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Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600
AUSTRALIA

Dear Committee Secretary,

Feedback regarding Family Law Amendment (Federal Family Violence Orders) Bill 2021

Resolution Institute is the peak membership body that represents over 3,000 dispute resolution practitioners in Australia and Aotearoa New Zealand. Resolution Institute has many members who work in family law as Family Dispute Resolution Practitioners (FDRP's) as well as family lawyers and arbitrators. The Resolution Institute subcommittee on family law and mediation is structured to provide advice and recommendations related to improving the legislative frameworks around family law, as well as training, continuing professional education events, networking and ongoing development of practitioners through formal learning pathways.

This submission has been completed by Resolution Institute in consultation with the family law and mediation subcommittee.

Resolution Institute appreciates the opportunity to respond to the Senate Legal and Constitutional Affairs Legislation Committee on the provisions of the Inquiry into the Family Law Amendment (Federal Family Violence Orders) Bill 2021.

Resolution Institute supports, in principle, any steps towards combatting domestic violence by implementing stronger protections than those that can currently be made by the family law courts. The recognition of family violence as a criminal matter of public concern instead of a private matter is a positive step towards addressing this serious issue. Also, the increased funding for family violence issues is an encouraging sign in Australia's ongoing battle against domestic violence.

Resolution Institute supports a lot of the content in the bill, including, first and foremost the 120-penalty unit and / or two- year imprisonment of those who breach Federal Family Violence Orders (FFVO), as well as the removal of self-intoxication as a justification for whether the conduct was accidental. Most importantly, is that families already before a federal court will not have to seek orders in different jurisdictions and navigate the legal maze which that entails.

Regarding the provisions of the bill more generally, Resolution Institute has very few concerns about the wording of the legislation. We do, however, have concerns about the practical elements, including the management of the process between states and federal jurisdictions, and who will manage the increased workload associated with FFVO's.

The first point to consider regarding the practical ramifications of the introduction of this legislation is that judicial staff will have to deal with an even greater case load in an already overloaded

family law system. Because Federal Family Violence Orders can be enforced in a manner that Family Violence Orders on the state level cannot, Resolution Institute anticipates there will be greater demand for FFVOs than for state Family Violence Orders. This in turn could potentially provide an incentive to enter the family court system earlier to obtain an FFVO.

The second point of concern regarding the practical implementation of this new legislation is the potential for increased trial times, as well as interim hearing times. Resolution Institute is concerned about the potential consequences that criminalising family violence may have, in that it may give people more incentive to resist or challenge any court orders, due to the increased penalties and possible criminal record. This may take the form of appeals, interim orders or even extra legal actions but will definitely slow down the process and increase the cost of proceedings. One example for this is the potential for state and territory courts to vary, revoke, or suspend an FFVO in favour of issuing one of their own. There is a risk that this could lead to multi-jurisdictional battles which would undermine the desired aim of reducing ‘the need for vulnerable families to navigate multiple courts when they are already before a family law court,’ as laid out in the second reading speech of the bill.

The third main issue is how consistency will be achieved for various definitions and legal tests for granting the FFVO’s at both state and federal level. It is assumed, for example, that each state will have its own legislation which touches on domestic violence orders and coercive behaviour which will define judicial powers, the necessary preconditions for issuing such orders and rules of evidence amongst other things. Resolution Institute supports all efforts to assist in the definition and management of family violence behaviours, including coercive-controlling violence (CCV) behaviours, which keep family members safe. We are concerned that any inconsistency may lead to ‘court shopping’ where parties fight over which jurisdiction to bring their claims before, thus further dragging out an already protracted process. This, of course raises further questions on how the state and federal legislation would integrate regarding, for example, transfers. This is especially important in the context of newly criminalised FFVO’s as there is a question as to how, on a practical level, the federal police would work with the state police in recognition and enforcement of the bill.

Minister Tehan’s second reading speech touches on this matter, stating that ‘States and territories have agreed that the new orders will be recognised on the National Domestic Violence Order Scheme and enforced by state and territory police.’ What is at issue, however, is that the minister also states that ‘Where the *Australian Federal Police* is enforcing a breach using Commonwealth enforcement powers, the bill provides a maximum penalty of two years imprisonment or 120 penalty units’ (emphasis added). This is just one example of potential discrepancies between state and federal enforcement powers and methodologies that might lead to confusion and delay.

Regarding the Lighthouse Project, Resolution Institute notes that if other matters are before the court, then a matter with family violence issues cannot be in the list. Aside from closing this loophole by removing the exclusivity of the Lighthouse Project, Resolution Institute recommends setting clear criteria for when a matter will be assessed as being suitable to go to the early conferencing with the alternative dispute registrars. Examples of guidelines include, the recency of separation, the age of the children involved and whether the parties have given confirmation that they will engage in the process in good faith. The increased power and funding of registrars under this legislation, while undoubtedly a good step, will increase their usage and may cause a backlog of applications and processing if not handled carefully.



Finally, given the broad definition of family violence in the *Family Law Act 1975* (Cth), Resolution Institute recommends that new and deeper training for all judicial staff involved in the process associated with FFVO's be undertaken. This includes a proper understanding of non-physical forms of violence, an understanding of patterns of behaviour and an appreciation of Domestic Violence Order type hearings.

Once again, thank you for the opportunity to comment.

Yours sincerely,

Amber Williams
Chief Executive Officer