



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

Mr Peter Cain MLA (Chair), Dr Marisa Paterson (Deputy Chair), Mr Andrew Braddock MLA

Submission Cover Sheet

Inquiry into Sexual, Family and Personal Violence Legislation Amendment Bill 2023

Submission Number: 003

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29 November 2023

Standing Committee on Justice and Community Safety

ACT Government

Via email: LACommitteeJCS@parliament.act.gov.au

To Whom It May Concern,

RE: Submission on Inquiry into the Sexual, Family and Personal Violence Amendment Bill 2023

The Women's Legal Centre ACT ('WLC') is pleased to have the opportunity to contribute to the inquiry into the Sexual, Family and Personal Violence Amendment Bill 2023 ('the Bill').

The Women's Legal Centre ACT

WLC is a specialized community legal centre dedicated to delivering high-quality legal services to women, with a focus on those experiencing and at risk of violence, discrimination and systemic disadvantage. We enhance women's lives through specialised legal support and advocacy in the areas of family law, early intervention care and protection, family violence, employment, discrimination, sexual harassment, migration, victims of crime and soon, sexual assault. The Centre operates within a multi-disciplinary team and uses a trauma-informed practice model through integrating legal services, social work, cultural supports and collaborative service models to provide wrap-around support to clients.

We also advocate for and assist government to improve relevant policy, legislation and implementation. We do this through community legal education, and making constructive, solutions-oriented submissions which draw on our front-line experience in our legal and social work practices in the ACT.

What We Do

WLC provides advice to and advocates for women in the ACT who are facing legal issues. Many of these women have or are experiencing family violence. The definition of family violence is continuously evolving and disproportionately affects the most vulnerable, including those who are financially, culturally, and socially marginalised.

Our work in this space is often focussed on supporting women who have or are experiencing family violence navigate complex legal systems including child protection matters, separation, divorce, parenting arrangements, property settlement, employment, discrimination, sexual harassment and migration/visa matters. We provide a trauma informed service which prevents women and their children from continuing to experience family violence.

Since September 2022, WLC has operated the RAFT (Remote Applications for Family Violence Order (FVO) Trial) Project. RAFT offers clients the opportunity to obtain an interim FVO without attending the ACT Court Building. The service includes legal advice, drafting an application for an FVO, and appearing during the interim hearing. We also ensure clients receive specialist safety planning via referrals to the Domestic Violence Crisis Service and ongoing non-legal support via referrals to our other external partnerships.

WLC does not practice in personal violence and therefore we have not made submissions on those proposed amendments. We are in the process of setting up our Sexual Assault Legal Service, which is a new area of practice for WLC. We hope to in the future provide submissions in this area.

The case studies included in this submission have been de-identified.

WLC supports the majority of the proposed amendments to the *Family Violence Act 2016*. We provide more detail about specific aspects of the reform below. Further we endorse the submission provided to the Committee by Legal Aid ACT.

1. Clarification around when an interim family violence order ('FVO') can be sought.

The current legislation does not allow a clear pathway for an interim FVO to be sought during proceedings or if an interim FVO was previously refused. Many applicants are self-represented and are either unable or unaware that they can seek legal advice prior to

making an application, which may result in an incomplete application, or no interim order being sought.

In our experience and as per the National Domestic Violence Bench Book, separation and engaging in a legal process are identified as high risk factors, which are likely to increase the risk of further family violence. We support a shift in recognising that family violence is cyclical and there are periods of calm followed by periods of escalation which requires a reassessment of safety and need for an interim FVO.

We note that the court must set a return date for the hearing of the interim order which is not later than 2 days after the day the application is received (section 47). We seek clarification around the definition of “no later than 2 days”. Does this mean business days? Does the day the application was received count? If the application was filed on Friday morning, must the interim be listed by close of business Monday or Tuesday? In our experience, there has not been consistency in the interpretation of this definition, which has resulted in last minute shifts in safety planning as women have had to return to the court 2 days later rather than 1 day.

2. The removal of the ‘Aid and Abet’ offence

We strongly support the decision to introduce provisions abolishing the offence of ‘aid and abet a breach of an FVO’ by a protected person. A common form of family violence is controlling and coercive behaviour, this manifests in protected persons being manipulated into the aiding or abetting a breach of their FVO by the perpetrator. When this occurs, many of our clients have reported being unwilling to report serious breaches by the Respondent because of fear of being charged themselves.

In our experience, it can take women several attempts to leave or separate from violent partners, and they often return to the relationship many times until the violence escalates again, and this amendment recognises a final separation may not occur at the time an FVO is initially applied for, particularly if someone continues to experience family violence.

Sonia's Story

Sonia had been with her partner on and off for 7 years. They share a child together and have lived together on and off.

Sonia is from a culturally diverse background and had limited knowledge about the Australian legal system. Sonia has experienced emotional abuse, verbal abuse, and threats from her partner that if she were to leave him, he would take their son away and take all her money.

Sonia's partner physically assaulted and was yelling threats to kill her when a neighbour called police. Sonia's partner was charged with common assault. Sonia decided to apply for and was granted an interim FVO.

A few weeks later, Sonia returned to the relationship out of fear that her former partner would take their child from her. There was an escalation of violence, resulting in Sonia's rib being cracked. Sonia felt unable to seek medical help, report the violence, or breaches out of fear that she would be charged with aiding and abetting a breach of the FVO.

3. FVO continues when protected person becomes an adult.

We support the proposal that an FVO will continue to be in force even after a protected person becomes an adult. In our experience, parents seek orders protecting their teenage children when there has been trauma in the form of experiencing or being exposed to violence at the hand of the other parent. The protective parent does not wish to put their children through the process of seeking their own order. The court process is triggering and requires applicants to give oral evidence outlining the violence they have experienced and the impact this has had on them and parents understandably wish to shield their child from this process.

We note that exceptions around parenting plans or parenting orders pursuant to the *Family Law Act*, will no longer apply once the child is 18 years old. This could lead to a situation where a Respondent is unable to spend time with their adult child as per the usual arrangements, because of an FVO, which would then require a further application to amend the FVO.

4. Preliminary Conference

The amendments in relation to Preliminary Conferences are unexpected and a shift from what has been standard practice for years. We support this change but believe the amendment needs further details and clarification.

We seek clarification around what grounds and considerations the court would rely on to determine if a conference is necessary or not? How is unacceptable risk defined? Will an applicant be able to advocate for or against a conference listing during the interim hearing?

We recognise the power of a registrar to adjourn a conference and submit that if service has not been completed prior to a conference, an applicant should be able to request a registrar to adjourn the matter in chambers. This means the applicant would not be required to attend court unnecessarily.

5. Provisional amendment of protection order in special or exceptional circumstances

We support the introduction of provisions allowing an applicant to urgently amend an existing FVO. However, there is a concern that a respondent cannot seek provisional amendments. There are circumstances, especially involving children or medical issues which may require the respondent to seek an urgent amendment.

We recommend an application for provisional amendment be dealt with administratively, in chambers by a Registrar. Where an applicant, protected person or respondent applies for an urgent provisional amendment, the Court should review the request in chambers and determine if the application is urgent or not. If it is determined to be urgent then they can make orders to list the matter, including on an ex-parte basis, if appropriate.

Tina's Story

Tina had a final FVO against her former partner which had been in place for 12 months. The FVO listed her children (11 and 14 years) as protected persons and her home a prohibited location. Unexpectedly Tina was admitted to Canberra Hospital, and it was unclear how long she would be admitted for.

Tina and her former partner discussed the care of the children and decided it would be best if her former partner moved back into the family home to care for the children and not disrupt their schedule.

Tina did not have the emotional capacity or resources to pursue the amendment while in hospital. Without this proposed amendment, Tina was unable to urgently provisionally change her FVO which created further disruption for her children.

6. Magistrate review of Registrar and Deputy Registrar decisions

We support the inclusion of this section as it codifies existing practice within the Magistrates Court and allows for clarity around the administrative process.

We recommend that the definition of relevant decision also include refusal of requested conditions such as, but not limited to, an exclusion order, not including children on orders or granting a reduced or no distance clause etc. Our reading of the definition only allows for a review to be requested if an interim FVO is refused entirely. It does not allow an application to be reviewed if the registrar or deputy registrar have not granted certain clauses.

This further addition is necessary as each applicant's safety concerns vary therefore if they are unable to seek a specific condition it may not be in their best interest to pursue the FVO at that stage.

The amendment requires further details outlining the process in which an applicant can seek a review, ie. must they request it at the conclusion of the interim hearing or are they required to present themselves at the registry to make this request.

7. Clarification around notifying protected person about court initiated interim orders.

We strongly agree with this amendment as there is currently no requirement to notify a protected person about a court initiated interim order. It's important for a woman's safety to know the court has taken this step as it may result in an escalation of violence and the need

for increased safety planning. Additionally, if they are unaware an order is in place, they cannot report behaviour which may not amount to a criminal offence but is a breach of the interim FVO (e.g. the respondent calls or emails the protected person).

8. Related charge includes breach of interim FVO.

We strongly agree with this amendment, as it aligns with other aspects of the *Family Violence Act* such as section 14. In our experience, family violence proceedings tend to move quicker than criminal proceedings. This results in applicants at FVO final hearings needing to run a mini criminal hearing to prove there was a breach of the FVO and then persuading the court to give the breach significant weight when determining if a final order should be granted. This is inappropriate where it pre-empts the court's adjudication of the criminal charge relating to the breach.

This amendment allows for the onus and evidence to be put on police as well as viewing a breach of an interim FVO as a serious matter rather than a minor offence.

Thank you for the opportunity to contribute to this inquiry. Please contact the writer should you wish to discuss the above.

Yours Sincerely,

Carla Stocks

Director of Legal Services

Women's Legal Centre ACT and Region