

Women's Legal Service

The Research Director
Health and Community Services Committee
Parliament House
George Street
BRISBANE QLD 4000

8th April 2014

Via email: hcsc@parliament.qld.gov.au

Dear Sir/ Madam,

RE: Child Protection Reform Amendment Bill 2014 as it relates to amending the Child Protection Act 1999

The Women's Legal Service (WLS) is a community legal centre in Brisbane, which has been operating for 30 years and has forged a strong reputation in Queensland for providing high quality legal and social welfare services to women. In the last financial year we assisted over 3500 women. Throughout our history we have tried to maintain a strong focus on making our service accessible to clients who live outside the metropolitan area. We currently employ a Rural Regional and Remote (RRR) solicitor and operate a RRR telephone service that provides direct access for RRR clients. 40% of our clients live in RRR areas in Queensland. Our main areas of work are in family law and domestic violence, though we do have some experience in the area of child protection.

We work in a holistic way with our clients, embracing a broader approach rather than looking only to legal proceedings as a solution for the complex problems faced by our most disadvantaged clients.

We thank the committee for the opportunity to provide comment on the *Child Protection Reform Amendment Bill 2014*.

Our comments are outlined below:

A. Some overall comments:

Interface between child protection, family law domestic violence

In our client work we see a clear overlap between family law, child protection and domestic violence. These issues have been identified and spoken about for 20 or more years - women are told or given strong messaging by Child Safety to leave their abusive partner otherwise their children will be taken into care and for the woman individually to seek a protection order under the



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Family and Domestic Violence Act and children's orders under the Family Law Act. Despite, separation being the most dangerous time for women leaving domestic violence relationships, they commonly are not given any support from Child Safety to safely leave the relationship. The levels of danger to children are highlighted in the Commission for Children and Young People and the Child Guardian's report: *Fatal Assault and neglect of Queensland children report (February 2013)* relating to child deaths between 2004–2006. It found that *domestic homicide* was the most common category of death examined in the project sample, more than double the occurrence of fatal child abuse which was the next most common category of death.

The overlap is clear and there is a strong message for multi-agency partnerships between domestic violence services and child protection (and probably family law) agencies. We hope that the new child protection roadmap sufficiently prioritises issues of domestic violence and safety for women and children.

Recommendation 1:

1.1 That the Queensland Government support (including financially) the establishment of multi-agency partnerships and closer working relationships between domestic violence services and child protection agencies.

1.2 That Child Safety protocols are developed to enhance supported referrals between Child Safety and domestic violence services.

Departmental accountability

In the report by Professor Chisholm to the Federal Attorney-General's Department called *"Information Sharing in Family Law and Child Protection: Enhancing Collaboration"* (March 2013 at p.90) the informal practice of Child Protection referring clients over to the family law courts to commence proceedings (as mentioned above) is discussed. Professor Chisholm notes that in these situations:

"Child Protection is likely to hold information that would be of real significance in the family court proceedings, and it is obviously a situation in which information-sharing is of great importance."

He goes on to say that :

"In Queensland, Child Protection has a practice of providing parents with a 'statement of position' letter that will assist them in obtaining legal aid, although this letter does not normally come before the court."

The policy supporting the "Statement of Position Letter" is found in the Child Safety Practice manual see <http://www.communities.qld.gov.au/childsafety/child-safety-practice-manual/chapters/10-general/10-21-family-courts/what-ifs#2-what-if-a-parent-requests-a-statement-of-position-letter-from-child-safety>

We would like to make two comments in relation to this:

(i) WLS lawyers were unaware of the existence of these position letters or the ability of our clients to request them to help support their legal aid

applications. These letters could be very helpful. One of the biggest problems that women, who have experienced domestic violence face in the family law system is the lack of evidence about the violence. This in turn impacts on their ability to obtain legal aid and therefore have legal representation in the family law courts. It concerns us that we were unaware of the existence of such a policy. We suspect if we were unaware of its existence it is not widely known. There is a clear need in this new era that Child Safety become an agency that is more open and transparent and actively engage the public and stakeholders in education and dialogue about its role, policies and procedures.

(ii) Secondly, when Child Safety advises a woman in a violent relationship to separate or otherwise they will investigate and possibly place the children in care, a child protection case *should* be opened and notations made, even though no formal investigation has commenced. Any advice to clients should be clearly documented. Otherwise, if the woman acts upon this advice and separates and later commences family law proceedings to work out future arrangements for the children, there will be no documentary evidence of Child Safety's involvement. Although Child Safety's involvement may be informal, their informal advice has significant impacts on a family's life. They should be accountable for the decisions they make.

Recommendation 2:

2.1 That Child Safety document all decisions and advice provide to clients including but not limited to, if Child Safety advises clients to separate and commence family law proceedings or other court proceedings, their reasons for this; if they make a determination that someone is a protective parent and reasons for this; and any determinations regarding risk to members of the family and children.

2.2 That the above occurs even in circumstances when Child Safety has not investigated the family or made a notification.

2.3 That Child Safety amend its practice manual and provide "letters of position" as a matter of course to clients that require assistance to apply for legal aid in family law matters, especially when informal advice has been provided to those clients about separation.

2.4 That "letters of position" not rely on the client requesting a copy of the letter.

2.5 That the policy clearly outline the circumstances why a "statement of position" letter will not be provided to clients, in certain circumstances.

2.6 That Child Safety engage in a public education campaign (ongoing) and dialogue with stakeholders about their role, policies and procedures.

B. The Bill:

3E 2(b) - a parent able and willing to protect the child from the harm

This section creates a quite onerous obligation upon the relevant persons to make determinations about whether there *may be a parent able and willing to protect a child from harm*. We envisage that significant professional support would/ should be provided to these professionals (doctors, teachers, police, registered nurses, child advocates) as determinations about protective parents would be outside their areas of expertise.

Recommendation 3:

3.1 That ongoing professional support and information be provided to the relevant persons in their mandatory reporting requirements under the Act and to assist their professional assessment about whether a parent is able and willing to protect a child from harm.

13(B) 2 - Action by relevant persons under other provisions

Similarly to relevant people considering that a child may be likely to become in need of protection if no preventative support is given, we would support this being extended to or made explicit that it also covers Child Safety.

Recommendation 4:

4.1 That a provision similar to S. 13 (B)2 explicitly cover Child Safety.

Use of the term "relevant person"

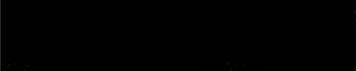
As far as we can tell, with the introduction of this new definition of relevant person in S. 13 E of the bill- there will now be 3 different ways that a 'relevant person' can be defined depending on which part of the Act you are considering. See Section 139 (7) and Section 140 (AB) of the *Child Protection Act 1999* and S. 13 E of the bill. This might be somewhat confusing.

Recommendation 5

5.1 That consideration be given to changing the terminology of 'relevant person' in S. 13 E.

We thank the Committee for considering our submission. If you require any further assistance please do not hesitate to contact us.

Yours faithfully,



Women's Legal Service
Per: Angela Lynch, lawyer