

CHILD PROTECTION ORDERS AND RURAL AREAS OF AUSTRALIA

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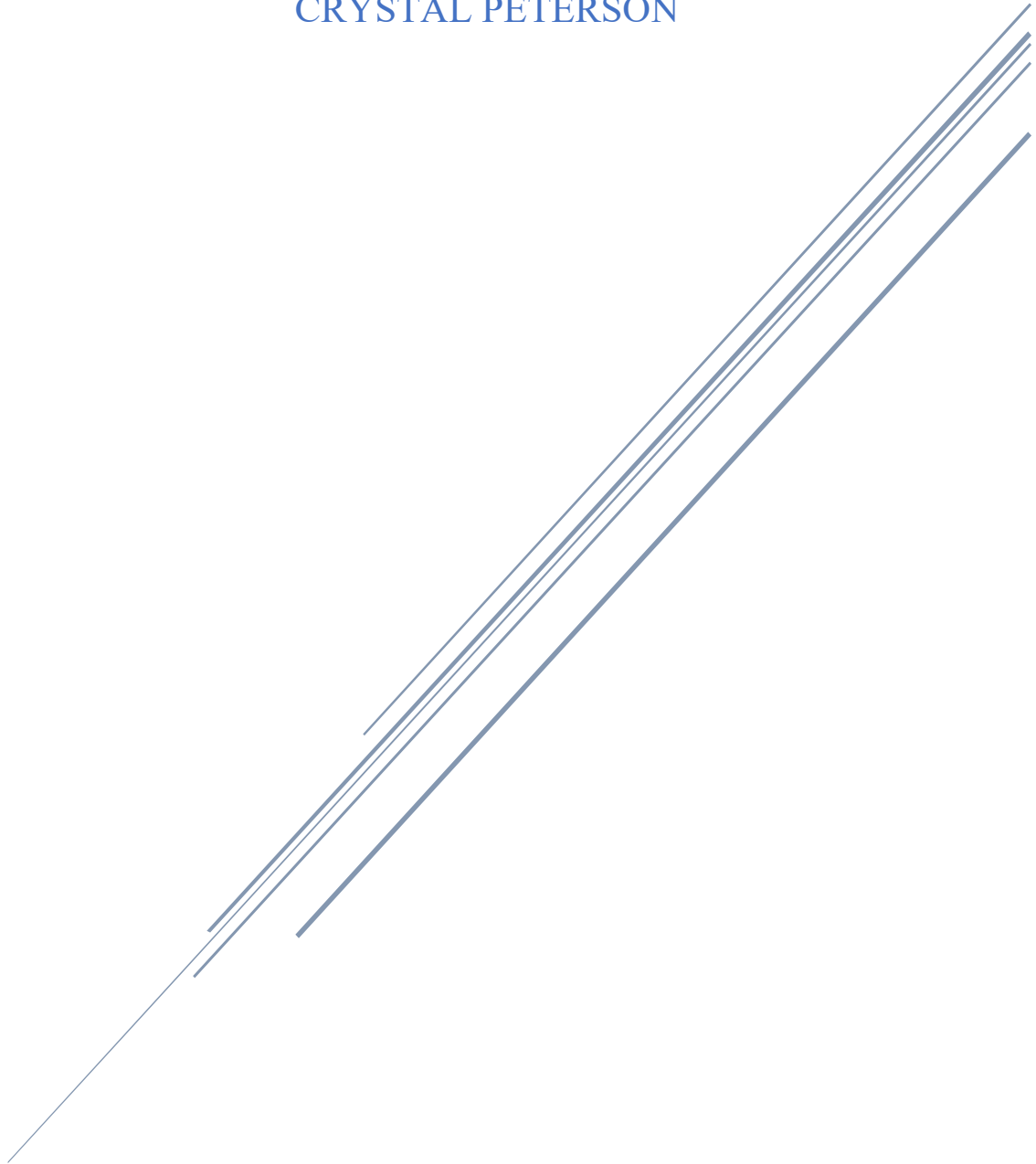


Table of Contents

Abstract	3
Part 1: Introduction	4
1.1 Purpose of report	4
1.2 Definitions	4
1.3 Background.....	5
Part 2: Examining Child Protection Orders	6
2.1 Strengths	6
2.2 Weaknesses.....	7
2.3 Western Australian Law	8
Part 3: Examining Rural Challenges	9
3.1 Social Challenges.....	9
3.2 Legal Challenges.....	10
3.3 Psychological Challenges	10
Bibliography	12

ABSTRACT

This report examines two unique and specific areas that could benefit from law reform. Responding to the Australian Law Reform Commission's review of the family law system, this report focuses on finalised supervisory orders in child protection orders and rural areas of Australia.

Some strengths examined for the orders included a continued residence for children with their parents and the importance of added accountability. Some weaknesses included the fact that any court orders can be broken and excluding the child's voice from court proceedings.

These strengths and weaknesses were examined in the WA and Commonwealth context. By looking at the statistics, it revealed that both WA and nationwide statistics reflect low usage of this protection type, opting for orders that require relocating children. Revealing that there were 5,138 children in WA on protection orders and supervisory orders were the lowest assigned.

The third part of this report focused on the consideration of social, legal and psychological impacts on rural demographics within the family law system. The most obvious aspects include the intimacy of small-town living, the time delay of court circuits which reduce legal services access and the psychological consequences of removing children from their homes during and after court proceedings.

PART 1: INTRODUCTION

1.1 Purpose of Report

The legislation that encapsulates family law proceedings in Australia is set to undergo significant updating to reflect modern Australia. Presently, the Australian Law Reform Commission (ALRC) has released the discussion paper for the ‘Review of the Family Law System’ (RFLS)¹ in preparation for the final submissions of findings.

This report aims to contribute essential information on a specific topic into the broader review. First, the strengths and weaknesses of interim and supervision protection orders will be assessed, then examined regarding specific Western Australia (WA) law.

Secondly, in the context of people who live in rural, regional and remote areas of Australia, specific focus will be given to some of the challenges faced socially, legally and psychologically.

1.2 Definitions

The term definitions for this report can be found within the issues paper for the RFLS. Included in the adopted definitions are terms ‘family law system’ (FLS), ‘family courts’ and ‘family violence’.²

In this report, the term ‘protection order’ refers to the specific interim and finalised supervisory orders with the exclusion of all other protection order types.

¹ *Review of the Family Law System* Discussion Paper 86 Australian Law Reform Commission 2018

² *Review of the Family Law System* Issues Paper 48 Australian Law Reform Commission 2018 p.15

1.3 Background

It is essential that the court system and its law keep up with how society changes.³

Most recently, WA and the Commonwealth government completed law reform inquiries into domestic violence, family violence and home violence laws to better reflect the raised awareness of the problems, deliver interdisciplinary solutions and update the court systems.⁴

On a Commonwealth level as well as a WA level, these reforms impacted the awareness around the complexity of the court systems for people dealing with family law matters; this inquiry aims to acknowledge shortfalls of current and provide proposals to rectify them.

³ See no 2

⁴ *Enhancing Family and Domestic Violence Laws* Final Report Law Reform Commission WA (no. 104) 2014

PART 2: EXAMINING CHILD PROTECTION ORDERS

2.1 Strengths

The provision of a protection order that allows for dependents to continue residence with their assigned parents or guardians is called a finalised supervisory order,⁵ and an interim order refers to conditions set by the court during proceedings.⁶

These orders allow for the benefit of children staying within their family but with added accountability on the parents, who answer to the court. By mandatory reporting of updates and access to the child, if needed, this type of order provides a means to help families where there are low risk and a higher potential to fix issues to overcome the challenges they might be facing at the time.

These orders are an effective means of assigning the care of a child into one parent, where the circumstances do not suit criteria for the best interest of the child for shared guardianship.⁷ Similarly, interim orders can provide access for parents who require additional social services support during court proceedings.

⁵ See no 3

⁶ See no 4

⁷ *ibid*

2.2 Weaknesses

Comparatively, the biggest downfall of any court order is that can be easily disregarded. As such, protection orders rely on the assumption that they offer a solution within the best interest of the child's future, preventing future suffering or abuse.⁸

When likened to similar orders such as family restraining orders, there are no criminal consequences for breaching a protection order. However, conditions can be set which include consequences. These consequences could be other protection orders, such as time-limited, until the child is eighteen or special guardianship.⁹

On a more general level, all types of orders that involve children have been critiqued for leaving the essential voice out of the proceedings: the children themselves. In some instances, protection orders might be determined to uphold the best interests of the child, but the outcome might not be what the child wants for themselves.¹⁰

The critique is supported by the literature, which argues there are degrees of difficulty in determining the outcome that will guarantee wellbeing for every child. Instead, it is an educated guess to reduce the risk of further trauma based on current evidence, often not considering new trauma created by the court orders.¹¹

With the power to remove children from risky situations, the government has been criticised of removing children without proper investigation or consideration of impacts when separating children.¹²

⁸ Alison Hay, 'Child protection and the family court of Western Australia: The experiences of children and protective parents' (Paper presented at the Child sexual abuse: justice response or alternative resolution conference, Australian Institute of Criminology, Adelaide, May, 2003)

⁹ *Children and Community Services Act 2004* (WA)

¹⁰ Dale Bagshaw, 'Reshaping Responses to Children When Parents are Separating: Hearing Children's Voices in the Transition' (2007) 60(4) *Australian social work* 450

¹¹ See no 1 p. 305

¹² Dawn Bessarab, 'Aboriginal Practitioners Speak Out: Contextualising Child Protection Interventions' (2010) 63(2) *Australian social work* 179

2.3 *Western Australian Law*

The legislation that sets out protection order in WA is the *Children and Community Services Act 2004* (WA). The previous strengths and weaknesses can be directly related to this legislation, because on a state level, the powers to make these decisions do not have to be approved by any federal level body, however, there is the availability of appeals.

The Commonwealth government has determined that finalised supervisory orders are the least interventionist of the orders but allow for specified conditions to keep accountability.¹³

Unfortunately, WA had among the lowest statistics for this type of order, within the five thousand, one hundred and thirty-eight children on orders as of 30 June 2017.¹⁴

Nationally, supervisory orders were ranked fourth out of five types, with less than 10 per cent of the nationwide fifty-four thousand, six hundred and sixty-six children on supervisory orders.¹⁵

Comparatively, over fifty-five per cent of these children had already received finalised guardianship orders not with their parents within WA courts.¹⁶ This data indicates that the child protective services and court decisions favour the removal of children over attempting a less invasive option such as supervisory orders.

Although national and state law has a supervisory protection order in place that allows children to stay with their parents while receiving extra support, the statistics indicate that the WA courts favour child removal.

¹³ *Child Protection Australia* Australian Institute of Health and Welfare 2016-2017 p. 34

¹⁴ *Ibid* p. 38

¹⁵ *Ibid* p. 30

¹⁶ *Ibid* p. 45

PART 3: EXAMINING RURAL CHALLENGES

3.1 Social Challenges

The RFLS has posed forty-seven questions for review.¹⁷ Of those, question twenty-five asks how FLS can incorporate the misuse of court processes as a form of abuse in family law matters.¹⁸ This includes prolonging court proceedings, approaching different legal services to create conflicts of interests, which prevent individuals from receiving legal advice or making multiple unsubstantiated notifications to child protection agencies.

This form of abuse is specifically harmful to those living in rural areas. Compared to metro areas where there are established courts, the court circuits are not in town regularly. Therefore these delays could carry on for much longer than they should, causing years of financial and emotional distress.¹⁹

When considering a family law issue such as protection orders or any child protection matters, the longer court goes on for, the more significant impact there is on the child not being given a stable home life.

When considering the rural demographic, socially these challenges are worsened by the intimacy of small-town living. Aspects of anonymity, privacy and confidentiality are stripped away, leaving families, the children and support services exposed.

The solutions in the RFLS discussion paper suggests fines for abusing court processes as well as amending the *Family Law Act 1947* (cth) to include misuse of court processes as a form of abuse.²⁰

¹⁷ See no 2

¹⁸ See no 2 p. 58

¹⁹ See no 1

²⁰ See no 1 p. 182

3.2 Legal Challenges

Question nine queries how the accessibility of the FLS can be improved for rural people.²¹

The most prominent legal challenge is accessing services, coupled with infrequent public transport or expensive private transport. These services could include legal advice, attending court circuit or support services.

When considering a family law issue such as protection orders or any child protection matters, this proves very problematic when individuals might not be able to access education about their legal rights. More generally, the limitation of services is also impeded by conflicts of interest, resulting in parties unable to access legal advice.²²

When considering the rural demographic, legally these challenges are worsened by the consequence of having children removed from parental care and taken to metro areas. This is not only distressing to the children but draws out the court process longer when there is no access to the correct legal support.

In the RFLS discussion paper, proposal four-eight suggests expanding court circuits in rural areas and proposal six-eight is the provision of co-locations for the family law registry and the judicial officers during the circuit.

3.3 Psychological Challenges

Another aspect of the RFLS examines what changes can be put in place to reduce the need for families to engage with more than one court when addressing safety concerns for children. Question thirty-two addresses this topic about the potential re-victimization and re-traumatisation for both parents and children who have suffered family violence.²³

²¹ See no 2 p. 33

²² See no 1

²³ See no 2 p. 72

When considering a family law issue such as protection orders, the problem is both the short-term and long-term psychological impacts on child development that alternative care might have on children when children could be at home with their parents and community.²⁴

When considering the rural demographic this challenge is heightened for people who must wait for specific courts to come to town, all the while not getting closure or regaining stability post trauma.

Children who are removed, are taken from their community as well as their comforts. The short-term impacts include behaviour and mood disruptions, delinquency, further traumatisation and lower school performance.²⁵

The long-term impacts include impacted brain development, self-esteem issues, poor emotional regulation and possible life-long criminality.²⁶

The discussion paper proposes post-order parenting services, which would help manage the enforcement of court orders. Another proposal is amending the law to include mandatory disclosure between court systems as well as services such as child protection agencies.

²⁴ Christine Harrison, 'Implacably Hostile or Appropriately Protective? Women Managing Child Contact in the Context of Domestic Violence' (2008) 14(4) (2008) *Violence against women* 381

²⁵ Yvonne Darlington, 'Practice challenges at the intersection of child protection and mental health' (2005) 10(3) *Child & family social work* 239

²⁶ Coleta Van Dam, Jan MAM Janssens and Eric EJ De Bruyn, 'PEN, Big Five, juvenile delinquency and criminal recidivism' (2005) 39(1) *Personality and individual differences* 7

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