

16 June 2010

Attention: Anita Axell  
ACT Department of Justice and Community Safety  
GPO Box 158  
Canberra ACT 2601

Dear Colleagues,

**Re: Proposal for a National Scheme for the Recognition and Registration of Domestic and Family Violence Orders**

The Women's Legal Centre (ACT & Region) thanks you for the opportunity to make a submission in respect of the discussion paper.

The Women's Legal Centre (ACT and Region) Inc ("the WLC") is a Community Legal Centre accredited by the National Association of Community Legal Centres. The Centre has been operating successfully in Canberra since 1996. Its objectives are to:

- provide accessible, timely and accurate information, advice and assistance on legal and related matters to women in the ACT and region;
- raise awareness in the community about the law and the legal system as it affects women; and
- identify and challenge barriers to women's access to justice.

The mainstay of the Centre's work is providing legal advice and assistance to women about individual matters. The Centre does this by operating an advice line each day; seeing clients face-to-face; and operating an evening advice service on Tuesday evenings where clients are given appointments with specialist volunteer solicitors. The Centre currently has seven staff members – two full time solicitors, two part-time solicitors, a coordinator, an Indigenous liaison officer and a part-time office manager.

As we do not have the resources to represent women throughout the whole of their matter, we are most usually intermittently involved in matters. For example, we may give initial advice and referral or we may assist women acting for themselves to negotiate with other parties, prepare their documents and/or prepare for Court.

We record (confidential) information from all clients who contact the Centre. One of the pieces of information we collect is whether there is a reported history of domestic violence. Our comments are based upon our anecdotal experience as we do not collect statistics in a way that could be presented quantitatively to contribute to the discussion about these matters.

We make the following comments:

1. In the 2008-2009 financial year, our statistics record reported domestic violence in 41% of children's matters. We assume that the figure would in fact be higher than this as not all clients report. Whilst this does not specifically address the cross-border issues that our clients may face in relation to domestic and family violence orders, it underlines the need to address these issues expeditiously; and supports the view that we cannot wait for the option of implementing model domestic violence laws in each jurisdiction to improve the current system.
2. As a long term objective, we support the implementation of model domestic violence laws in each jurisdiction and those laws recognising all interstate DVOs. Whilst we accept the stated disadvantages of overhauling all jurisdiction's laws in circumstances where many jurisdictions have recently reviewed and amended their legislation, it would be useful to have a timetable with identifiable and accountable interim steps to move towards this long term objective.
3. Because of Canberra's close proximity to Queanbeyan, New South Wales, the issue of cross-border recognition and registration of domestic and family violence orders is of particular relevance to the ACT community. The approach to protection orders is markedly different in New South Wales and the Australian Capital Territory. In particular, (a) the police in New South Wales make the application to the Court on behalf of the complainant. In ACT, the parties themselves run the proceedings (b) there is a different attitude to children being included on orders in NSW and ACT. Any cross-border recognition and registration will highlight these differences.
4. In our anecdotal experience, it is the more serious matters where, at present, the need to register and enforce orders in other jurisdictions arises. Recognition only has meaning if police are able to effectively enforce the orders. Complainants need to be confident of the enforceability of the orders in all jurisdictions. The WLC does not support an option that merely registers all DVOs. This has the potential to send a false message that the DVO is actually enforceable and it may not be until the moment of crisis when the relevant party is informed that, despite registration, the DVO is not enforceable.
5. Automatic national registration would enable clear procedures to be put in place in all jurisdictions. In jurisdictions like the Australian Capital Territory, where victims represent themselves, they would be relieved from the obligation of following up registration in other jurisdictions.
6. Clarity about enforceability is a key issue. Both police and victims need to be in a position to know whether a breach has occurred in a way that can be prosecuted in whatever jurisdiction. The common experience of women is that it is at the stage of crisis – reporting a breach – that problems about registration and/or service come to their attention. In other words, any process that can strengthen the link between obtaining an order and guaranteed enforceability in all jurisdictions is beneficial. The

options which create fine distinctions that are open to interpretation are less attractive from a victim's perspective.

7. It would be interesting to systemically review the types of orders that are presently being registered in different states. This may provide an evidence base to inform decisions about how best to ensure recognition and enforceability of orders in other jurisdictions.
8. The recognition and registration of protection orders made in the Family Court is a vexed issue. There are no standard orders - the language is different, the definitions are different - and so it is difficult to assess how Family Court orders would sit alongside state and territory orders with their more prescriptive language. Perhaps some discussion could take place about standard or model orders in the Family Court and/or Federal Magistrates Court which would enhance the likelihood of these orders being registered and recognised in State and Territory Courts.
9. We endorse the comments at paragraph 16 of the discussion paper. This may work to reduce inconsistencies and encourage the use of common language for orders across the jurisdictions.
10. The Women's Legal Centre supports the use of a national data base to track the registration of orders. In our view a standard method of accessibility to information by the complainant should be prescribed as part of this process. We refer to situations where an interim order has been granted but the victim has difficulties accessing information as to whether the order has been served and is therefore enforceable. It would be useful if the data base recorded service and attempts at service as this is typically an area where it is difficult to get information. Women should be able to easily satisfy themselves that the orders have been registered in the other jurisdiction and are enforceable. As a suggestion, there could be access to a national database through a secure log-in.

We are happy to be involved in any further discussion or working groups.

Yours faithfully,  
WOMEN'S LEGAL CENTRE

Rhonda Payget  
Principal Solicitor