

Women's Legal Service

The Research Director
Communities, Disability Services and Domestic and Family Violence Prevention Committee
Parliament House
George Street
Brisbane, QLD, 4000

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10th November 2015

Dear Sir/ Madam,

Re: Domestic and Family Violence Protection and another Act Amendment Bill 2015

The Women's Legal Service (WLS) is a community legal centre that provides specialist legal information, advice and representation to Queensland women in matters involving domestic violence, family law and child protection. We also provide allied domestic violence social workers who assist clients to obtain a holistic response from our service. We offer a range of services including domestic violence duty lawyer services at Holland Park, Caboolture and Ipswich. We are a Queensland wide service with a specialist rural, regional and remote lawyer and have been in existence for 31 years.

We thank the government and the committee for the opportunity to respond to this legislation. We are more than happy to have representatives appear before the committee to clarify our position, if so required.

Our response is set out below:-

1. Ouster provision

WLS supports the mandatory consideration of ouster conditions. We believe the Section 64 (2) provision could be improved with the following change:

*In deciding whether to impose an ouster conditions on the respondent in relation to the aggrieved's usual place of residence, **and having regard to the principles as set out in S. 4**, the court*

We believe it is important to obtain a victim's views about such a specific provision because it might be unsafe for her to remain in the family home or usual place of residence. However, some victims may be frightened of sharing their views with the court in front of the perpetrator or some victims may feel overborne or threatened that they may not seek the imposition of such a condition. We believe that it is important the court is reminded of the S. 4 principles— as these relate to the paramount principle of victim safety but also requires the court to consider other important issues, such as disruption to victim and children's lives, which is an important consideration in ouster proceedings.



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Recommendation One

WLS supports the mandatory consideration of ouster conditions by the court when making decisions about domestic violence protection orders. We believe the provision could be improved with the following suggested drafting change:

In deciding whether to impose an ouster conditions on the respondent in relation to the aggrieved's usual place of residence, *and having regard to the principles as set out in S. 4, the court.*

2. Cross-applications

It is well established that perpetrators of violence use legal proceedings and the legal process to further abuse, harass and intimidate victims of violence. It is our experience that perpetrators of violence initiate protection proceedings, pre-empting the victim's application and apply for cross applications after she has filed as a way of obfuscating the issues before the court. It is a very successful tactic as mutual orders, may lessen the chance of a women's concerns about her and her children's safety being treated with sufficient seriousness in her future interactions with agencies and with the family courts.

In 2014, Women's Legal Service NSW prepared a report into women defendants in AVO proceedings¹. Although strictly speaking it was not considering cross applications, the report provides valuable insights about women who are defending AVO proceedings. It makes the following conclusions which align with our experience.

The study findings include that over two-thirds of our women clients defending AVOs reported that they were the victims of violence in their relationships. Fewer than 40% of these clients had a final AVO made against them when the case came before the court.

Many of the women defending AVOs reported that when police had been called after a violent incident, they felt that their version of events had not been viewed as credible compared with the other party, due to the circumstances of their heightened stress and anxiety.

Other women reported that they believed the other party had deliberately initiated AVO proceedings as a further mechanism of controlling their behaviour, by giving them the ability to threaten them with reports to police in the future.

In the majority of cases where women were defending AVOs, the other party's complaint related to a single incident only. In several of these cases injuries to the other party could be indicative of self-defence, such as scratching or biting on the arm or hand.

Although further research is needed to determine the frequency with which inappropriate AVOs are pursued against women defendants, it is clear from the study that in a number of cases, the applications initiated against women defendants appeared unnecessary for the protection of the other party.

WLS agrees with the policy objective that as much as possible that cross applications be heard together and that the court makes a determination of who is the most vulnerable and in need of protection. This finding should then be taken into account by the court in determining whether a protection order is necessary or desirable.

¹ Women's Legal Service NSW, *Women Defendants in AVO proceedings: What is their experience of the justice system?* March 2014.

An additional idea is if a finding is made about who is the most in need of protection that this is noted on the domestic violence order. This is only an idea and should be referred across to the broader legislative review for a more thorough examination and consultation.

Recommendation Two

WLS agrees with the policy objective that (as much as possible) cross applications be heard together and the court makes a determination of the party who is the most vulnerable and in need of protection and that this finding (when made) should assist the court in deciding whether a protection order in the circumstances is necessary and/or desirable.

Recommendation Three

That the Domestic and Family Violence Protection Act legislative review considers whether a finding by a court about who is the most vulnerable and in need of protection should be noted on the protection order.

There would also have to be a legislative process developed for determining the transfer of proceedings between registries. I.e. What happens when there are competing applications in different registries? Which registry is most suitable? For example, what if a victim of violence flees to Brisbane and files in a Brisbane Magistrates Court for a protection order and the other party files for a protection order in rural Queensland. The woman has safety concerns about returning to rural Queensland to fight the application being brought against her. Which court makes the determination? How do they make the decision about the most appropriate registry? Section 41D (3) attempts to deal with this but it does not assist substantively in the determination around which court (there are 2 court registries involved with two potential aggrieved parties) should make the decision about the transfer or not. What are the legislative guidelines to assist the court (whichever court it is) to make the best and safest decision.

Recommendation Four

That a legislative process be developed to assist the court's decision making about the most suitable registry to determine the issues in dispute when there are simultaneous applications on foot.

We make the following specific comments about the drafting of this section:

- Section 41C(2)(b) should the reference be to Section 4 (2) (d) the person in most need of protection rather than (e)?
- The provisions are quite lengthy and take away from the accessibility of the act to people acting without a lawyer however, we appreciate the drafting complexity and this may be unavoidable.

Recommendation Five

That the section reference in Section 41 C (2)(b) should be to Section 4(2)(e) rather than (d).

3. Principle ensuring victims voices are heard in proceedings

Although WLS supports the policy position of hearing victim's voices in the proceedings – this can mean a number of things and can be achieved a number of ways. For example, better education and training of the police supported by protocols might assist them to have more in depth conversations with women about the types of conditions required in police applications, rather than just the standard conditions often applied for. This would arguably increase women's voice in the process. Specialist magistrates with careful questioning may be able to

find out from victims who have not filled out an application as fully as required, the information necessary for them to make an appropriately safe order. Women would also feel supported and listened to in these circumstances.

We do not agree with the current proposed provision and have concerns that it might actually have the opposite effect of decreasing women's safety in certain circumstances or other unintended consequences.

For example, we are particularly concerned that the inclusion of the provision might give added weight to the victims' voice in variation proceedings at the expense of safety. We are particularly concerned about proceedings where women seeking a variation to withdraw the protection order altogether. Although the current S. 92 does provide for the victims' wishes to be considered, the courts ultimate decision must be based on safety S. 92(3).

We also have some concerns that the provision as presently drafted might be interpreted by some magistrates, as an obligation on them to question the victim about their views and wishes in the court and possibly in front of the perpetrator.

We would prefer further thought be given to the best way to implement the Taskforce recommendation non-legislatively. However, if the government decides to proceed with the amendment we at least suggest the following amendment:

Section 4 (2) (b) the views and wishes of people who fear or experience domestic violence should be considered before a decision affecting them is made under this act;

These views and wishes could be considered a number of ways including through the application and affidavit process, which may not be as confronting a process to victims as speaking in the court.

Recommendation Six

WLS supports the public policy position of hearing victim's voices in court proceedings however we prefer that this policy objective be achieved via non legislative avenues because of the possibility of unintended consequences.

Recommendation Seven

That if a legislative approach is adopted, WLS prefers the following wording:

Section 4 (2) (b) the views and wishes of people who fear or experience domestic violence should be considered before a decision affecting them is made under this act.