

Pulling Together – Blacktown Services Combined for Justice

Outer West Domestic Violence Network

Submission to the Australian Law Reform Commission – Family Law review

Introduction

The Outer West Domestic Violence Network is an interagency group which aims to work collaboratively to address Domestic/Family Violence within a human rights framework advocating the right to safety for all women and children. We aim to provide a forum for coordinated, timely response to domestic/family violence issues in Blacktown LGA, to increase safety and support for women and children in the Blacktown LGA through education and prevention programs, and through partnerships and collaboration. to increase knowledge, resources and activities which addressing the needs of women and children affected by violence, and to advocate, lobby and engage with policy makers and key influencers, building awareness and the capacity for system change.

We are making this submission on the Family Law Review being conducted by the ALRC because the areas of family law and family violence are something that touch each one of our connected agencies, and we hope that through this submission, we may assist the ALRC in making changes to the *Family Law Act 1975* (Cth) that are meaningful, significant and effective to those that need them the most.

As a network, we have chosen to address the questions that accompanied the Issues Paper which we believe to be the most relevant to our areas of expertise and experience. We have chosen to address each question by expressing our points of agreement or difference with proposed solutions to each question, and by providing an accompanying de-identified real-life story that illustrates either the solution or the need for the solution as expressed.

We hope that in doing this, the ALRC will better be able to take into account the experiences of those interacting with the family law system every day, the challenges they face as people, and the challenges we face as those trying to help them.

Submissions

Within the topic of Access and Engagement:

Question 3 In what ways could access to information about family law and family law related services, including family violence services, be improved?

Question 4 How might people with family law related needs be assisted to navigate the family law system?

We agree that the availability of a ‘navigator’ to assist those accessing the family law system would help greatly. We would also suggest that greater collaboration amongst services to

work towards accessible resources, such as Domestic Violence Service Directory for the Blacktown LGA that our network developed would also assist those accessing the family law system.

Question 5 How can the accessibility of the family law system be improved for Aboriginal and Torres Strait Islander people?

We agree with the recommendation made by the SPLA Committee that the Australian Government should, as a matter of urgency, implement the Family Law Council's recommendations from its 2012 report, *Improving the Family Law System for Aboriginal and Torres Strait Islander Clients*, as well as the Council's additional recommendations in its 2016 report on families with complex needs as they relate to Aboriginal and Torres Strait Islander families.

We also agree that the family law system needs to better understand and respond to the family violence experienced by Aboriginal and Torres Strait Islander families, and suggest it may be able to do so by following the abovementioned recommendations.

Question 6 How can the accessibility of the family law system be improved for people from culturally and linguistically diverse communities?

We recognise greatly the acute need for the family law system to be made more accessible for those from culturally and linguistically diverse communities in our work. We support the recommendations made by the Family Law Council in 2012 to address this issue. We also welcome the CALA pilots being funded and run across the country and look forward to seeing this become a norm in the way that family dispute resolution is approached for those from culturally and linguistically diverse communities.

Question 7 How can the accessibility of the family law system be improved for people with disability?

We agree that there is a lack of understanding in the family law system, and amongst those who professionally work within it, about disability, particularly intellectual and mental disability which affects so many, and is particularly present in those who are and have been incarcerated. We would support the suggestions made at paragraph 83 of the Issues Paper, as recommendations that have potential to ameliorate this situation.

Case study: Our work on the intersection of ABI and DFV is looking at the ways that DFV can lead to an ABI and how to improve social responses with a focus on responses *in the DFV and Health sectors*. We have not yet looked into people's experiences of DFV-related ABI and the family law system though we hope that this can be explored in the future.

Overwhelmingly practitioners working in the DFV and Health sectors have expressed a concern that perpetrators could use a diagnosis of brain injury to further perpetrate violence against someone through family law processes – for example many perpetrators currently make claims that their partners are 'unfit' parents, and they use the threat of child removal through making false reports as a way to control and further enact violence. A diagnosis of brain injury, or symptoms of brain injury such as poor memory or fatigue, could easily be used against a person experiencing DFV where family law practitioners (such as mediators, therapists, court advocates, child protection staff, and solicitors) lack awareness about both

family violence and brain injury. The existence of brain injury or any other neurocognitive disorder does not inherently make someone incapable of parenting well, however, there are social stigmas and misunderstandings about such disabilities that are frequently used to exert power and control over people who experience violence.

Question 8 How can the accessibility of the family law system be improved for lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) people?

We agree with the issues raised by the Issues Paper regarding this question, particularly the recognition of family violence occurring towards someone from a member of their own family as a result of their sexuality or gender identity. As highlighted by the Victorian Royal Commission into Family Violence, this area needs improvement in the family law system's response to such an iteration of family violence.

Question 10 What changes could be made to the family law system, including to the provision of legal services and private reports, to reduce the cost to clients of resolving family disputes?

It is simply unacceptable that families should expect costs of upwards of \$100,000 to bring their family law matters to the court, particularly with the data supplied by the Australian Institute of Family Studies regarding the median personal income of separated parents. In the work our agencies do, we are constantly aware of the financial stress and burden caused by these proceedings, particularly in cases affected by family violence and an inability to qualify for Legal Aid due to owned but not accessible assets such as a family home.

We would support suggestions to expand the availability of low-cost services such as FDR, but stress that for some families, especially those with a history of family violence, the certainty of court orders is paramount, and therefore it is not enough to simply expand access to FDR, or 'unbundle' services, but the ALRC should be looking to reduce actual court costs where they are prohibitive to those that need the court's assistance the most accessing those services at all.

Question 13 What improvements could be made to the physical design of the family courts to make them more accessible and responsive to the needs of clients, particularly for clients who have security concerns for their children or themselves?

We agree with the concerns raised about the court environment, as set out at paragraph 119, and also agree with the recommendations made by the Victorian Royal Commission into Family Violence to resolve these concerns. We further support the concept of 'dynamic security' but suggest that security systems and safe areas need to be approached with the gravity of the reason they are there; to keep victims of domestic and family violence safe.

Within the topic of Resolution and Adjudication Processes

Question 20 What changes to court processes could be made to facilitate the timely and cost-effective resolution of family law disputes?

We wholeheartedly agree with the concerns raised within the Issues Paper regarding the time delays and costs associated with them. We would also emphasise the point made about the safety risks to parties that are created by this delay and would suggest that this makes this question more pressing.

While we agree with the suggestions made about ways to resolve this issue, we would further suggest that the funding and appointment of additional judges and staff would go a long way to addressing the time delays which are the root of many complaints we receive about the system.

Question 25 How should the family law system address misuse of process as a form of abuse in family law matters?

We wholeheartedly agree with the issues raised under paragraph 190 of the Issues Paper in relation to the ways that the family law system and its processes are misused, and further agree with the characterisation of such misuse as a form of abuse.

We would support the amendment of the definition of family violence within the Family Law Act to include such misuse of process as a form of abuse, and the strengthening of the ability of the courts to order penalties where this form of abuse is identified. We would also encourage the further use of the court's ability to summarily dismiss proceedings that are found to be frivolous, vexatious or an abuse of process, and the restriction of appeals where such an abuse of process is found.

However, we would point out that all these processes require the instigation and engagement of the court process in the first place, and that this is what traumatises people to begin with. We would suggest that a preliminary informal process be instigated to test merits in family law proceedings, to further assist those who are victims of such abuse to not have to fully engage with a process that only later may be found to be to their detriment.

Question 28 Should online dispute resolution processes play a greater role in helping people to resolve family law matters in Australia? If so, how can these processes be best supported, and what safeguards should be incorporated into their development?

We agree that there are accessibility issues for clients who are simply seeking to sort through their family law matters themselves through family dispute resolution. We would support further inquiries into the making of such services more accessible through different means, but would stress that the reality for many of our clients is that access to a computer, reliable internet and/or a telephone is not the norm, and therefore would encourage the ALRC to consider that were such services as the Justice42 tool to be implemented in Australia, they should not be seen as particularly able to make such services more accessible to those who are already disadvantaged within the community.

We would therefore encourage the ALRC to consider that, as part of the possible expansion of FDR services, centres such as family relationship centres should be equipped with accessible computers, internet and telephone lines in private rooms to allow those who otherwise could not access these tools to do so.

Within the topic of Integration and Collaboration

Question 31 How can integrated services approaches be better used to assist client families with complex needs? How can these approaches be better supported?

As an interagency, OWDVN sees the positive impact of integrated service approaches within the Blacktown Local Government Area. Our members have the opportunity to attend at our meetings and other events and meet those working on the same issues but in different agencies. We have seen many successful partnerships and have heard many positive stories about how this has benefited not only clients, but the professionals themselves to be able to better serve their clients, as well as feel supported within the wider community of colleagues who work in this area.

We understand that there are many interagencies like ourselves that work towards the goal of integrated service approach as well as raising awareness for issues through community engagement and education. We are also aware of the work that family relationship centres do and the support they can provide to families. We would simply suggest that greater funding of this part of the sector would go a long way to better supporting the work that is already being done, because the simple fact is that many professionals working in the family law/family violence realm understand that a single-discipline approach won't work, and in working towards the best interests of their clients, are already doing the work to make this sector as multi-disciplinary as possible. That is why OWDVN exists.

Question 32 What changes should be made to reduce the need for families to engage with more than one court to address safety concerns for children?

We agree with the problems that the Family Law Council identified as set out in paragraph 242 of the Issues Paper. We would support the creation of a national family and child protection system, and the development of digital hearing processes to reduce the need to families to physically attend different court locations.

We would further suggest that perhaps the role of a 'navigator' should not be considered as only appropriate to the family court and should perhaps begin at the point of origin for many of these families, which is the local courts. Therefore, families would be getting the support they need from the beginning.

Case study: The victim and the defendant were in a very violent and controlling relationship and had children together. The defendant was sentenced to a 9 year custodial sentence for a violent crime which was outside of the family. There was a final ADVO granted during that time which included a no contact order with the victim and the children named as PINOPS. This expired whilst the defendant was in prison.

During the time of the defendant's imprisonment, FLC orders were made awarding sole custody of the children to the victim which included pursuant to 68b of the FL Act the defendant being restrained from contacting or approaching the victim or the children, by any means whatsoever including through any third party. He was further restrained from attending or being within 100 metres of the residence, employment or schools attended by the children.

Despite the orders, the defendant sent letters from prison to the victim and the children. They included accusations of her being a liar and statements saying that he would be a father to the children. Although no direct threats were made to the victim she felt these letters were a threat that he planned to take the children. These letters intimidated and re-traumatised the victim each time they arrived making her feel unsafe and fearful for her safety once he was released from prison. The victim asked for help as the release date was nearing. We referred the matter to the local Safety Action Meeting where the police informed that they couldn't act on a FLC breach. After further advocating to the police they made an ADVO application which was granted in the local court for 5 years protecting the victim and children, conditions 1abc, 2,3,5 and 9.

Our concerns are that there seems to be a conflict/ misunderstanding what action police can take in these matters. If there isn't clarity for police, how can a victim know what supports to expect? The information that we and the victim were given in relation to this advised that it is up to the client to initiate the breach with the family law courts whereby they have to file an application along with an affidavit, putting the responsibility onto the victim. Added to that is the length of time proceedings in the FLC can take which all adds stress to the traumatised victim.

The information that we were given about the penalties for breaching the orders are such that the court could impose fines, bonds and community service and a maximum imprisonment of 12 months for serious contraventions. Our concern is that the actions of the defendant may not seem to reach the threshold for serious contravention unless one is versed in the impact of domestic violence on victims and children.

Question 33 How can collaboration and information sharing between the family courts and state and territory child protection and family violence systems be improved?

We agree with and have experienced ourselves, both professionally and through our client's experiences, the frustration of the limited extent that these systems are able to work together and information share.

We wholeheartedly agree with the list of recommendations made by the Family Law Council and as set out at paragraph 249 of the Issues Paper. We would suggest that the benefits of such a system would outweigh any perceived negatives, such as privacy and conflicts, which are already managed by those of us with shared systems.