



Important Proposed Changes to the Family Law Act

The Attorney-General releases public consultation paper with proposed changes to the Family Law Act to combat family violence

In December 2016, The Attorney General's department released a public consultation paper regarding proposed changes to the *Family Law Act 1975* (the "*Family Law Act*") to improve support, particularly to those families trapped in conflict and violence.

These legislative amendments would form part of the Government's broader measures towards stopping family violence.

FAMILY LAW MATTERS TO BE RESOLVED BY STATE AND TERRITORY COURTS

The Government accepts that, currently, families experiencing family violence or conflict must liaise with several courts to address their needs including the Family Court, criminal courts and children's court. The key problem that emerges is the delay this causes for families in need.

The Government now proposes to increase the number of state and territory courts vested with family law jurisdiction which would involve expanding the current jurisdiction of state and territory courts for family law property matters, and encouraging those courts to adopt the family law jurisdiction where necessary. Such changes would improve legal support for families who are currently frustrated by navigating the convoluted and time consuming process.

This amendment would not see the need for parties to switch between systems in all cases including complex cases. But where appropriate for a state court to make a family law order these amendments would provide the jurisdiction to do so.

Some key changes to the *Family Law Act* regarding state and territory courts include:

- Granting summary jurisdiction under the *Family Law Act* for state and territory children's courts;
- Providing more scope for state and territory courts to hear more family law property matters with current limit imposed on cases exceeding \$20,000. A higher limit would be devised; and
- In family violence matters, a single court would be able to resolve disputes over property settlements and parenting arrangements.

Further, judicial officers would be able to provide short form decisions in family law matters to support the quick resolution of matters by a single court.

The above amendments to the *Family Law Act* would relieve the burden of delay and ensure more protection for families suffering from violence due to timely resolutions.



FURTHER FAMILY LAW ACT PROVISIONS FOR PROTECTION AGAINST FAMILY VIOLENCE

New provisions in the *Family Law Act* would see the family law courts embody more power to protect victims of family violence in proceedings:

- a) A new criminal offence for breaching a personal protection injunction would be introduced;

The new law introducing an offence against a personal protection injunction has been introduced because the Government views family violence as a matter of “public concern”.

- b) The operation of family law orders varied by a state or territory judge would be extended;

Amended laws would remove the 21 day time limit on a state or territory court’s variation of a family law order in interim domestic violence order proceedings. Currently, where a state or territory court orders a variation, the variation (or revival or suspension) only has effect for 21 days. This is problematic as it gives rise to uncertainty in cases where the order expires before the matter is heard, possibly presenting a risk for violence against the family. The changes will ensure that a variation is effective until:

- such time that the court sees fit to denote;
- a further order is made; or
- the interim domestic violence order ceases to be in place.

- c) Judges would be allowed to dismiss unmeritorious matters sooner; and

Unmeritorious cases will be dismissed as soon as possible and without prolonging the suffering of the family due to a malicious claim.

- d) Underpinning this is the change that would see judges explain the impact of orders in a way that would support the best interests of the child.

Currently the *Family Law Act* is very prescriptive in determining how judges advise the parties of an order. The purpose of the last amendment above will ensure children are considered at the heart of the matter when the family is instructed.



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LEGAL UPDATE | FAMILY LAW | JANUARY 2017

NON-LEGISLATIVE CHANGES

Beyond legislative measures, there are also initiatives to support state and territory courts in exercising jurisdiction.

Such an initiative is the National Domestic and Family Violence Bench Book. A national online resource, it will assist judicial officers in promoting correct and supportive decisions that are consistent across the board.

The Government has also agreed to fund training for judicial officers on family violence and family law that will provide further tailored learning beyond the Bench Book.