

Women's Council for Domestic and Family Violence Services . WA

Submission to the Australian Law Reform Commission : Review of the Family Law System

Policy Officer

Women's Council for Domestic and Family Violence Services

ABOUT THE WOMEN'S COUNCIL FOR DOMESTIC AND FAMILY VIOLENCE SERVICES

The WCDFVS is the peak non-government body in Western Australia committed to improving the lives of women and children in society, and ensuring they live free from family and domestic violence. The organisation provides a voice on domestic and family violence issues to help facilitate and promote policy, legislative and programmatic responses relevant to women and children who have experienced domestic and family violence.

The organisation has five core functions: promoting the protection of women and children through representing their needs to policy and decision makers; representation and advocacy on a range of national committees and advisory bodies; community education; research and training on emerging issues and trends related to FDV; and information and referrals to sections of the community that would provide appropriate help to women and children.

The WCDFVS has a few key goals:

- To strengthen their unified voice on domestic and family violence issues.
- To maintain the Women's Council for Domestic and Family Violence Services (WA) as an independent viable and credible organisation.
- To improve the access of women and children to Women's Refuges and services who are experiencing domestic and family violence.
- To provide leadership in the area of domestic and family violence issues to key stakeholders and the community.
- To increase the community awareness of the incidence, effects and responses to domestic and family violence.
- To collaborate with key stakeholders in the development of policies, legislation and programs which impact on women and children experiencing domestic and family violence.
- To ensure access and equity for all members in remote/rural locations.

The Women's Council made a submission to the Parliamentary inquiry into better family law system to support and protect those affected by family violence, in relation to,

Term 5. Capacity of family law professionals

The WCDFVS supports a number of innovative practices in operation at the Family Court of WA and believes they would be beneficial to be considered by the Australian Law Reform

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Commission to improve the capacity of the Family Court practitioners to respond more effectively to family violence matters.

1 The WA Family Court Reference Group: The group meets three times annually for 1.5 hours and is chaired by the Chief Judge. The group has been active for over six years and has a relevant and wide ranging membership, senior practitioners from the Family Court including the Principle Registrar and Director of Court Counselling, senior managers/directors from Department of Child Protection and Family Support legal unit, Family Law practitioners Association , Legal Aid, Department Child and Adolescent Health, Family Pathways Network, Aboriginal Legal Service , Community Legal Services, Citizen Advice Bureau, Anglicare, Communicare, Relationships Australia, Centrecare and the Women's Council for Domestic and Family Violence Services.

The meetings provide an opportunity for services outside the court but integral to its work to improve their understanding of the functions, constraints and opportunities to improve the experience of the court for our clients. The range of service providers bring a vast knowledge and expertise for the court to draw on when making its decisions in family violence cases.

The strength of these meetings is reflected in the willingness of the Chief Judge and other court staff to be very open and inclusive in the information provided and this has generated a high level of trust and cooperation across all the meeting participants.

2 The WA Family Court has had a co-located Senior Child Protection officer based full- time in the Family Court for over three years. This position provides Magistrates and Judges with immediate access to relevant Department of Child Protection and Family Support case files. This reduces delays in interim decision times, provides informed and knowledgeable information directly to decision makers and reduces the risk of information being missed or lost.

3 The Council believes Family Court System would benefit from a much clearer and freely available information on the qualifications, skills and knowledge of Single Expert witness report writers (family report writers), the role of the report writer in the court process, what avenues an applicant or respondent can access if they have evidence that indicates a report is factually wrong.

4 The Council recommends that due to the complexity of family violence and its impact on all family members including extended family, all professionals working in the family law area to have compulsory and frequent professional education on the issue.

In the last ten years our understanding of the impact of family violence on the brain development of children and young people continues to develop at a rapid rate. We must support family law professionals to access the most current and relevant knowledge by requiring attendance at seminars and conferences that expose them to a greater understanding of the complexities and ramifications that decisions made by the court have on the safety and well-being of family members.

5 Family Law professionals need to be embedded in the Family Violence sector networks and interagency committees, currently most Court and family law practitioners sit outside of the collaborative networks of community and government agencies that respond to the issue of family violence.

This results in individuals who lack up to date knowledge on the complexities of family violence, who lack knowledge of support services available for their clients and who bring unchallenged their personal beliefs and myths about the issue.

The Women's Council would like to make the following responses to some of the review questions.

Q2. What principles should guide any redevelopment of the family law system?

We believe that the principle of safety for families and in particular victims/survivors of violence should be a paramount consideration in any reforms to the family law system.

Q3-4. Q3. In what way could access to information about family law and family related services, including family violence services, be improved?

Q4. How might people with family law related needs be assisted to navigate the family law system?

The Council supports the need for forms in the courts need to be written in a Simplified English (SE) to ensure that people for whom English is not their first language and people with low literacy skills are able to fill them out in cases when they do not have access to legal advice.

What Is Simplified English? Simplified English (SE) was developed so that documents written in English could be understood by people who speak little English. To make the documents easier to understand, Simplified English uses a limited vocabulary and a set of writing rules.

In addition Courts need to ensure they:

- Have court staff available to answer questions from the public.
- Hold community education forums, in collaboration with relevant service providers, to increase understanding of and trust in the court system.
- Enable women to visit safe rooms for education on court processes.
- Provide special training to court registries, who are the first point of contact for many women, and are therefore an important touchpoint for distributing information and setting the tone of their experience.

The WA Family Court runs regular Walk in her Shoes tour for community agency staff who clients are utilising the Family court system. The tours equip staff with the knowledge of the Court processes, Court staff roles and the buildings layout so staff can support clients with confidence.

Interpreters

The Women's Council believes it is a fundamental right that all Court clients who request and interpreter MUST have access to an interpreters to ensure their an access to justice.

It is also paramount that female victims/survivors needs to have a choice of having female interpreters in matters involving family violence.

Interpreters must attend professional training on the issue of DFV and have a current certificate before they can interpret in the Family Court system.

The WA Office of Multicultural Interest in partnership with the Women's Council for DFV services and LifeLine ran three training workshops for interpreters on the issue of DFV in 2017. The workshops were booked out maximum capacity 30 people each time.

Physical safety in courts

There is a great need to improve physical safety in courts. Courts are often accessible through one entrance/exit forcing victims/survivors to face perpetrators or walk past them to access toilets/ the court room. Perpetrators and their family / friends can often use that as a possibility to further harass and intimidate victims/survivors.

Courts should be sufficiently resourced to provide separate waiting areas, separate entry and exit points, safe rooms, dedicated areas for children, separate interview rooms, and possibility of video-link attendance of hearings. The latter is particularly important for women in rural, regional and remote areas.

Q5. How can the accessibility of the family law system be improved for Aboriginal and Torres Strait Islander people?

There also needs to be at least one but preferable two or more aboriginal and Torres Strait Islander liaison officer employed in every Family Law Court, to support Aboriginal clients to negotiate a complex and disempowering system. Liaison officers also play a crucial role in educating Family Court staff, from registry staff to Chief Judges on Aboriginal and Torres Strait Islander kinship and cultural obligations.

The WA Family Court was fortunate for several years to have two Aboriginal Liaison officers but this valuable role ceased due to lack of ongoing funding.

Q6. How can the accessibility of the family law system be improved for people from culturally and linguistically diverse backgrounds?

The Women's Council endorses recommendations made by the Judicial Council on Cultural Diversity (JCCD) in the National framework to improve accessibility to Australian courts for Aboriginal and Torres Strait Islander women and migrant and refugee women.

We draw your particular attention to the following recommendations for improving the family law system for people of culturally and linguistically diverse backgrounds:

- Courts and tribunals should engage Cultural Liaison Officers, establish Cultural Diversity Committees, introduce multicultural plans, and actively recruit employees from migrant and refugee backgrounds.
- Courts and tribunals should review the appropriateness of signage, brochures, services, procedures for engagement of interpreters, and support for vulnerable witnesses, to ensure they are accessible to all.
- Women from culturally and linguistically diverse backgrounds should be consulted meaningfully when developing products and procedures designed for and about them.
- Courts and tribunals should schedule regular activities to engage women of migrant and refugee background, such as stakeholder meetings, court open days and tours, and community education forums.
- Court staff should receive compulsory cultural capability training.

Q14 What changes to the provisions in Part VII of the Family Law Act could be made to produce the best outcomes for children?

The 2011 amendments to the Family Law Act, including the expansion of the definition of family violence and the prioritising of safety over a meaningful relationship with both parents were

necessary and positive steps in effective legal responses to family violence. However, the presumption of equal shared parental responsibility remains and The *Family Law Act 1975 (Cth)* states that when making a Parenting Order, the Court must apply a presumption that it is in the best interests of the child for the child's parents to have equal shared parental responsibility for the child¹. This means that parents must consult with each other and share responsibility for decisions about major long term issues in regard to the children. Although the presumption is not meant to apply in cases of abuse, women and children are still negatively impacted by the presumption because it is often hard to identify or prove abuse to the standard required by the Courts. This is problematic particularly in situations where domestic and/or family violence may not be properly identified, for example where a victim of violence is unrepresented.

As each family is unique, rather than focusing on presumptions, decisions about children should be made on a case-by case basis in the best interest of the child and placing a greater focus on safety and risks to children

[Q15. What changes could be made to the definition of family violence, or other provisions regarding family violence, in the Family Law Act to better support decision making about the safety of children and their families?](#)

The current definition of Domestic and Family violence requires further expansion as our knowledge and understanding develops of the complex of ways perpetrators continue to abuse their previous partner and children. Australian legislation current lags behind on the issue of technology facilitated abuse.

It is crucial that the multitude of ways technology can be used to harass, coerce, stalk, track and recorded a victim, and the use of or the threat to use imitate images as a means of control are included in the definition of DFV.

The Women's Council endorses The National Domestic and Family Violence Bench Book recognition of the need to recognise spiritual and cultural abuse as a form of domestic and family violence that may be part of a broader and complex pattern of behaviours experienced by a victim.

Spiritual and cultural abuse are means by which a perpetrator can exercise dominance, control or coercion over a victim who is especially vulnerable due to their spirituality or cultural identity. Behaviours may include any form of domestic and family violence and may involve the perpetrator (but are not limited to the examples provided below):²

- belittling the victim's spiritual or cultural worth, beliefs or practices;
- denying the victim access to their spiritual or cultural community;
- preventing the victim from wearing clothing prescribed by spiritual or cultural practices;
- asserting his entitlement to a dowry from the victim's family, or punishing the victim or her family for what is claimed to be an insufficient dowry;
- forcing the victim to undergo partial or total removal of her external genitalia, or be subjected to any other injury to her genital organs for reasons that are not medically warranted (sometimes referred to as female genital mutilation or FGM);

- compelling the victim to keep the abuse secret by threatening that disclosure will result in the victim being disbelieved, shunned and shamed by their spiritual or cultural community.

Ongoing abuse after separation by taking actions that prolong and/or frequently seek to overturn or change the decision making of government departments including the Family Court system.

The reluctance of the Family Court to declare a perpetrator a vexatious litigant frequently results in victim/survivors experience ongoing abuse and harassment to the point of being forced to withdraw due to financial and emotional stress from further court events.