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By email: warren.fraser@justice.govt.nz

Dear Warren

Stronger Response to Family Violence: improving information sharing between the family and criminal jurisdictions in domestic violence cases

Thank you for your letter of 6 October inviting the New Zealand Law Society's comments on the *Improving information sharing between the family and criminal jurisdictions in domestic violence cases* options paper. We appreciate the opportunity to comment on the proposals to improve information sharing between these jurisdictions in domestic violence cases.

Overview

The Law Society agrees that due to the significant overlap between domestic violence cases in the criminal and family/civil jurisdictions there is benefit in sharing information across the jurisdictions to ensure the courts have the best information available to them. As noted in the options paper (paragraph 8), this will help to "… ensure that courts have the best information available to them to resolve DV cases effectively, enhance the safety of victims/protected persons and ensure consistency across the criminal and family/civil jurisdictions where appropriate."

However, there are a number of factors that need to be balanced in order to ensure people's rights to privacy and natural justice are preserved and to recognise the differences between the two jurisdictions in terms of standards of proof and matters of public record. In relation to natural justice, consideration could be given to whether persons should be notified when a request is made for information about them.

If a criminal court requests information from a family court this occurs under rule 432 of the Family Courts Rules 2002. That information is limited in its ambit (see rule 432(3)). Once released, the information will then be part of the court file and be a matter of public record. We are mindful of the restrictions in section 11B Family Courts Act 1980 on publication of identifying information, and therefore support the view that the rules around release of information from the Family Court to the District Court should not be widened.

<u>Proposed amendments to existing rules and regulations</u>

(a) Removing the 'reasonable belief' requirement

1. Do you think the reasonable belief requirement should be removed? Why or why not?

The Law Society agrees that the requirement of reasonable belief should be removed from regulation 7 of the Criminal Procedure (Domestic Violence and Harassment Information) Regulations 2013, so long as the requirement to make such a request remains discretionary rather than mandatory. We agree

that the removal of this requirement will enable enquiries to be made about any related domestic violence proceedings whenever such a case comes before the court and accords with the purpose of the rules and regulations.

(b) Amending the definition of "domestic violence offence"

2. Do you think the definition of "domestic violence offence" should be amended? Why or why not?

3. If so, is it appropriate to define "domestic violence offence" as any offence that consists of or includes conduct that is DV, as defined in the Domestic Violence Act? (That is, remove the requirements that a protection order must be in place or applied for when the offending occurs, and that the offending must be against the protected person/applicant?) Why or why not?

As suggested in paragraph 16 of the options paper, the Law Society agrees that the definition of "domestic violence offence" should be expanded to overcome the scenarios listed in the table under paragraph 15. This should be in addition to and not in substitution for the existing provisions.

Paragraph 17 of the options paper suggests that "offending against another person [a person other than the applicant] could be indicative of ongoing risk and/or propensity for domestic violence". Under section 14(1) of the Domestic Violence Act 1995, the court may only make a protection order if it is satisfied that:

(a) The respondent is using, or has used domestic violence against the applicant, or a child of the applicant's family, or both; and

(b) The making of an order is necessary for the protection of the applicant, or a child of the applicant's family, or both.

In light of the tests set out in section 14(1), further thought needs to be given to the relevance and probative value of information about offending against a person other than the applicant.

(c) Clarifying the information that can be obtained by the family/civil jurisdiction about DV-related criminal charges or convictions

4. Do you think reg 7 needs to be amended to clarify the type of information the family/civil jurisdiction can seek from the criminal jurisdiction? Why or why not?

5. What types of information do you think the family/civil jurisdiction should be able to obtain from the criminal jurisdiction in Domestic Violence Act proceedings? Why?

Regulation 7(4) of the Criminal Procedure (Domestic Violence and Harassment Information) Regulations 2013 currently states that the Registrar can only request information about:

(a) the conditions on which bail has been granted, and

(b) a copy of the permanent court record relating to the conviction.

The Law Society submits that regulation 7(4) should be amended to allow the Registrar to seek additional information about the sentence imposed and the sentencing notes.

If this amendment were to be made, the family/civil jurisdiction would be able to obtain appropriate information from the criminal jurisdiction, limited to the:

(a) Conviction imposed;

(b) Sentence imposed;

(c) Sentencing notes (which include the agreed or determined facts of offending and the judge's reasons for imposing the conviction/sentence); and

(d) Any bail conditions imposed.

(d) Allowing the family/civil jurisdiction to obtain respondent address information from the criminal jurisdiction

6. *Do you agree that the family jurisdiction should be able to obtain respondents' addresses from the criminal jurisdiction for the specific purpose of serving protection orders? Why or why not?*

   The family jurisdiction should be able to obtain the respondent's address from the criminal jurisdiction for the specific purpose of serving protection orders. It is important that a protection order is served on the respondent(s) as soon as possible after it is granted, in order to serve its purpose to protect the applicant(s) and/or any other children or persons named in the protection order. It would be sensible to share this information between jurisdictions to enable service to be effected in a timely manner.

Aspects of the Family Court Rules and Domestic Violence Rules not currently proposed to be changed

7. *Is there any information the criminal jurisdiction is not currently able to obtain from the family/civil jurisdiction that you think should be shared? If so, why?*

   As paragraph 25 of the options paper notes, the types of information the family/civil jurisdiction can share with the criminal jurisdiction is clearly stated in rule 432(3) of the Family Court Rules 2002. This enables the Family Court to provide to the criminal jurisdiction information about the status of the Family Court proceedings, which can only include: information as to the existence of a past proceeding; if there is a current proceeding and where it is at in terms of its progression through the court; and what the outcome of the proceeding was. If an order has been made, a copy of the order, either the protection order (including a temporary order) or the order dismissing any temporary order or final order can be made available to the criminal jurisdiction. The criminal jurisdiction would only be able to use information from the family/civil file for setting bail and for sentencing.

   The Law Society submits that rule 432(4) should be amended to include the words "without delay" as is set out in rule 96(4) of the Domestic Violence Rules 1996. This may assist the criminal jurisdiction to receive information about a protection order granted in the family jurisdiction in a timely manner particularly where applications for bail are being heard.

8. *Do you think the relevance requirement in the rules is needed? Could it unduly restrict the ability of courts to share information automatically in future?*

   The touchstone of any evidence and/or information received and considered by a court is "relevance". It is a fundamental principle included in section 7 of the Evidence Act 2006. Relevance should stay as a requirement in the rules and would not unduly restrict the ability of the courts to automatically share information.

These comments have been prepared with assistance from the Law Society's Family Law Section. If you have any questions or wish to discuss the comments, please do not hesitate to contact the Section Chair, Dr Allan Cooke, through the Section Manager Kath Moran (kath.moran@lawsociety.org.nz / 04 463 2996).

Yours sincerely

Chris Moore
President