NEW SOUTH WALES

# THE CHIEF MAGISTRATE OF THE LOCAL COURT

4 February 2016

Ms Sophie Dunstone
Committee Secretary
Legal and Constitutional Affairs Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email: LegCon.Sen@aph.gov.au

Dear Ms Dunstone

**Re: Inquiry into the Family Law Amendment (Financial Agreements and Other Measures) Bill 2015**

I am writing to provide a submission to the above inquiry, in relation to the likely impact of the proposed amendment of s 68T of the *Family Law Act 1975* upon the making of family violence orders in the Local Court of New South Wales.

I do not foresee that the amendments will significantly affect the work of the Court in making family violence orders, nor do they seem likely to lead to a noticeable increase in the number of subsequent applications made to the Local Court seeking a variation of parenting orders.

At present, the power to vary, revive or suspend parenting orders when making an interim family violence order is infrequently used in the Local Court, because few applications are made. Although s 68R empowers the court to vary a parenting order on its own initiative, in practical terms it will usually only do so on the application of a party.

There is no formal mechanism for information sharing between the Local Court and the Federal courts, with the result that the court is reliant on the parties to inform it of any parenting orders.[1] If a variation is sought, the court will require the party seeking the change to provide a copy of the parenting order and to have given appropriate notice to the other party. As a result, the court is rarely in a position to include a condition in an interim family violence order that affects a parenting order in the early stages of proceedings at which interim orders are made.

On the rare occasions where the court may do so, the proposed removal of the 21 day time limit upon the duration of any variation, revival or suspension of the parenting order does not appear likely to cause difficulties in the Local Court. I understand concerns

[1] Indeed, s 42 of the *Crimes (Domestic and Personal Violence) Act 2007* provides a requirement for the court to remind parties of this obligation.

have been raised that there may be an increase in applications being made to a State court rather than a Federal court. However, the possibility that parties may choose to file their application at the court with a shorter waiting time seems more likely to eventuate in the present circumstances where the legislation imposes a strict time limit.

In any event, as a court of summary jurisdiction, the Local Court's power to hear and determine applications for parenting orders is limited by the requirement for both parties to consent to that course; an application must otherwise be transferred to the Family Court or the Federal Circuit Court under s 69N.

In practice, most applications for parenting orders are made in regional locations where the Local Court is the closest court presence. Many are transferred on the court's initiative under s 69N(5) on the basis that the making of final orders is best dealt with by those specialist jurisdictions (though the court may consider it more appropriate to deal with a matter to finality, for instance, where concerns as to delay, distance or cost arise).

In view of these arrangements, and given the infrequency with which conditions affecting parenting orders are imposed when making an interim family violence order, the amendments seem likely to have little impact upon the Local Court.

Thank you for the opportunity to comment on the Bill. Please do not hesitate to contact my office should I be able to assist further.

Yours sincerely,

Judge Graeme Henson
**Chief Magistrate, Local Court of New South Wales**