committee Hansard*, 23 February 2018, p. 6.

2.25 The department responded to these concerns, pointing not only to the increased resources and training for judges in family violence but also protections in the bill that:

> …make [it] clear that proceedings are not to be considered frivolous, vexatious or an abuse of process just because an application is made and later withdrawn. This is intended to operate as a safeguard against the actions of self-represented family violence victims being misinterpreted. For example, they may make an application and then withdraw it for reasons other than the merits of their case, such as the power and control dynamics of family violence. If they later re-make the application, this should not be considered to be vexatious.[33]

Dispensing with explanations regarding orders or injunctions to children

2.26 Currently, if a court makes an order or injunction that is inconsistent with a family violence order, the Act requires the court to explain the order to the protected person, who may be a child. The bill would amend this provision, to give the court some discretion not to do so–or to exclude a particular matter from explanation, where it would be in a child's 'best interests'. The department noted this could be used to avoid re-traumatisation of a child who had witnessed or been a victim of family violence having to return to court to have a decision explained.[34]

2.27 This measure had broad support in evidence.[35] However, a number of submissions pointed out that it would be in a child's best interest to have an order explained in the vast majority of cases.[36] For example, the AHRC submitted:

> The Commission considers that this proposed amendment does not give sufficient weight to the importance of the interests affected or the rights of children to have an active and informed role in decisions affecting their lives.
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> Research suggests that Australian judges are generally not well-equipped with the skills and the training to undertake direct interactions with children and young people. This could lead to judges and court officials adopting a default position that avoids providing children with explanations of court orders and injunctions relevant to their safety and wellbeing because they consider that the children are 'too young to understand'.[37]

2.28 DV Vic submitted that, while it supports the amendment in principle relating to infants and very young children, it:

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33 *Submission 21*, p. 8.

34 *Submission 21*, p. 9.

35 For example, see: DV Vic, *Submission 8*, p. 1, AASW, *Submission 9*, p. 4, safe steps, *Submission 12*, p. 10, Law Council, *Submission 13*, p. 11, RANZCP, *Submission 14*, p. 1, NLA, *Submission 20*, p. 4.

36 SACCYP, *Submission* 2, p. 2, AHRC, *Submission 4*, p. 6, DV Vic, *Submission 8*, p 1.

37 *Submission 4*, p. 3.

> …objects to it in relation to older children and young people, who consistently report that they feel disempowered in the context of family violence and frustrated by others speaking on their behalf. During the Victorian Royal Commission, children and young people were noted as saying their experiences of the family court were unpleasant, and that it was a space in which they felt ignored.[38]

2.29 Additionally, some other comments in evidence were that:

- the decision not to explain matters to a child should be informed by a developmental assessment made by an appropriately qualified professional;[39] and
- in assessing an Aboriginal or Torres Strait Islander child's 'best interests', other considerations should be taken into account, including their relationship with other family members (including grandparents), as well as their 'right to enjoy his or her Aboriginal or Torres Strait Islander culture (including the right to enjoy that culture with other people who share that culture).[40]

2.30 In response, the department noted that there was broad support for the measure in other submissions, including some which suggested that:

> …it may not be in the child's best interests to be exposed to the conflict between their parents to the extent necessary for courts to comply with this requirement. To comply with the requirement as it currently stands, the court may be expected to explain in some detail its consideration of the violence between a child's parents as the reasons for making an order.[41]

2.31 Additionally, the department also noted:

> In making the decision about whether to provide an explanation, the court is required to have regard to the benefit to the child of having a meaningful relationship with both parents, and the need to protect the child from exposure to family violence. These are relevant considerations in a judge's decision about whether to explain to a child an order which affects them. The court can still choose to take additional considerations into account where it considers them relevant. This is intended to strike an appropriate balance between ensuring that judges do not dispense with an explanation lightly and avoiding an excessive burden on judges to consider an extensive range of matters in making a relatively confined decision.

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38 *Submission 8*, p. 7.

39 AASW, *Submission 9*, p. 4.

40 ATSILS (Qld), *Submission 10*, p. 8. See also Ms Kate Greenwood, Policy, Early Intervention and Community Legal Education Officer, ATSILS (Qld), *Proof Committee Hansard*, 22 February 2018, p. 39.

41 *Submission* 21, p. 9, citing evidence in AASW, *Submission 9*, p. 4, safe steps, *Submission 12*¸ p. 10, Law Council, *Submission 13*, p. 11 and RANZCP, *Submission 14*, p. 1.

> This amendment applies in a very specific and limited circumstance. It does not have any broader application which would affect the extent to which a child is heard or involved in the substantive proceedings.[42]

Time limits on state and territory court orders

2.32 The bill would remove the 21-day time limit on parenting or related orders made by state and territory courts, including when they are revived, varied or suspended when making an interim family violence order. The AGD submitted:

> Currently, these interim amendments to parenting orders expire after 21 days. If the parties have not been able to get a hearing before a family law court in that timeframe to seek ongoing amendments to their parenting orders, they may be left with parenting orders and family violence orders which are inconsistent. This can be confusing and may put vulnerable family members, including children, at risk of further violence.
>
> The amendment would create greater flexibility for judicial officers to ensure that family violence orders and parenting orders are consistent and safe for children. Judges would have the option to set a time limit for the interim orders where appropriate, or they would expire when the interim family violence order expires, or when a court makes an alternative order.[43]

2.33 This was broadly supported in evidence.[44] Victoria Legal Aid noted it would be particularly beneficial in regional areas where courts may not be able to offer another hearing for parties within a specific period.[45]

2.34 The Law Council and ATSILS (Qld) both raised the concern that this may lead to parents and children being separated for longer periods of time, which could be later interpreted by a court as a 'status quo' parenting arrangement, which could affect the judicial determination of a 'child's best interest'.[46]

2.35 The department disagreed with this, commenting that the 'change to any 'status quo' parenting arrangement is only one of a number of additional factors which a judge must consider'.[47] The department also noted that there was an intention to provide state and territory magistrates with information so they would fully understand the operation of this amendment. This would include 'consideration of an appropriate timeframe on orders, depending on a family's circumstances, with

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42 *Submission 21*, p. 9.

43 *Submission 21*, p. 7.

44 For example, see: AASW, *Submission 9*, pp. 2–3, VLA, *Submission 11*, p. 11, safe steps, *Submission 12*, p.10, Law Society, *Submission 13*, p. 12, WLSA, *Submission 15*, p. 4, NFVPLS, *Submission 17* (Attachment 1), p. 18, AFCC, *Submission 18*, p. 2, NLA, *Submission 20¸* p. 3,

45 *Submission 11*, p. 11.

46 Law Council, ATSILS (Qld)

47 *Submission 21*, pp. 7–8.

particular reference to the potential consequences of children being separated from one parent for an extended period of time'.[48]

Offences for breaching injunctions

2.36 The bill would introduce criminal penalties for breaches of personal protection injunctions (PPIs). Currently PPIs are enforceable in the civil jurisdiction, and will remain so should the bill pass. However, criminalisation of breaches is intended to 'reduce the burden on family violence victims of bringing a private application for enforcement'.[49] This was generally supported by submissions.[50]

2.37 The Law Council raised a number of concerns, arguing that:

- state and territory courts should remain the primary jurisdiction for individuals seeking family violence orders;
- offences should not be applied retrospectively; and
- these provisions be incorporated into the National Domestic Violence Order Scheme (NDVOS), which ensures orders made in one state can be fully enforced in other states and territories.[51]

2.38 The department concurred that jurisdictional courts should remain the primary forum for individuals seeking family violence orders, but pointed out that criminalising PPI breaches is intended to increase their deterrent effect, thereby providing greater safety for protected persons.[52] Regarding retrospectivity, the AGD commented:

> The offences as proposed would not retrospectively criminalise any breaches which occur prior to commencement of the offences. However, where PPIs are in place at the time of the commencement of the offences, any breach of those PPIs after the commencement of the offences would constitute an offence...[53]

2.39 Regarding the Law Council's proposal to incorporate this into the NDVOS, the department stated it:

> …does not agree that Commonwealth offences should be enforced as state and territory crimes. It is important that the same elements and penalties should apply to a Commonwealth offence, no matter where it is enforced.[54]

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48 *Submission 21*, p. 8.

49 AGD, *Submission 21*, p. 6.

50 For example, see: AHRC, *Submission* 4, p. 5, Salvation Army, *Submission 6*, p. 3, RANZCP, *Submission 14*, p.1, *WLSA, Submission 15*, pp. 5–6, NFVPLS, *Submission 17* (Attachment 1), p. 14, AFCC, *Submission 18*, p. 2,

51 *Submission 13*, p. 11.

52 *Submission 21*, p. 6.

53 *Submission 21*, p. 6.

54 *Submission 21*, p. 6.

2.40 Submissions made by safe steps and Tasmania Police noted that police officers would need additional training to enforce these provisions effectively.[55] The department noted these concerns, and commented:

> The department is committed to providing an appropriate level of information on the offences for all police officers and is working with states and territories to determine the content of that resource. The department is also working with states and territories to ensure that police will be able to access timely, up-to-date information about the existence and details of a PPI. The commencement timeframe of 12 months from Royal Assent of the Bill would allow appropriate information-sharing mechanisms and training to be put in place to ensure that state and territory police can carry out their role.[56]

Committee view

2.41 The bill would make amendments to Australia's justice system to improve outcomes for many vulnerable Australians experiencing family violence. Importantly, it would strengthen the powers of courts to protect these individuals, including children, and expedite the resolution of many family law cases by allowing them to be heard by state and territory courts, where appropriate.

2.42 The committee notes that these amendments would fulfil some Commonwealth commitments with states and territories contained in the ambitious National Plan to Reduce Violence against Women and their Children 2010-2022. Moreover, the committee understands that other provisions of the bill would reflect recommendations made to the Commonwealth across a number of expert reports and inquiries into potential reform of the family court system and the way family violence is addressed in Australia.

2.43 An overwhelming majority of submissions received by the inquiry supported not only the bill's intention in addressing family violence, but also its particular provisions. However, the committee also notes that some concerns were raised, which will be addressed in turn.

2.44 Some submissions argued that these reforms should be delayed until the ALRC finishes its review of the family law system in March 2019. The committee makes the point that reform of legal systems is a slow process, and it is important to look at ways to protect individuals at risk of family violence, including children, immediately. Moreover, as noted above, the bill's provisions are Commonwealth responses to a number of expert reports and inquiries into family violence, and that they have broad support in evidence received by this committee.

2.45 The committee is confident that should the ALRC inquiry raise other issues requiring attention, the government could amend the current Act to take into account the benefit of any recommendations of the inquiry. The committee notes once again

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55 safe steps, *Submission 12*, p. 8, Tasmania Police, *Submission 16*, p. 1. See also similar concerns raised by the Law Council, *Submission 13*, pp. 9–10 and WLSA, *Submission 15*, p. 5.

56 *Submission 21*, p. 6.

that the process of reform can be lengthy and time-consuming, and it is better to address immediate issues with the current legislation and then to deal with any additional recommendations as they come to hand.

2.46 Regarding resourcing, the committee is aware of the general concerns in evidence that the bill's provisions may see an increased burden on state and territory courts from family law cases. On this matter, the committee notes two things.

2.47 First, as stated by the department in its submission, the bill would not confer any increased jurisdiction to state and territory courts, but allow for regulations to prescribe matters such as children's courts and an increased property value. This means that any prescription of relevant courts or other matters would be done in consultation with states and territories. Second, the AGD made it clear that the Commonwealth would work closely with jurisdictions to monitor the impacts of any increased burden on state and territory courts, should the bill be passed. This would include gathering data to inform future decisions on resourcing or other emerging needs of the family law system, and adjusting policy accordingly.

2.48 Another broad concern raised in evidence was the need for training for judges and court officials to support the changes brought about by the bill. On this matter, the committee notes that the Commonwealth has commissioned a number of initiatives to train and inform judges and other officials on the impact of parenting, property, and family violence matters on family court matters that may come before the courts. This includes training programs to be rolled out over 2018-19 for judges in the Family Court on a number of relevant issues, and the planned update of the National Domestic and Family Violence Bench Book in mid-2018.

2.49 The committee also understands that the Commonwealth has left much of the power to determine rules and procedures to state and territory courts themselves, to accommodate the general preference for children's courts to retain their own practice and procedures.

2.50 Regarding the bill's amendment of property jurisdiction, the committee notes that this provision has been drafted to allow states and territories some leeway in determining the increased ceiling for courts to make property decisions. Additionally, the committee notes evidence from the department that the Commonwealth would continue to work with states and territories to build clear assumptions about where it is appropriate for complex cases to be determined by a family law court.

2.51 Regarding short form judgements, the committee is satisfied that the bill is designed to clarify existing practice, and to encourage more judges to adopt it where appropriate.

2.52 Regarding particular concerns about the rights of children raised by the AHRC, the committee notes that the relevant provisions of the bill align with section 60CC(2) of Part VII of the Act, which provides for the matters to be taken into consideration when determining 'the best interest of the child'. These are '(a) the benefit to the child of having a meaningful relationship with both parents, and (b) the need to protect the child from physical or psychological harm from being exposed to family violence'.

2.53 As well as this requirement, judges would be able to draw on additional factors outlined in 60CC(3), should they consider it appropriate, including 'any views expressed by the child'. This provision of the bill would give judges some flexibility in making and expressing decisions in short form, while ensuring the best interests of the child are always paramount.

2.54 Some submissions raised concerns that strengthening the powers of courts to dismiss vexatious proceedings may actually disadvantage some vulnerable individuals at risk of violence. The committee understands that there is always a risk that perpetrators of violence will attempt to manipulate court processes. However, the AGD's submission noted that the bill contains safeguards, and that additional training in family violence would be delivered for judicial officers to support implementation of changes made by the bill. The committee considers that these factors should assist in the recognition of family violence by courts and judicial officers, and guide them in making decisions that do not prejudice vulnerable individuals.

2.55 On dispensing with the requirement to explain family orders to children, the committee considers that the bill strikes an adequate balance between ensuring the best interests of a child is paramount when deciding to explain court decisions, while not putting excessive compliance burden on judges.

2.56 Regarding the new time limits on state and territory orders, the committee notes concerns raised by some submissions. However, it also notes the safeguards contained in the bill, and training planned for magistrates on these matters, which should ensure that 'status quo' arrangements do not override other factors in determining the best interests of a child.

2.57 Lastly, the committee notes the proposed new criminal penalties for breaches of PPIs. The committee is satisfied that these would not be applied retrospectively, and that the Commonwealth would work appropriately to ensure state and territory police are able to implement these changes effectively.

2.58 Once again, the committee notes the overwhelming support for the intention on the bill and its provisions, and so recommends that it should be passed.

Recommendation 1

2.59 The committee recommends that the bill should be passed.

Senator the Hon. Ian Macdonald

Chair