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Submission in response to the exposure draft of the *Family Law Amendment (Family Violence and Other Measures) Bill 2017 (Cth)*

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No To Violence Incorporating the Men's Referral Service

WEstjustice

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INTRODUCTION & SUMMARY OF RECOMMENDATIONS

Introduction

We thank you for the opportunity to respond to the exposure draft of the *Family Law Amendment (Family Violence and Other Measures) Bill 2017* (the **Exposure Draft**) and its accompanying Public Consultation Paper (the **Consultation Paper**). The Exposure Draft incorporates provisions originally in the now-lapsed *Family Law Amendment (Financial Agreements and Other Measures) Bill 2015* (Cth) and amends further provisions in the *Family Law Act 1975* (Cth) (the **Act**).

About WLSA

Women's Legal Services Australia (**WLSA**) is a national network of community legal centres specialising in women's legal issues, which work to support, represent and advocate for women to achieve justice in the legal system. We seek to promote a legal system that is safe, supportive, non-discriminatory and responsive to the needs of women. Some of our centres have operated for over 30 years.

Our members provide free and confidential legal information, advice, referral and representation to women across Australia in relation to legal issues arising from relationship breakdown and violence against women. Our legal services are directed to vulnerable and disadvantaged women, most of whom have experienced family violence. Therefore, our primary concern when considering any proposed legal amendments is whether they will make the legal system fairer for our clients – vulnerable women.

Our members' principal areas of legal service work are family violence (family violence intervention orders), family law, child protection and crimes compensation. Our members also deliver training programs and educational workshops to share our expertise regarding effective responses to violence and relationship breakdown.

Finally, both WLSA and its individual member services work to contribute to policy and law reform discussions, primarily focused on family violence, to ensure that the law does not unfairly impact on women experiencing violence and relationship breakdowns. We are informed by a feminist framework that recognises the rights of women as central.

Summary of recommendations

- **Recommendation 1:** WLSA supports the following amendments, subject to state and territory courts receiving sufficient additional resourcing and training to be able to meet their increased family law caseload:
    - the vesting of specialist children's courts, however constituted, with the power to make orders under Part VII of the Family Law Act; and
    - the removal of the monetary limit of $20,000 for state and territory courts to determine family law property proceedings.

  WLSA encourages the Federal Government to consider whether the specialisation of magistrates in family law would assist state and territory courts in more effectively meeting an increased family law caseload.

- **Recommendation 2:** That prior to the implementation of the amendments the Federal Government make additional resourcing available to state and territory courts, including by way of training for court staff and judicial officers, in order to ensure these courts can provide a high quality service to litigants and meet increased family law demand.

- **Recommendation 3:** That the Federal Government make additional funding available to all legal assistance services, comprised of: community legal centres, including specialist women's legal services and programs; Family Violence Prevention Legal Services, Aboriginal and Torres Strait Islander Legal Services and Legal Aid Commissions, to enable them to better respond to anticipated increased demand for family law legal assistance flowing from the proposed jurisdictional amendments.

- **Recommendation 4:** That the Federal Government form a cross-sectoral consultative committee to advise it on inter-jurisdictional family law practice issues.

- **Recommendation 5:** WLSA supports the insertion of section 69ZL to provide for a court to give reasons in short form for a decision it makes in relation to an interim parenting order, provided there are sufficient procedural fairness safeguards in place.

- **Recommendation 6**: That the Federal Government introduce legislative protections to stop a victim of family violence being directly cross-examined by their abuser in all family law proceedings.

- **Recommendation 7**: That the Federal Government implement Recommendation 19 of the FLC Final Report regarding commissioning research on what family law systems abuse occurs and how it can be prevented.

- **Recommendation 8:** That the Act be amended as proposed to criminalise breaches of personal protection injunctions granted under provisions of the Act.

- **Recommendation 9:** That the Federal Government fund training for state and territory police officers on family law and family violence to ensure there is a consistent understanding of the proposed injunction amendments and their enforceability nationwide. Training should include the formation of a national response framework that can be used by police when responding to alleged breaches of injunctions. Such a framework could, for example, draw upon the Common Risk Assessment Framework (**CRAF**) used by Victorian police.

- **Recommendation 10:** That the Federal Government work through COAG to encourage all state and territory police to introduce and enact a *Code of Practice for the Investigation of Family Violence,* as in Victoria.

- **Recommendation 11:** That the Federal Government clarify the interaction between the criminalisation of breaches of family law safety injunctions and the proposed national DVO scheme.

- **Recommendation 12:** That any amendment to subsection 68P(2) should be consistent with the *Convention on the Rights of the Child*.

- **Recommendation 13:** That section 68T of the Act be amended as proposed to remove the 21 day time limit on a state or territory court's power to vary, discharge or suspend a family law order in interim domestic violence order proceedings.

- **Recommendation 14:** That subsection 114(2) of the Act, in relation to orders relieving a party of the obligation to perform marital services, be repealed as proposed.

1 – FAMILY LAW MATTERS TO BE RESOLVED BY STATE & TERRITORY COURTS

Significant resourcing required to support the value of broadening of state and territory courts' family law jurisdiction (Items 1-5 and 8-11)

The Exposure Draft proposes to amend state and territories family law jurisdiction in two ways. Firstly, the proposed amendments confirm that specialist children's courts, however constituted, have the power to make orders under Part VII of the Family Law Act (items 1-5, and 8-9). Secondly, the proposed amendments remove the monetary limit of $20,000 for a state or territory court to hear and determine family law property proceedings (items 10-11). The stated purpose of these amendments is to encourage state and territory courts to determine family law matters and so reduce the number of litigants who will be required to navigate both state and federal court systems.[1]

WLSA agrees that navigating multiple courts, laws and jurisdictions poses a significant problem for families in general and women who have experienced family violence in particular. This makes it difficult, if not impossible, for some community members to satisfactorily resolve all of their legal disputes arising out of family violence. Therefore, in principle, WLSA supports this proposed expansion of state and territory family law jurisdiction. However, we are concerned that the efficacy of these proposed amendments relies heavily on the capacity of state and territory courts to hear more matters, and to quickly gain the requisite family law expertise.

We acknowledge the first recommendation in the Family Law Council's interim report on *Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems* (**FLC Interim Report**) that the *Family Law Act* be amended to confirm that specialist children's courts, however constituted, are able to make orders under Part VII of that Act. We agree it is often expeditious for such courts, given their familiarity with the particulars of cases in which parenting orders are often required, to make such orders rather than refer them to another court for determination. However, we note that this recommendation in the FLC Interim Report comes with the following caution in relation to court training and resourcing:[2]

> In recognition of the practical barriers affecting the capacity of children's courts and magistrates' courts to undertake family law work, Council believes it will be critical that any legislative amendments are supported by professional development for relevant judicial officers and practitioners, including court staff and child protection department personnel. Council also notes that these courts will need to be properly resourced to undertake this work.

The experience of WLSA member lawyers in state and territory courts is that there is already a pressing demand for court services and a lack of resources for these courts to hear matters in a timely and effective manner.[3] Our further experience is that as state and territory courts

[1] Consultation Paper, [4] and [32].

[2] FLC Interim Report, at page 103.

[3] What is "effective" decision-making will depend on the circumstances of the case. It may, for example, require the decision-maker to have specialist knowledge and access to specialist court services. It may also require the decision-maker to understand and respond sensitively to the dynamics of family violence and the effects of trauma on litigants' presentation. In addition, it may require the decision-maker to adopt a culturally sensitive approach when dealing with litigants from a culturally or linguistically diverse (**CALD**) or Aboriginal or Torres Strait Islander (**ATSI**) background.

exercise their limited family law jurisdiction infrequently, few have the requisite expertise to properly hear and determine family law property and parenting matters. For example, family law orders made in state and territory courts have in the past omitted standard enforcement clauses that the Family Court would routinely include. Because of such factors, and given the wealth of family law expertise of federal courts, it will likely still be desirable to have most property and parenting matters determined by a federal court.

State and territory courts also lack access to the services and systems currently available to assist decision-makers in family courts. For example, Family Court services include family consultants with relevant expertise who prepare family reports and conduct child dispute conferences, and registrars with sufficient knowledge and expertise to run conciliation conferences in family law property matters. Currently these services, which are integral to the management of cases within the family law jurisdiction, are not available to judicial officers exercising their family law jurisdiction in state and territory courts.

It is for all of the above reasons that we posit, alongside the Family Law Council, that state and territory courts will require a significant injection of resources, including in the form of family law training, in order to fully realise the objectives of these legislative amendments. Without sufficient resourcing, WLSA is concerned that the proposed broadening of those courts' family law jurisdiction will either not be taken up (by litigants and the courts), or will fail to reduce complexity and delay in proceedings for litigants.

It is our view that the development of the National Domestic and Family Violence Bench Book (the **Bench Book**) alone will be insufficient to equip state and territory courts for this change. Further, without knowing the detail of the judicial family law training referred to at page 5 of the Consultation Paper, we cannot comment on whether this would be sufficient to allay concerns. In addition, we query whether family law practice experience will be required to equip inexperienced magistrates to hear complex family law matters, and whether the appointment of specialist judicial officers with extensive family law practice experience would be required.

Therefore, the support we have for increasing state and territory family law jurisdiction is contingent on the Federal Government confirming additional resources and funding to state and territory courts to ensure they are in a position to take on an increased caseload in a relatively unfamiliar area of law. This should include appropriate resourcing for training of court staff and judicial officers to deal with family law matters, and a focus on providing timely and effective outcomes for clients. It could also include piloting of the specialisation of magistrates in family law, to enable courts to more effectively respond to an increased family law caseload.

Recommendation 1: WLSA supports the following amendments, subject to state and territory courts receiving sufficient additional resourcing and training to be able to meet their increased family law caseload:

- The vesting of specialist children's courts, however constituted, with the power to make orders under Part VII of the Family Law Act, and
- the removal of the monetary limit of $20,000 for state and territory courts to determine family law property proceedings.

WLSA encourages the Federal Government to consider whether the specialisation of

magistrates in family law would assist state and territory courts in more effectively meeting an increased family law caseload.

Recommendation 2: That prior to the implementation of the amendments the Federal Government make additional resourcing available to state and territory courts, including by way of training for court staff and judicial officers, in order to ensure these courts can provide a high quality service to litigants and meet increased family law demand.

Increased demand for legal assistance services

WLSA anticipates that these two sets of jurisdictional amendments will increase demand for legal assistance services, including services provided by community legal centres (**CLCs**), given the large proportion of litigants with family law issues who are vulnerable and disadvantaged. For example, Women's Legal Service Victoria (**WLSV**) duty lawyers at the Magistrates' Court of Victoria assist clients with applications for family violence intervention orders. With an expansion of the Magistrates' Court family law property and parenting jurisdiction, these clients may be more likely to raise a claim at that court, and require legal assistance in this regard.

This comes in the context of demand for community legal services far outstripping availability. In March 2016, Victoria Legal Aid reported that family violence and family law duty lawyers in Victoria were stretched and unable to meet the excessive demand for their services.[4] In 2014-2015, close to 160,000 people in legal need had to be turned away by CLCs, largely due to a lack of resources.[5] At 1 July 2017, the CLC sector will face a 30% reduction in Commonwealth funding nationally and limited state and territory funding in many jurisdictions. Therefore, these amendments will result in an increased need for additional funding of legal assistance services.

In increasing legal assistance funding, it is important that all legal assistance services, comprised of CLCs, including specialist women's legal services and programs; Family Violence Prevention Legal Services; Aboriginal and Torres Strait Islander Legal Services; and Legal Aid Commissions, are sufficiently funded in order to provide a choice of legal services. This is necessary both for clients' sense of agency, as well as to ensure access to justice in cases where a conflict of interest arises.

Recommendation 3: That the Federal Government make additional funding available to all legal assistance services, comprised of: CLCs, including specialist women's legal services and programs; Family Violence Prevention Legal Services, Aboriginal and Torres Strait Islander Legal Services and Legal Aid Commissions, to enable them to better respond to anticipated increased demand for family law legal assistance flowing from the proposed jurisdictional amendments.

[4] "Recent research released by Victoria Legal Aid showed that, due to high demand, only four in every ten people receive assistance at court in the family violence jurisdiction. Much of the assistance provided is time pressured and some is clearly insufficient….Simply put, current services are not keeping up with excessive levels of demand": Victoria Legal Aid, Submission to the Access to Justice Review (March 2016), at page 38, available online at: https://myviews.justice.vic.gov.au/application/files/4714/5818/8114/Submission_67_-_Victoria_Legal_Aid.pdf

[5] National Association of CLCs (NACLC) National Census of CLCs 2014 Infographic (2015) NACLC, 1.

Further consideration required in relation to how jurisdictions will interrelate

In discussion, WLSA members' lawyers have questioned how state/territory and federal court rules of practice and procedure will interrelate given the proposed expansion of state and territory courts' family law jurisdiction. One such area is the difference in the evidentiary requirements between state and federal jurisdictions. While the Federal Circuit Court requires affidavits in writing and written evidence in relation to family law property disputes, magistrates' courts often accept oral evidence, or less formal statements confirmed by oral evidence, in civil claims. If a child protection matter is before a children's court, and the court decides to exercise its family law jurisdiction, would a further application or other documents be required? Another area of uncertainty is how interim family law property orders made by a state or territory court will be treated by federal courts, should a family law dispute move from the state/territory court to the federal court. We submit these matters of inter-jurisdictional practice and procedure require further consideration by the Federal Government.

Recommendation 4: That the Federal Government form a cross-sectoral consultative committee to advise it on inter-jurisdictional family law practice issues.

Short form judgements (Items 6-7)

Item 6 inserts a new provision section 69ZL into the Act to provide that a court may give reasons in short form for a decision it makes in relation to an interim parenting order. WLSA agrees with this amendment. However, we note that where short form judgments are made, appropriate safeguards must be put in place to ensure that procedural fairness is available for clients. This includes ensuring that there is a sufficient "record" of the order and reasons to allow for the parties to appeal if required, and accessible transcripts and recordings of court hearings (including the option for these to be provided free of charge to those in financial hardship).

Recommendation 5: WLSA supports the insertion of section 69ZL to provide for a court to give reasons in short form for a decision it makes in relation to an interim parenting order, provided there are sufficient procedural fairness safeguards in place.

2- STRENGTHENING COURT POWERS TO PROTECT VICTIMS OF FAMILY VIOLENCE

Preventing systems abuse, and the proposed power to enable summary dismissal for unmeritorious claims (Items 12-13, 21 and 24)

WLSA supports legislative amendment that reduces systems abuse by perpetrators of family violence in the Family Court system. This includes, for example, our support for the amendment of the Act to stop perpetrators from directly cross-examining their victims in court. We are also concerned, as noted by the Family Law Council (**FLC**) in its 2016 final report on *Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems* (**FLC Final Report**), about the "misuse of the subpoena process to obtain access to sensitive therapeutic treatment records that are inadmissible or serve no legitimate forensic purpose."[6]

[6] FLC Final Report, 154.

However, WLSA notes, alongside the FLC in its Final Report, that since 2012, courts have had the power under Part XIB of the Act to dismiss vexatious proceedings, and under section 118 of that Act to dismiss frivolous or vexatious proceedings and make costs orders. However, as the FLC notes in its Final Report, "information on the use and impact of these powers is lacking",[7] as is information about systems abuse in the family law context generally. It is for these reasons that the FLC goes on to make Recommendation 19 of the FLC Final Report as follows:

> **Recommendation 19: Self-represented litigants and misuse of process**
>
> 1) The Federal Government commission research that would support an understanding of how and to what extent the intentional and unintentional misuse of legal processes, such as the request for subpoenas, and other agencies and services relevant to family breakdown (family law services and courts, the child support system, child protection systems and civil family violence protection order systems) occurs and how this may be prevented.
>
> 2) The Federal Government commission research that would support an understanding of the extent, experience and dynamics of self-representation in family law matters involving families with complex needs, including matters where there are family violence and mental health issues.

Given existing summary dismissal powers in the Act, and the lack of information about their efficacy, particularly in relation to combatting systems abuse, we query the rationale behind an expansion of these powers by way of Items 12-13 and 24 of the Exposure Draft (the **summary dismissal amendments**) prior to the research suggested by the FLC being completed. We further query the extent to which current summary dismissal powers are, and the proposed expansion of summary dismissal powers could, be used to perpetrate systems abuse and so further injustice.

In particular, many of our clients who are victims of family violence are also litigants in person. Often their paperwork is not of a high standard and they can present badly in court or at conferences because of their fear and trauma. This is often exacerbated by having to face their perpetrator (whether or not the perpetrator is represented) in the stressful court environment. These factors combined may result in victims' claims seeming, on their face, unmeritorious, when victims in fact require support and assistance in explaining their experience, gathering evidence and drafting affidavit materials.

We are further concerned about to what extent perpetrators and/or their lawyers threaten a victim of family violence with summary dismissal and associated legal costs, including by way of correspondence or pre-litigation negotiations, without good basis. These threats may result in victims of family violence withdrawing meritorious claims. We are concerned that if a victim withdraws her claim in such circumstances and then seeks legal assistance and files again later with a stronger case, she may still be perceived as vexatious for making multiple applications. Further, as the risk of such threats arises largely outside of court hearings, we note that it is largely irrelevant whether or not the judiciary is able to identify the difference between an unprepared, stressed, or fearful litigant and a bona fide unmeritorious claim.

[7] Ibid.

Given the large amount of litigants in person in the family law system, the risk of such unintended consequences of summary dismissal powers should be carefully considered. As the FLC notes in its Final Report, in more than half of the parenting cases that come before the Family Court, one or both parties are unrepresented for some or all of the proceedings.[8] The Council further states that "more than half (52%) of the family law trials in the Federal Circuit Court in 2014/15 involved at least one parent who was unrepresented, and in 20% of these cases both parties were unrepresented."[9] In a 2000 Family Court report on self-represented litigants that drew on a questionnaire provided to court judges and registrars, in 59 per cent of cases involving one or more self-represented litigants, the self-represented litigant was considered to be disadvantaged by their lack of representation.[10]

In addition, although the Bench Book could be amended to provide guidance for judges to identify the distinction between these two categories of case, in practice the distinction may be difficult to ascertain. Again, the ability of these proposed amendments to achieve their policy objective is contingent on the expertise of judges, and their ability to discern the nuances of systems abuse. Some WLSA member lawyers also commented on the adversarial culture that still exists in the family law system, in which courts, lawyers and/or the other party at times take the inaccurate view that a victim of family violence is using allegations of family violence as a tactic in their matter.

Importantly, we note that the FLC does not in the FLC Final Report recommend that the powers to summarily dismiss provided for in the Act be expanded. Rather, it recommends that the Federal Government should commission research to better understand systems abuse. The FLC also makes other recommendations in relation to systems abuse that we believe would be more effective in protecting victims of family violence, in particular its recommendation 8 that the Federal Government address the issue of direct cross-examination of family violence victims by their abusers. We note the UK family court's commitment to banning family violence perpetrators' direct cross-examination of victims this year,[11] as well as the recommendation made at the 2016 Council of Australian Governments National Summit on Reducing Violence against Women and their Children to ban direct cross examination by a perpetrator in any family law or family violence proceeding.[12]

Recommendation 6: That the Federal Government introduce legislative protections to stop a victim of family violence being directly cross-examined by their abuser in all family law proceedings.

Recommendation 7: That the Federal Government implement Recommendation 19 of the FLC Final Report regarding commissioning research on what family law systems abuse occurs and how it can be prevented.

[8] Family Law Council (2016) *Family with Complex Needs Intersection of Family Law and Child Protection Systems Final Report* (hereinafter referred to as the **FLC Final Report**) at page 5, available online at: https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Documents/Family-with-Complex-Needs-Intersection-of-Family-Law-and-Child-Protection-Systems-Final-Report-Terms-3-4-5.PDF

[99] FLC Final Report, page 22.

[10] Family Law Court (2000) *Litigants in Person at the Family Court of Australia*, at page 2, available at: http://www.familycourt.gov.au/wps/wcm/connect/f987e373-90f0-4ebe-a886-db7c7174080f/report20.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ROOTWORKSPACE-f987e373-90f0-4ebe-a886-db7c7174080f-lh-ejy1

[11] https://www.theguardian.com/society/2016/dec/30/family-courts-sir-james-munby-domestic-abuse-victims

[12] https://coagvawsummit.pmc.gov.au/family-law

Criminalisation of breaches of injunctions (Items 15-16 and 22-23)

The Exposure Draft proposes amendments that will criminalise a breach of a personal protection injunction issued under the Act (the **injunction amendments**). Currently, breach of an injunction is a private matter between parties that can only be enforced if the aggrieved party (the victim) brings a civil enforcement action in a family court. The stated purpose of these amendments is to provide additional protection for victims of family violence and to demonstrate that family violence is a matter of public concern.[13]

WLSA agrees with the policy objective of these amendments. We consider that the greatest value of these amendments will be for women who see an escalation of family violence after the commencement of family law proceedings. The injunction amendments could assist in those circumstances, as they would mean that those women would not need to go to a new court to obtain an enforceable (by police) safety order.

In our experience victim survivors are most likely to face an escalation of family violence at the point of separation,[14] which is often well prior to commencement of family law proceedings. Therefore many victim survivors are likely to already have a state or territory court domestic violence order (**DVO**) in place at the commencement of family law proceedings. For victim survivors who do however need to obtain protection during family law proceedings, equalising the enforceability across federal injunction orders and state and territory protection orders is likely to improve outcomes for victims, and reduce the need for women to commence proceedings in multiple courts in order to stay safe.

The effectiveness of this proposed amendment will be contingent on its implementation. For example, we note the differences in ease of use of court forms between states and territory courts, and the Family Court, which are likely to influence which court orders (DVOs or injunctions) are used. Currently, many state and territory courts have simplified court forms for a DVO application. We note in particular the phone app form for intervention orders that was piloted by the Neighbourhood Justice Centre in Victoria in 2015.[15] However, the Family Court requires an affidavit as part of an application for an injunction. This may diminish the uptake of Family Court injunctions. We anticipate that community legal education (particularly for self-represented litigants) in relation to the existence of personal safety injunctions, and the process by which to apply for and enforce them, will be required.

Ensuring effective enforcement of family law injunctions will also be important. An ongoing issue reported by WLSA member lawyers is a lack of timely and effective police response to breaches of DVOs. Our clients frequently report failures of state or territory police to properly investigate and prosecute breaches of DVOs. This suggests criminalisation of breaches of family law injunctions would only be effective if coupled with sufficient training and resources for state, territory and federal police to respond appropriately to reports of family law injunction breaches.

We therefore support the Federal Government investing in training state, territory and federal police in both family law and family violence. Training should include the formation of a

[13] Consultation Paper, at [57] at page 14.

[14] See, for example: George and Harris, Landscapes of violence: women surviving family violence in regional and rural Victoria (2014), at page 81, accessible online at: http://www.deakin.edu.au/__data/assets/pdf_file/0003/287040/Landscapes-of-Violence-online-pdf-version.pdf

[15] http://www.theage.com.au/victoria/new-app-for-family-violence-intervention-orders-20150518-gh48k0.html

national response framework that can be used by police when responding to alleged breaches of injunctions. Such a framework could, for example, draw upon the Common Risk Assessment Framework (**CRAF**) used by Victoria Police. We further encourage the Federal Government to work through the Council of Federal Governments (**COAG**) to support all state and territory police to introduce and enact a *Code of Practice for the Investigation of Family Violence,* as in Victoria.[16]

Finally, we note the ongoing work through COAG in relation to development of a national DVO scheme and a national information sharing system. [17] We query how the injunction amendments will interact with this, in particular the national DVO scheme, to ensure police have access to the necessary information to ensure that all personal safety orders and injunctions can be effectively enforced. We request that the Federal Government clarify the relationship between this scheme and the injunction amendments to determine whether, and to what extent, there will be any gaps or overlaps of services and resources.

Recommendation 8: That the Act be amended as proposed to criminalise breaches of personal protection injunctions granted under provisions of the Act.

Recommendation 9: That the Federal Government fund training for state and territory police officers on family law and family violence to ensure there is a consistent understanding of the proposed injunction amendments and their enforceability nationwide. Training should include the formation of a national response framework that can be used by police when responding to alleged breaches of injunctions. Such a framework could, for example, draw upon the Common Risk Assessment Framework (**CRAF**) used by Victorian police.

Recommendation 10: That the Federal Government work through COAG to encourage all state and territory police to introduce and enact a *Code of Practice for the Investigation of Family Violence,* as in Victoria.

Recommendation 11: That the Federal Government clarify the interaction between the criminalisation of breaches of family law safety injunctions and the proposed national DVO scheme.

Dispensing with explanations regarding orders or injunctions to children (Items 14 and 17)

WLSA submits that in making legal amendments that affect children's ability to engage with the legal system, the wellbeing and safety of the child should be prioritised, and any amendment made should be consistent with the *Convention on the Rights of the Child*. In particular we draw your attention to sub-articles 9(1) and (2) of that Convention, which provide that in child protection and family law parenting proceedings, children should be "given an opportunity to participate in the proceedings and make their views known."[18]

We refer to the National Children's Commissioner's evidence before the Legal and Constitutional Affairs Legislation Committee regarding the *Family Law Amendment (Financial Agreements and Other Measures) Bill 2015*. The issue of dispensing with explanations regarding orders or injunctions to children was proposed in that Bill. The Children's Commissioner spoke with concern that "children routinely tell me that they feel

[16] https://www.police.vic.gov.au/content.asp?a=internetBridgingPage&Media_ID=464

[17] https://www.pm.gov.au/media/2016-10-17/coag-summit-address-violence-against-women-and-their-children

[18] http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx

disempowered and silenced in Family Court proceedings. They also say they are not given information about outcomes or consulted on decisions about them".[19]

We therefore recommend that any amendment to subsection 68P(2) should be consistent with the *Convention on the Rights of the Child*.

Recommendation 12: That any amendment to subsection 68P(2) should be consistent with the *Convention on the Rights of the Child*.

Removal of 21 day time limit on state and territory courts' power to vary, discharge or suspend an order (Item 18-20)

The draft amends section 68T of the Act to remove the 21 day time limit on a state or territory court's power to vary, discharge, or suspend a family law order in interim domestic violence order proceedings. The draft provides for variations to now have effect until the date specified in the order, until the interim intervention order expires or until further notice. Currently, if a state or territory court, in hearing an interim domestic violence order matter, orders that a family law order be varied, revived or suspended, then that variation, revival or suspension only has effect for 21 days.

WLSA supports the removal of the 21 day time limit. Inconsistent interim family violence orders and parenting orders risk the safety of children, their carers, victims of family violence and the potential for violence to occur again.

Recommendation 13: That section 68T of the Act be amended as proposed to remove the 21 day time limit on a state or territory court's power to vary, discharge or suspend a family law order in interim domestic violence order proceedings.

3 - OTHER AMENDMENTS

Repeal obligation to perform marital services (Item 15)

Item 25 of the Draft repeals the existing subsection 114(2) of the Act. Subsection 114(2) currently permits the court to make an order relieving a party to a marriage from an obligation to perform marital services or render conjugal rights. WLSA supports the amendment.

Recommendation 14: That subsection 114(2) of the Act, in relation to orders relieving a party of the obligation to perform marital services, be repealed as proposed.

[19] Legal and Constitutional Affairs Legislation Committee, Family Law Amendment (Financial Agreements and Other Measures) Bill 2015, transcript at p26(30): http://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/a6054ad8-388b-41ae-9c04-50500d839c4a/toc_pdf/Legal%20and%20Constitutional%20Affairs%20Legislation%20Committee_2016_02_12_4163_Official.pdf;fileType=application%2Fpdf#search=%22committees/commsen/a6054ad8-388b-41ae-9c04-50500d839c4a/0000%22