

This submission has been prepared by the Research Team who conducted a project funded by the Law Society of Western Australia Public Purposes Trust Fund entitled *Family Property Disputes involving Family Violence: A Research Project* (the Project). The team is Associate Professor Jill Howieson (Chief Investigator, UWA), Professor Robyn Carroll (UWA), Associate Professor Sarah Murray (UWA), Dr Ian Murray (UWA), Professor Lisa Young (Murdoch), Lisa Jarvis (Notre Dame), Dominique Hansen (Law Access) and Fiona Lester (Project Manager/Researcher).

The Project Report is expected to be completed by 30 November. The Research Team has finalised the Executive Summary to the Report containing the Eight Key Findings (below) and Nine Recommendations (See Appendix A). As context to this submission the key findings from the Project are:

- F1. In Western Australia, **access to low-cost ongoing legal assistance** for people having both family domestic violence (FDV) issues and property disputes is limited.
- F2. The reasons for the inability of service providers to meet the need for clients with FDV and property disputes are **lack of funding, time and resources**, and a **lack of family property lawyers with adequate FDV and dispute resolution training**.
- F3. Service providers **lack a cohesive, collaborative or comprehensive means to collect data on FDV and property disputes**.
- F4. There is a **lack of information sharing amongst service providers** with the result that it is not clear to the public and other services which services providers have capacity to assist clients with property disputes and FDV.
- F5. There is a **lack of free information** about the intersection between the law of property division following relationship breakdown and FDV available to the public.
- F6. Service providers have **difficulty in identifying FDV**, possibly due to a divergence in the way that professionals ask questions of the potential victims of FDV, and/or a reluctance of victims and perpetrators to report.
- F7. Stakeholder Organisations identify “best” service design as one which **provides ongoing and wrap-around legal and non-legal advice, support and legal representation for both parties**, potentially encompassing the full range of services (including mediation), with practitioners and professionals who have FDV training.
- F8. There is a **‘patchiness’ and complexity to service delivery** to people in need in this area. Addressing the issues requires **greater funding, further research and collaborative effort** to integrate the existing and emerging knowledge and practices.

There are many recommendations that we support, as a research team of scholars and practitioners concerned about the operation of the family law system. We have limited our submission, however, to the proposals and questions that are either directly, or tangentially, relevant to our Project. As our Findings indicate, the Project confirms that there is a need for action to improve access to justice and outcomes for people with family law property disputes where family violence is a factor, in particular:

1. for more focused and coordinated data collection at entry points when people are accessing legal and other support services to ensure appropriate information, advice and referrals to the public and to provide data for research and evaluation purposes;
2. for accessible information about the law relating to family violence and property division following relationship breakdown;
3. for early and skilled advice, advocacy and legal assistance with safety as a priority;
4. for wrap around services on an ongoing basis with properly trained legal and other professional service providers; and
5. to strengthen the legal recognition of family violence as a statutory consideration in property division decision making and ensure this is reflected in information, advice, support and legal services about family law financial matters and proceedings for people affected by family violence.

**Below are our responses to those Proposals and Questions in DP 86 that are directly or tangentially relevant to the Project (by Chapters).**

### **Ch 2. Information, Education and Referral**

Proposals 2-1, 2-3, 2-4, 2-5, 2-6 and 2-8 follow naturally from our findings (see in particular F5), and other relevant evidence. In particular, the Project identifies that even the materials available now do not address the intersections of family violence and property. This is something that needs to be specifically focussed upon in these new materials. Wide consultation and access to information as proposed in 2-2 and 2-7 is consistent with views expressed by Project Stakeholders.

It is imperative that there is a body having oversight for this (as in Proposal 2-5) given that it is likely that there will be significant changes to law and processes over time. The government should NOT wait until the Hubs are in place to act on these Proposals. It is imperative that governments act now, with a view to amending the materials as the situation evolves. The creation of a body which has oversight of this will increase the chance that the materials will not be static and thus out-of-date quickly.

### **Ch 3. Simpler and Clearer Legislation**

We support Proposal 3-2. The Project established that there is no equivalent to the Form 4 notification of family violence in property only matters. Although some information is gathered about concerns about safety and security in the Court, information about family violence between the parties to a property dispute is not gathered systematically in documentation for court proceedings. This reflects the current approach in the law in which family violence has limited relevance to substantive applications. Moreover, more attention should be paid generally to court forms providing a more comprehensive source for data collection. Evaluation of both process and substance matters in court would be greatly enhanced by attention being paid to this in the drafting of forms.

We support Proposal 3-10 in conjunction with 3–11, on the basis that the Project identifies that the absence of family violence as a statutory consideration in property matters contributes to the overall failure of family violence being appropriately addressed in advice, support, negotiations and proceedings concerning property. (See P. Easteal, C. Warden and L. Young, ‘The *Kennon* ‘factor’: Issues of indeterminacy and floodgates’ (2014) 28 *Australian Journal of Family Law*). We therefore support in principle the amendment of the Act to make express reference to the relevance of family violence in property matters. This should also be reflected in any relevant regulations and forms.

We support Proposal 3–12, as the property provisions are essentially remedial in nature and designed to protect family members who are economically vulnerable, including when family violence contributes to that vulnerability.

While the Project did not directly address this issue, we support Proposals 3–13 and 3-14 in general as they would enhance the overall capacity of the system to properly address issues of property division where family violence is a factor.

We support Proposal 3–19. While the current provisions permit this, given the failure generally to recognise the relevance of family violence in financial proceedings, it is important to have an express provision.

#### **Ch 4. Getting Advice and Support**

We support Proposals 4-1 to 4-4. They are entirely consistent with a need identified in our Report. There is an urgent need for ‘wrap around’ services and a visible, single entry point. These Proposals provide that entry point, but of course do not guarantee provision of the necessary services. The utility of the Hubs depends on adequate and stable funding (R. 1), both of (a) the Hubs (which was not the experience with Family Relationship Centres which might have fulfilled this role) and (b) the necessary services to which they refer people. These Hubs will also provide an opportunity to coordinate data collection and create current and visible information. They could also facilitate research and the development of an evidence base to develop a common understanding of the needs of these clients and the best methods of service delivery.

We support Proposals 4–5 to 4-8. However, it is important that property matters be a focus of this service, building on currently available FASS support services.

#### **Ch 5. Dispute Resolution**

While the Project does not directly address these matters, we support those parts of Proposals 5-2, 5-6, 5-7, 5-8, 5-9, 5-10 and 5-11 that would improve:

- Access to information relevant to property negotiations; and
- The safety and effectiveness of advice, representation and delivery of mediation and legal services in family property proceedings where family violence is a factor.

In relation to Proposal 5-9, our Project identified that lawyer assisted mediation has benefits by providing an important safety buffer for clients where violence is a factor and increasing the chance of an agreement being reached. However, access to legal representation is unaffordable for many litigants in these cases. Thus we strongly support that part of Proposal 5-9 which calls for funding agreements for the provision of legal representation to parties in property cases. The Proposals in Ch 10 of DP 86 especially 10-3 are pertinent to the increased role of lawyers in mediation and legal services in family property proceedings where family violence is a factor.

### **Ch 6 Reshaping the Adjudication Landscape**

We support Proposals 6–3 to 6-7. The Project identifies that there is an absence of a focus on the intersection of family violence and property matters in the Act and this has contributed to the lack of process and procedural developments to address this. Specialist court pathways for small property claims and family violence will go some way to addressing this; however the intersections between the two will need to be considered in the design.

The Project was conducted in Western Australia, where we already have co-location of courts exercising Family Law jurisdiction. We therefore support Proposal 6–8. The Project reveals that there is a particular need for services in rural, regional and remote locations where property and family violence intersect.

We support Proposal 6-12, particularly as it relates to matters of safety. While in Western Australia some efforts have been made in this regard, our Project identified a possible lack of awareness by people coming to the court of the ways in which they could protect their safety. Thus, in addition to ensuring courts have appropriate facilities and accommodations, those facilities and accommodations need to be widely publicised.

### **Ch 8. Reducing Harm**

The Project concerns the effect of family violence on parties to property disputes from an access to legal and other services perspective. We did not address the definition of family violence in our study and therefore are not in a position to make submissions on most of the Proposals in this Chapter on the basis of our Findings and Recommendations. Note however our finding (F.6) that ‘service providers have difficulty in identifying FDV, possibly due to a divergence in the way that professionals ask questions of the potential victims of FDV’. This led to our Recommendation (R.5) that there is a need to adopt a ‘consistent and clear approach to identifying FDV and encouraging clients to report FDV’. The absence of a clear and consistently applied definition of family violence, and one that reflects the experiences of people who experience family violence creates difficulties in the sector including data collection, referrals and advice, and data evaluation. We therefore support Proposals 8-2

### **Ch 10. A Skilled and Supported Workforce**

A workforce capability plan that reflects the importance of family law system professionals having an appropriate understanding of family violence would facilitate the achievement of our Recommendations (R5 and R6). We therefore support Proposal 10-1, 10-3, 10-6 and 10-

8. In particular, and in answer to Question 10-1, this requires that professionals understand how family violence can impact on property settlement negotiations, (including safety and trauma issues). It is extremely important that FDR practitioners working in property matters should have the necessary expertise both in matters of family violence and family property law. For example, absent a legislative amendment to expressly include family violence in the property provisions, FDR practitioners may be even less likely than lawyers and judges to ensure that parties take family violence into consideration in resolving property disputes.

### **Ch 11. Information Sharing**

As victims of family violence may have difficulty in establishing violence in property matters, we support information sharing that will aid victims in this regard.

### **Ch 12. System Oversight and Reform Evaluation**

Our Project concerns entry level access to justice and legal services. Our findings identify a need for architecture that ensures government funding, leadership and oversight of the family law system to address issues concerning property disputes and family violence. We support, in principle, the establishment of a peak body to facilitate improvement in this area. However, the work of any such body must be evidence driven. Family law is an intensely debated area, and research indicates that, at times, law reform in this area has been driven by anecdote. The body should seek to facilitate a more reasoned and rational debate about the operation of the family law system. Thus it is imperative that it operates independently.

## APPENDIX A

### Recommendations from *Family Property Disputes involving Family Violence: A Research Project*

Recommendations	
R1. Stable and adequate funding	Commonwealth and State governments should ensure stable and adequate funding of the development and implementation of ongoing and wrap-around legal assistance services to people caught in the FDV and family law property dispute dynamic.
R2. Government Leadership to provide architecture	Commonwealth and State Government should lead on FDV and fund the creation of the appropriate administrative architecture for systems and processes to support victims of FDV who are caught in family law property disputes. A well-funded, systematic, government-led and collaborative approach is required.
R3. Collaborative approaches to funding, service provision, training and research	<p>Stakeholders to adopt or to enhance collaborative approaches to</p> <ul style="list-style-type: none"> <li>- Providing integrated and wrap-around services for vulnerable clients caught in the FDV/property dispute dynamic</li> <li>- Exploring collaborative funding models</li> <li>- Conduct comprehensive and consistent FDV training for all practitioners working in this field</li> <li>- Co-ordinate data collection and create current and visible information</li> <li>- Research and develop an evidence base to develop a common understanding of the needs of these clients and the best methods of service delivery</li> </ul>
R4. Wrap around service provision – best service design	<p>Wrap-around legal and related service provision</p> <ul style="list-style-type: none"> <li>- Commonwealth and State governments should resource legal assistance services and other service providers to provide ongoing and wrap-around legal and related support to people caught in the FDV and family law property dispute dynamic.</li> <li>- Wrap-around services employ family property lawyers and dispute resolution practitioners who have FDV training and expertise.</li> <li>- Wrap-around services include appropriately structured mediation with legal representation for both parties.</li> </ul>
R5. Identification of FDV	A consistent and clear approach to identifying FDV and encouraging clients to report FDV.
R6. Comprehensive,	Comprehensive, consistent and collaborative training for all practitioners

consistent,  
collaborative  
training

working in the area

- Service funders and providers develop a common approach to identifying FDV issues in family law property matters (including a common approach to asking questions of clients).
- Organisations raise awareness of the importance of FDV training for all practitioners working in this field, i.e. family law practitioners, mediators etc.
- Develop a common approach and curriculum to training and ensure information and expertise sharing

R7.  
Information  
provision and  
sharing

Up to date, visible information sharing

- Create an up-to-date, accessible list of the extent of services and centres available which have capacity for legal assistance in family law property matters, including the type and extent of assistance. Make the list available to legal practitioners, dispute resolution service providers and the public.
- Create an up-to-date, accessible list of family law practitioners who have FDV training and expertise and make it available to legal practitioners, dispute resolution service providers and the public.
- Legal service providers and dispute resolution service providers provide online information on the intersection between FDV and family law property disputes, with a focus on safety issues.

R8. Research:  
Developing an  
evidence base

Develop an evidence-base

- Stakeholder Organisations develop a collaborative and evidence-based approach to research and practice, to develop a common understanding of the needs of clients and the best methods of service delivery.
- Stakeholders consider the resources needed to ensure access to a cohesive, collaborative and comprehensive means to collect data on FDV and family law property disputes.
- Adopt the collaborative and information sharing Constructive Inquiry as a research method, where appropriate.

R9. Data  
collection

Coordinated data collection

- Commonwealth and State governments fund co-ordinated efforts to improve the functionality of the Stakeholder Organisations' current data collection systems.
- Stakeholder Organisations take a collaborative approach to ascertain the best methods for collecting data with a focus on FDV and family law property disputes.