

ROYAL COMMISSION INTO DOMESTIC VIOLENCE

I practice solely in family law in South Australia as a sole practitioner. I have predominantly practiced family law since 1996.

One area that I consider would be of significant benefit to victims of family violence in South Australia is in respect to the effect of and enforcement of restraining orders issued on an interim basis by the Federal Circuit and Family Court of Australia.

The advice I provide to clients is that an Interim Restraining Order issued by the Federal Circuit and Family Court of Australia will not afford a victim of family violence the same level of protection as an Interim Intervention Order granted by the Magistrates Court of South Australia.

An Interim Intervention Order granted by the Magistrates Court of South Australia can be enforced by South Australia Police immediately and action can be taken against the perpetrator of the violence the subject of the Interim Intervention Order. In many cases the perpetrator can be taken into custody and/or dealt with in a manner that affords the victim protection and safety.

An Interim Restraining Order granted by the Federal Circuit and Family Court of Australia can only be enforced by the victim issuing enforcement proceedings in the Federal Circuit and Family Court of Australia. It does not afford the victim immediate relief and assistance and does not deal or seek to deal with the perpetrator of the violence immediately.

In my experience in many family law matters involving victims of family violence the victim will not seek assistance of South Australia Police in circumstances where:

1. They fear repercussion from the perpetrator;
2. They are subject to family pressure not to involve police;
3. They are subject to cultural pressure not to involve police;
4. They are subject to community pressure not to involve police;
5. They do not have an understanding of how South Australia Police can assist and protect them;
6. They are fearful of attending upon police;

7. Where English is not their first language;
8. Where they are so traumatized from violence that they are unable to advocate for themselves;
9. Where they have no support from any source;
10. Where they fear engaging with support services;
11. Where they have no financial support to leave the perpetrator.
12. Where they have been unable to advocate for themselves with South Australia Police previously;

Those same family law clients are in many cases willing to seek an Interim Restraining Order in the Federal Circuit and Family Court of Australia in parenting and property matters with the assistance of and representation by a family lawyer.

In my opinion it would be of significant assistance to victims of family violence who engage in proceedings in the Federal Circuit and Family Court of Australia to have criminal law legislation and the Family Law Act amended to permit the following:

1. The registration of the Federal Circuit and Family Court of Australia Interim Restraining Order with:
 - a. The Magistrates Court of South Australia; and
 - b. South Australia Police;
2. Once registered for the Interim Restraining Order to be given the same effect and legal standing as an Interim Intervention Order issued by the Magistrates Court of South Australia; and
3. For the victim to elect whether the Magistrates Court of Australia or the Federal Circuit and Family Court of Australia is to determine the Intervention Order on a Final Basis; and
4. If the Family Court of Australia determines the Restraining Order on a Final Basis that the victim be permitted to have that final Restraining Order registered with The Magistrates Court of South Australia and South Australia Police and have the same standing and effect as if it had been an order of the Magistrates Court of South Australia.

This would permit South Australia Police to enforce the Interim Restraining Order/Final Intervention Order as if it were an Order of the Magistrates Court of South Australia and

have the perpetrator brought before the Magistrates Court of South Australia immediately for breach of the Order and dealt with pursuant to criminal law legislation thereby protecting the victim of domestic violence.

The Division 2 Judges of the Federal Circuit and Family Court of Australia have jurisdiction to grant and regularly grant interim restraining orders pursuant to the Family Law Act 1975 (Cth) in matters involving family violence.

At present we have a Federal Court (Federal Circuit and Family Court of Australia) and State Court (Magistrates Court of South Australia) both engaged in cases involving family/domestic violence but the remedies and enforcement action available to protect victims and deal with the perpetrators of family/domestic violence is unequivocally unjust.

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██████████ Family Law
Principal
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