



FAMILY COURT OF WESTERN AUSTRALIA

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23 July 2024

Committee Secretary
House of Representatives Standing Committee on Social Policy and Legal Affairs
PO Box 6021
Parliament House
CANBERRA ACT 2600
By email to: spla.reps@aph.gov.au

Dear Dr White,

Inquiry seeking evidence to improve access for victim-survivors in the family law system to family violence orders

Thank you for the opportunity to provide a submission in response to the Inquiry.

As a state-based court which exercises both state and federal jurisdiction in relation to family law matters AND which has a limited state jurisdiction to make family violence restraining orders, I hope that the Committee finds the following general background information useful in its deliberations.

1. The Family Court of Western Australia (**FCWA**) is a state family court.
 - a. The *Family Law Act 1975* (Cth) established the Family Court of Australia.
 - b. The *Family Law Act 1975* (Cth) also made provision for each state to establish its own State Family Court. Western Australia was the only state which elected to do so. The FCWA was established in 1976 pursuant to Western Australian legislation – now known as the *Family Court Act 1997* (WA).

- c. Under the Australian Constitution, the Commonwealth has legislative power in relation to marriage, divorce, and matrimonial causes, and in relation thereto, parental rights and the custody and guardianship of infants. The states have legislative power in relation to ex-nuptial children and financial issues arising out of de facto relationships (including for same sex couples). Western Australia has not referred its powers to the Commonwealth in relation to these matters, except for a limited referral of powers in relation to superannuation splitting.
 - d. Accordingly, the FCWA exercises both state and federal jurisdiction in relation to family law matters (and noting that the Federal Circuit and Family Court of Australia does **not** have jurisdiction in Western Australia in relation to family law matters, save and except in the exercise of its appellate jurisdiction).
 - e. The FCWA operates from a single registry in the Perth CBD (at 150 Terrace Road) but does conduct a limited number of circuits to five major regional towns across the state.
 - f. The FCWA technically comprises two separate courts: The FCWA (made up of the judges and registrars of the court) and the ‘Magistrate’s Court at 150 Terrace Road, Perth’ (made up of the family law magistrates, who are all also registrars of the FCWA). In this submission, references to the FCWA include the Magistrates Court at 150 Terrace Road, Perth (unless otherwise stated).
2. An entirely separate state court, the Magistrates Court of Western Australia (**MCWA**), has extensive powers to make restraining orders (including family violence restraining orders) under the *Restraining Orders Act 1997* (WA).¹
 - a. The MCWA has 28 registries located around the state, including to deal with applications for restraining orders, at the following locations:
 - i. The Central Law Courts located in the Perth CBD.
 - ii. At six metropolitan courts located in Armadale, Fremantle, Joondalup, Mandurah, Midland, and Rockingham.

¹ The Children’s Court of Western Australia also has extensive powers to make family violence restraining orders specifically for the protection of children, or against children, under the *Restraining Orders Act 1997* (WA).

- iii. At 21 regional courts across the state.²
- b. The MCWA, Legal Aid Western Australia through its Domestic Violence Legal Unit (**DVLU**), the Family Advocacy and Support Service (**FASS**), and the Western Australian Police, offer a “wrap around” service at the Central Law Courts for applicants seeking an urgent / interim family violence restraining order. I understand from my discussions with the Chief Magistrate of the MCWA that currently, the Central Law Courts deals with in excess of **6,000** restraining order applications per annum.³ (This number obviously does not include applications for restraining orders made at the other 27 metropolitan and regional registries across the state).
- c. The wrap around service at Central Law Courts includes:
 - i. The DVLU providing legal representation to all applicants to make the application for an urgent / interim restraining order. In the event of a conflict in a particular case, then a solicitor from a Community Legal Service will instead act for the applicant.
 - ii. Applicants have access to FASS support workers, including for referrals to outside family violence support services and programs.
 - iii. Whenever the MCWA makes an urgent, interim restraining order, the order is automatically, electronically forwarded to the Western Australian Police, so that the police can then arrange to affect service of the order on the respondent.
- d. The MCWA currently offers an online restraining order application service for people seeking a family violence restraining order, which enables them to lodge their application without having to attend at a Magistrates Court registry, but only in circumstances when they are assisted by an approved legal service provider. Currently the following legal service providers have been approved:
 - i. Legal Aid Western Australia.
 - ii. Aboriginal Family Law Services.

² Refer to the following for the list of locations:

https://www.magistratescourt.wa.gov.au/C/court_locations_contacts.aspx

³ By comparison, in the 2023 calendar year, 2,606 new final order applications were lodged in the FCWA, of which approximately 55% sought parenting orders.

- iii. Community Legal Centres.
 - iv. Family Violence Prevention Legal Services.
 - e. If considered suitable, litigants in restraining order proceedings in the MCWA can participate in a shuttle mediation program. Both applicants and respondents are provided with legal representation for the purposes of shuttle conference (for applicants – by the DVLU; and for respondents – by Community Legal Centres). Currently, the shuttle mediation program operates at the Central Law Courts, as well as at the Armadale, Bunbury, Fremantle, and Joondalup registries. In the case of Aboriginal families, referrals are made to outside specialist aboriginal mediation services.
 - f. The MCWA and Legal Aid Western Australia also provide significant resources on their respective websites in relation to restraining orders, including fact sheets and videos.
3. By contrast, the FCWA has a **limited** power to make restraining orders pursuant to s63(2) of the *Restraining Orders Act 1997 (WA)*, which provides that a court **hearing proceedings** under the *Family Law Act 1975 (Cth)* or the *Family Court Act 1997 (WA)* may make a restraining order against a party to the proceedings, or any other person who gives evidence in the proceedings.
- a. A FCWA judge or family law magistrate may make an interim or final restraining order, but only in circumstances where there are family court proceedings on foot.
 - b. Any objection to an interim restraining order is usually transferred to the MCWA, which will then deal with the objection and the final hearing, if required.⁴
 - c. The FCWA does not have jurisdiction to hear and determine breaches of restraining orders.⁵
4. Even though the FCWA has a limited jurisdiction to make restraining orders, in practical terms, the FCWA has only made such orders in a very small number

⁴ *Family Court Act 1997 (WA)* s44(1).

⁵ *Restraining Orders Act 1997 (WA)* s61(3): Proceedings for a breach of a restraining order ... are to be brought, if the alleged offender is a child, in the Children's Court, or otherwise in the Magistrates Court.

of cases. This is because the FCWA simply does not have the necessary state-wide infrastructure, access to wrap around services, or the judicial resources (both in terms of numbers of judicial officers and availability of court accommodation) to deal with restraining order applications in a timely manner.

5. The issues that arise for litigants who intersect the family law system and the restraining order system have been mitigated in Western Australia, to some extent, by the long-standing ‘information sharing arrangements’ enjoyed between the FCWA and the MCWA, in particular, in relation to any relevant history of restraining orders and criminal offending concerning litigants. For example, at the first hearing of every new family law application in the FCWA seeking parenting orders, a family consultant (from the Court’s Counselling and Consultancy Service) participates in the hearing with the family law magistrate. The family consultant has access to the Western Australian Courts’ electronic case management system (ICMS) in the court room and can provide “live” information to the family law magistrate and the parties, such as: (1) past and current restraining orders; (2) historic convictions for breaches of restraining orders; and (3) pending charges for breaches of restraining orders. The family law magistrate is able to take this information into account when considering what arrangements would promote the safety of the child the subject of the parenting proceedings, as well as each person who has care of the child.⁶

If I can be of further assistance, then please let me know.

Yours faithfully



GAIL SUTHERLAND
CHIEF JUDGE

⁶ *Family Law Act 1975 (Cth)*: s60CC.