



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

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Standing Committee
Justice and Community Safety
Office of the Legislative Assembly
London Circuit
Canberra, ACT 2601

28 November 2023

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

Dear Committee Secretariat,

RE: Sexual, Family and Personal Violence Legislation Amendment Bill 2023

Thank you for the opportunity to provide input to the Inquiry into Sexual, Family and Personal Violence Legislation Amendment Bill 2023.

Legal Aid ACT ('The Commission') provides legal assistance to the most vulnerable and disadvantaged members of the ACT community, including those who have suffered or perpetrated sexual, domestic, and family violence.

We do this primarily through our Early Intervention Legal Practice, which comprises of our Domestic and Family Violence Unit, Health Justice Partnership (located at the Canberra Hospital), Family Advocacy and Support Services (FASS) and Family Law Duty Service. This work largely focuses on sexual, family, and domestic violence, urgent family law matters, and the care and protection of children.

Much of our commentary on the proposed amendments have been made in the previous round table discussions in April and March 2023, and a written submission in September 2023. Our comments made out below should be read in conjunction with these earlier contributions.

Family Violence Act 2016

Section 43(4)

We welcome the insertion of this provision, that will remove the offence of contravention of a Family Violence Order. This will ensure that a protected person cannot be charged with aiding, abetting, counselling, or procuring a contravention of a Family Violence Order.

Section 44A

The Commission welcomes this new provision, which clarifies that an order continues to be in force when a protected person becomes an adult. However, we note that if a respondent has been spending time with a child in accordance with a parenting plan or order, once that child becomes an adult, the respondent will not be able to rely on the usual exception that is

contained in Family Violence Orders – ‘except in accordance with an order or parenting plan made under the Family Law Act 1975’. This will likely result in either the protected person or respondent making an application to amend the protection order.

Section 82B

The Commission suggests that the ability to obtain a provisional amendment should be made available to respondents to protection orders. Respondents to protection orders are not necessarily the perpetrators of family violence. People experiencing family violence are often misidentified as perpetrators of family violence, or perpetrators obtain family violence orders against victims/survivors as a way of perpetrating or continuing family violence.

The Queensland Domestic and Family Violence Death Review and Advisory Board found that in just under half (44.4%) of all cases of female deaths subject to the review, the woman had been identified as a respondent to a family violence protection order on at least one occasion.¹ Moreover, in nearly all of the domestic and family violence related deaths of a First-Nations person, the deceased had been recorded as both the respondent and aggrieved prior to their death.²

As such, we recommend that applicants, respondents, and protected persons be able to access this provision if they satisfy the criteria listed in s82B(2).

Section 82B(2)

We note that the use of the words ‘hear and decide the provisional amendment’ is inconsistent with s82B(3), which uses the term ‘makes a provisional amendment’. We suggest that s82B(2) instead read as ‘The Magistrates Court may make a provisional amendment at any time...’.

Consistency in the language of the provision is important and the term ‘makes a provisional amendment’ is far clearer than ‘hear and decide’.

Section 91B(3)

This provision provides that an applicant may request a review of a ‘relevant decision’ but is unclear on how any request is to be made. For example, if an applicant appears before a Deputy Registrar on an application for an interim family violence order, and:

1. Is advised of their ability to request a review; and
2. Asks to get legal advice on the issue,

It is unclear how the applicant advises the Court they ‘request a review’? The Commission suggests more detail, or a more formal pathway, to be included in the provision to prevent unnecessary confusion.

¹ Queensland Domestic and Family Violence Death Review and Advisory Board [QDFVDR&AB], 2017, p. 82.

² Ibid p. 82.

Definition of *related*

The Commission welcomes the amendment to the definition of 'related', which ensures that an interim Family Violence Order will convert to a 'Special Interim Family Violence Order' if a person is charged with contravening the family violence order.

Personal Violence Act 2016**Section 83B(3)**

In line with our comments on s91B(3) above, the Commission suggests a more detailed or formal pathway to be included in the provision to prevent unnecessary confusion for those who wish to request a review.

Should you have any questions in relation to the above comments, please do not hesitate to contact me [REDACTED]

Yours Sincerely, [REDACTED]

Dr John Boersig PSM
Chief Executive Officer
Legal Aid ACT