

ALRC Review of the Australian Family Law System - Discussion Paper

Submission by Women's Legal Service Queensland

Introduction

WLSQ provides Queensland wide specialist, free legal information, advice and representation to women in matters involving domestic violence, family law, child protection and sexual violence. Last financial year we assisted over 16 000 victims of sexual or domestic violence. We also employ allied domestic violence social workers who assist clients to ensure a holistic response for our clients.

WLSQ receives Women's Safety Package (WSP) funding for our high risk Gold Coast, Brisbane and Caboolture Domestic Violence Units. The Caboolture unit has a First Nation's support worker to assist Aboriginal and Torres Strait Islander women's access. Our Health Justice Partnership solicitors provide legal advice and assistance to victims of domestic violence at the Logan, Gold Coast, Redlands, QE2, PA and Royal Brisbane Hospitals and shortly to the Redcliffe and Caboolture hospitals.

We have been operating for 34 years and have been actively involved in advocating for law reform in family law for the majority of our existence, principally concerned with how domestic violence is dealt with in the system and the long and short term impacts on women and children's wellbeing when safety is not prioritised in decision making. We are a member of Women's Legal Services Australia (WLSA) and endorse their comprehensive submission. The purpose of this submission is to provide a particular perspective from our own service experience.

In Queensland, there has been extensive reform since the release of the *Not Now: Not Ever Report* into domestic violence in 2015. Despite this, women and children continue to be exposed to and face ongoing violence, including death. This is for a number of complex reasons but unfortunately, a major impediment to women and children achieving safety after leaving domestic violence, is the family law system. Any reforms proposed must be informed from a philosophical basis that places domestic violence safety and risk at the centre of all practice and decision making in the entire family law system. There needs to be a drastic shift in focus away from the system prioritising cooperative and shared parenting, which places victims of domestic violence and their children in danger.



1. Children

DOMESTIC AND FAMILY VIOLENCE DEATH REVIEW ADVISORY BOARD ANNUAL REPORT 2017/18 – FINDINGS ON POST SEPARATION VIOLENCE AND CONTACT ABUSE

In domestic violence deaths considered by the Queensland Domestic and Family Violence Death Review and Advisory Board¹ from 2006/07 to 2017/18 13.8% involved child custody or access disputes as a risk factor. In cases involving culturally and linguistically diverse deaths, child custody and access was an issue in dispute in 35.7% of matters.

In the 13 cases considered by the Board during 2017/18 there was evidence that there were children exposed to or were the direct victims of domestic violence². The Board found for those cases where a relationship separation had occurred, perpetrators would use shared custody arrangements as an opportunity to facilitate further abuse against the primary victim of violence.

Of concern, of the five cases where there was a parental separation the victim made attempts to facilitate a shared custody arrangement with the children. The Board noted this may have been an appeasement strategy by the mother to reduce violence and conflict. It is pertinent to note there were no Family Court orders in place for these families however common beliefs about family law inform victims' behaviour. The belief that shared parenting is in the best interests of children is a powerful myth that is especially resonant in families where there is domestic violence. Perpetrators assert that they have rights to their children after separation and victims of domestic violence may believe that 50:50 is the law, allow shared care to try to minimise conflict or for a variety of other complex reasons.

Importantly the Board noted:

The general presumption towards shared parenting in cases where there is parental domestic and family violence and mental health concerns can be particularly problematic as it means arrangements are established without formal oversight, with no corresponding opportunity to intervene. (page 65)

And the Board repeated previous calls for greater assistance for women trying to separate where there is domestic violence to be able to access assistance in making parenting arrangements.

WLSQ receives approximately 14 570 calls to its State-wide Domestic Violence Legal Helpline each financial year. However it is unable to answer an additional 47% of these calls. The need to increase funding for specialised family law and domestic violence legal

¹ 2017 – 18 Annual Report

² P.62 report

assistance to respond and provide early intervention and legal assistance to victims is compelling.

Recommendation 1

That the new family law system place issues of domestic violence safety and risk at the centre of all practice, procedure, legislation and decision making.

Recommendation 2

That the family law system develops and implements as a matter of urgency a domestic violence risk screening process in collaboration with domestic violence specialists.

Recommendation 3

That the WLSQ State-wide Domestic Violence Legal Helpline is fully funded to be able to respond to unmet need and to specifically provide early intervention assistance to domestic violence victims in relation to their legal rights concerning parenting arrangements post separation with the perpetrator.

The two highest risk indicators of death identified in the Annual Report were a history of domestic violence and an actual and/or pending separation – both of these indices identify families in the family law system as being in the cohort of high risk matters. The links cannot be denied and any new family law system must have issues of domestic violence safety and risk as its core.

Recommendation 4

Consistent with the findings of the Queensland Domestic and Family Violence Review Board high risk indicators, in determining the best interests of children the Family Law Act be amended to specifically consider the history of domestic violence in the relationship.

HUBS – CONCERNS ABOUT PHILOSOPHICAL UNDERPINNINGS

WLSQ supports in general the proposition for the establishment of community based Families Hubs to be a visible entry point for families into the family law system. We understand these Hubs are based on the current approach in the Victorian domestic violence system. There is a concern that these Hubs which are multi-disciplinary may work better in the domestic violence field (than in family law) because of the greater likelihood of a shared philosophy of professionals working with and preventing domestic violence.

The success of the Hubs in the family law system may be impeded by competing philosophical understandings of domestic and family violence.

There can be a tendency by professionals working in the family law system to prioritise outcomes that promote the cooperative care of children over and above issues of safety and risk.

Terminology such as 'high conflict' or conflictual relationships can be used in domestic violence matters. This has the effect of mutualising violence in relationships, meaning that both parents may be blamed for their involvement in the 'conflict'.

Serious consequences for the safety of women and children can flow from a failure to accurately identify the existence of domestic violence and the person most in need of protection. Domestic violence dynamics of power and control often continues after separation, can involve systems and litigation abuse, and can be highly dangerous and potentially lethal to women and children.

Importantly, when there is domestic violence, the cooperative care of children may not be in their best interest as it can continue to expose the mother and the children to ongoing issues of violence and control in the relationship.

Recommendation 5

That the Family Law System recognise its central role in protecting women and children in Australia from ongoing domestic violence and become domestic violence informed in its processes and decision making.

Recommendation 6

That the family law courts embed a domestic violence specialist professional (who is a simultaneously employed by a domestic violence agency) in the court registry to assist informed decision making around safety and risk and to assist the system becoming more domestic violence informed.

Recommendation 7

That the Family Law Act be amended to include a legislative provision similar to the Queensland Domestic and Family Violence Act that when making decisions involving mutual claims of violence that the court consider the person who is in most need of protection.

BLAMING VICTIMS FOR THE VIOLENCE

Unfortunately, there can be a tendency to “victim blame” in systems that do not take a domestic violence informed approach. This can result in mothers being solely blamed for a range of behaviours exhibited by children, for example, unruly behaviour of children in their care. Professionals can fail to properly consider the dynamics of domestic violence and its impact on the family where the perpetrator may have intentionally disrupted the dynamics between the mother and the children or may have encouraged this behaviour as a way of continuing control over the mother. This approach was quite common in child protection or welfare systems’ responses in Australia and throughout the world.

In Queensland, in response to the *Not Now: Not Ever* domestic violence report and the Carmody Inquiry into Child Protection, the Queensland Government has invested quite substantially into more closely aligning the child protection and domestic violence systems.

The beginning of the culture shift is occurring because of the adoption of David Mandel's Safe and Together Model which provides a domestic violence informed framework of operation for child protection workers. The model requires compulsory training and its hallmarks include prioritising perpetrator accountability and not holding women accountable for men's use of violence, whilst recognising the impact of violence on women and children. Where claims of mutual violence exist the model requires child protection workers to map out the use of violence by each party and identify the "intent" of the violence. This means for women who may have used violence in the relationship (not uncommon), exploration around "intent" (was it self-defence, a trauma or frustration response?) is incredibly important. It may result in a professional assessment that her violence is unlikely to continue if she and her children are protected and if they can be supported to safety. The approach is quite revolutionary in the area of child protection and drives a culture shift away from victim blaming, emphasising perpetrator accountability whilst prioritising safety and risk by professionals in this field.

Recommendation 8

That the ALRC investigate the work of David Mandel and the Safe and Together Model and the adoption of key aspects of the program be embedded in the family law system as a whole in relation to perpetrator accountability to assist a shift towards an approach that truly prioritises safety and risk for children and victims of domestic violence.

In our experience working in this area over decades, unless legislative and policy reform concerning issues of domestic violence and abuse is clearly articulated and placed at the centre of decision making, violence can be completely missed, minimised or ignored by service providers and decision makers. All professionals who work in the family law system must have a thorough and nuanced knowledge of issues of domestic violence and abuse and its impact on women and children to be able to intervene early or as appropriate and provide safe and appropriate referrals to specialist domestic violence agencies.

Recommendation 9

That the Families Hubs develop a clearly articulated approach to domestic violence that prioritises women and children's safety and perpetrator accountability, is gendered in nature whilst recognising the existence of other forms and manifestations of violence in vulnerable communities and is alert to and recognises the propensity of perpetrators to use systems and professionals to further control and abuse family members.

Clarity is needed as to how the Hubs will operate. For example, will they be stand-alone services or places where a range of services co-locate. Regardless of the model adopted, it is very important they include specialist domestic violence workers for both victims and perpetrators and a specialist women's legal service.

Recommendation 10

That the Families Hubs include both specialist domestic violence workers for victims and perpetrators and a specialist women's legal service.

EDUCATION, AWARENESS AND INFORMATION

WLSQ supports the development of a national education campaign to enhance community understanding of the family law system. However, it should specifically address domestic violence risk and safety issues. Specialist domestic violence services including women's legal services should be specifically consulted on content and development.

Recommendation 11

That the national education campaign specifically address domestic violence risk and safety issues and consult with specialist domestic violence services including women's legal services.

SIMPLER AND CLEARER LEGISLATION

WLSQ supports in principle the approach of simplifying Family Law Act provisions. If this includes removing the presumption of equal shared parental responsibility and its links to shared time then we fully support this however, the ALRC needs to explicitly articulate this.

Recommendation 12

That the ALRC be explicit in its recommendation that simplification of the Family Law Act includes removing the legislative pathway linking the presumption of equal shared parenting responsibility to the consideration of shared time.

A NOTE OF WARNING

The current law with its legislative pathway linking equal shared parental responsibility with shared time provisions have been in place since 2006, which will be 13 years by the time the ALRC finalises its report in March 2019. There are strong community perceptions that there is a presumption of equal shared time, which we submit is greatly contributed to by the current legislative pathway, which in itself is difficult to follow. These community perceptions are difficult to shift and many of our clients report that they are forced into unsafe shared care arrangements because of the other party's insistence that a presumption exists. WLSQ has concerns the simplification of the law will not lead to a real change of approach that truly prioritises safety and risk and to achieve this shift we recommend that there needs to be a clear legislative presumption against equal shared parental responsibility and equal shared time with the perpetrator

of domestic violence when there is domestic violence/abuse when such arrangements are being sought by the perpetrator. The system needs to be mindful of times when the predominant victim of the violence may seek increased time with the children from a position of limited or no contact.

Recommendation 13

That there be a presumption against equal shared parental responsibility and equal time care arrangements with the perpetrator of domestic violence when such arrangements are sought by the perpetrator where there is domestic violence/abuse in the family.

HISTORY OF CARE OF THE CHILD

The stability of care arrangements and of the household and routines are important considerations for any child. For children where there is domestic violence this can be even more important. We support an additional best interest consideration that a “history of care for the child” is taken into account in determining arrangements for the child which is consistent with well-established theory on child attachment. We acknowledge the current legislation eludes to this in considering the nature of the relationships. However, this provision specifically requires the court to look back in the relationship to determine care giving roles, which is particularly important in domestic violence matters because stability can be of even more importance to traumatised children and it is very common for perpetrators of domestic violence to seek time with their children not out of a genuine concern for the children but to exert ongoing power and control over the family and punish the mother. We have a health justice partnership lawyer who provides legal advice to victims of violence at a range of hospitals in the South East of Queensland. During the Christmas period in 2017, two teenage children were hospitalised in mental health units as they were suicidal as a result of family court orders for a transfer of “custody” to the other parent. It is essential that attachment issues be appropriately taken into account in decision making.

Recommendation 14

That consistent with the theory on child attachment in determining the best interests of the child the family courts consider the history of care of the child especially when there has been domestic violence in the family.

ARRANGEMENTS THAT PROMOTE THE CHILD’S SAFETY AND BEST INTERESTS

WLSQ supports children’s safety being given prominence in the best interests approach. There needs to be a definition of safety that includes the emotional and physical safety of the child and adult victims of domestic violence and encapsulates the issue of “risk to safety”. For example, a child may be physically safe at a contact centre but they may still be emotionally harmed from interaction with the perpetrator. A child may be physically safe but psychologically harmed by witnessing the ongoing violence and degradation of their mother.

Consistent with this approach the actual guidelines for determining the child's safety and best interests "whether particular arrangements are safe for the child and the child's carers, including safety from family violence or abuse" should additionally include the risk of family violence/abuse.

This is essentially asking the court to specifically consider not only if the child is physically or emotionally safe but if a proposed arrangement is too risky to accept because of the history of domestic violence in the family.

WLSQ strongly supports a specific reference to the safety of the child's carer as a consideration in determining a child's safety and best interests which again is consistent with national and international literature that supports the notion that the best chance of recovery for a child victim is if their safe carer is emotionally and physically safe. The safety of children and the safety of mothers cannot be separate considerations any longer.

Recommendation 14

That "safety" be defined to include emotional and physical safety.

Recommendation 15

That in determining the child's safety and best interests the court in addition specifically consider the risk to the child of any proposed arrangement of future family violence/abuse by specifically considering the history of family violence/abuse in the family.

Recommendation 16

When determining a child's safety and best interests the safety of their primary carer is of the utmost importance.

DEFINITION OF FAMILY VIOLENCE

We agree with the Victoria Legal Aid position that the family violence definition be amended to capture all forms of physical abuse not just assault. Although we agree with the proposition there should be a focus on the perpetrator's behaviour we believe the focus should be on whether the behaviour results in the victim feeling coerced, controlled, and/or fearful and/or may have other deleterious impacts including on their wellbeing or freedom to make decisions. Although the *Queensland Domestic and Family Violence Protection Act (QLD) 2012* does not link the violent behaviour to an impact on the victim we believe this is to make it as easy as possible for victims of violence to obtain the protection they crucially require in urgent circumstances. As it is clearly a protective act, the intention is to not create unreasonable legal impediments to obtaining an order and therefore protection. This unfortunately can result in cross applications being made or orders made against primary victims in circumstances when they are defending themselves or have used violence out of frustration or a trauma response. The family law courts are generally not making protective orders and have capacity to some extent to take a more nuanced approach and to determine the allegations and behaviour in

context to determine if there is validity to the claims of domestic violence made by both parties. We therefore see valid reasons to continue to link the existence of domestic violence to the impact of coercion, control and fear on the victim.

We agree with the notion proposed by Victoria Legal Aid that the behaviour is repeated but are concerned that use of the word “repeated” may require “proof” of exactly the same behaviour occurring on two occasions to amount to family violence. It is important to note that perpetrators often use a range of tactics to control their victim and other family members.

We strongly agree with the position of Domestic Violence Victoria that effective implementation of any changed definition of family violence and other measures was dependant on rigorous family violence capacity development.

Recommendation 17

That the definition of family violence be expanded to include physical abuse and not just assault.

Recommendation 18

That the definition continues to include that the behaviour should be linked to the victim being coerced, controlled and/or fearful and/or may have other deleterious impacts including on their wellbeing or freedom to make decisions.

Recommendation 19

There may be value in stating that family violence can involve a range of behaviours and can involve a pattern of behaviour over time.

Recommendation 20

WLSQ sees value in providing examples of family violence to assist interpretation and understanding and effort should go into these to ensure they cover off on a variety of behaviours that may not necessarily be viewed as abusive and also examples from vulnerable groups.

A SPECIALIST FAMILY VIOLENCE PATHWAY

WLSQ supports the development of a specialist high risk family violence pathway in the Family Court. We believe that the indicia for inclusion in the list may include:

- A domestic violence risk assessment being undertaken by a domestic violence service or the police that confirms high risk.
- Has there been strangulation? – Research has found this to be a highly dangerous activity and that a victim of non-fatal strangulation is eight times more likely to be murdered.
- Has there been sexual violence and/or stalking or ongoing monitoring? This is another known high risk behaviour.

- Is the alleged perpetrator a member of an outlaw motor cycle gang? Recently the Queensland Domestic and Family Violence Death Review Board has added this criterion to its list of lethal risk factors.
- Is the perpetrator highly sexually jealous or highly controlling?
- Is the family a part of a State High Risk Team?
- Are there in addition to domestic violence allegations also allegations of child abuse including child sexual abuse?
- Has the victim been in refuge or in hiding?
- Have there been threats to kill?
- Does the perpetrator have access to weapons?
- Are there mental health or substance abuse concerns?
- Have there been threats to suicide?

The court could then make a determination “prime facie” about the evidence of domestic violence and risk to allow the matter onto the list.

We enclose a copy of a document outlining how a high risk list may work. Obviously the decision making would have to be urgent and timely and legal aid assistance would be a requirement or it will simply be inaccessible to many victims of violence. The judiciary should be alert to delaying tactics or litigation abuse and put in measures to protect against this type of system’s abuse. The matter would need to be closely case managed with all orders being made with safety and risk being the highest priority. We would also recommend that any model developed be in collaboration with domestic violence specialist services.

DOMESTIC VIOLENCE IS THE CORE BUSINESS OF THE FAMILY LAW COURTS

The evidence is overwhelming that domestic violence is the core business of the family law courts. The ALRC itself identifies this at 6.22 of the 2018 *Review of the Family Law System: Discussion Paper*, reporting on the Australian Institute of Family Studies findings that:

- Nearly 50% of families in the courts reported safety concerns for themselves or their children.
- 85% reported a history of family violence.
- More than 50% reported physical violence.

The court system’s approach to domestic violence needs a radical overhaul. The establishment of a high risk domestic violence pathway should be the standard mode of operation in the court where there are so many concerns about safety and risk of adult victims and their children. In essence there needs to be earlier decision making about the existence of domestic violence on a prima facie basis and as a matter of course for all cases and standard utilisation of domestic violence risk assessments and specialist domestic violence family reports.

Recommendation 21

That the Family Court system requires a radical overhaul of current approaches to matters involving domestic violence and a domestic violence pathway (incorporating a high risk stream) should be developed and introduced as standard operational practice, utilising domestic violence risk assessment, triage, case management and use of domestic violence specialist family reports.

Recommendation 22

That any domestic violence pathway (and/or high risk pathway) should be developed in collaboration with domestic violence professionals including women's legal services.

CHILD SEXUAL ABUSE

WLSQ is concerned that this issue has not really been dealt with in the report.

The current approach of the system is deeply flawed and this places children at risk. Concerns about the approach have increased since the shared parenting reforms in 2006 that emphasise the ideals of shared and cooperative parenting. Where mothers raise disclosures of child sexual abuse she is seen as being diametrically opposed to this ideal, and she (and of course the child) are more likely to not be believed and be seen as obstructive to that ideal. In our view, a more cautious approach that emphasises safety must be taken by the system.

It is often difficult to obtain proof of sexual abuse as children do not always disclose in either Police or child safety interviews. The evidence of the family report is critical however we question whether some report writers have the expertise to properly consider allegations of child sexual abuse in providing these reports. Where mothers' evidence is either heavily discounted or they are presumed by the system to be lying, the child's voice and safety are lost.

As we said in our earlier ALRC submission, mothers can be placed in an unenviable Catch 22:

Our clients have to make the unenviable decisions about consenting to orders before trial where the children see the father for shorter periods of time eg. Every second weekend rather than risk having the living with arrangements changed at trial for the children to live with the father fulltime. Mothers are therefore making impossible decisions that involve weighing up exposing their children to the risk of sexual abuse every second weekend vis a vis the risk of the child living with him on a fulltime basis if the matter proceeded to trial. These clients become stuck between systems and the children suffer and arguably are being exposed to ongoing abuse. Child Safety will not / are reluctant to investigate any claims of sexual abuse of children if the family court is involved. The Police may also be more reluctant to respond thinking the claims are a tactic in a family court hearing. The Family Court itself is not set up to respond appropriately because it does not have an investigatory arm.

WLSQ again acknowledges an investigatory gap in family law matters:

Child Safety's reluctance to investigate abuse allegations when family law proceedings are on foot may protect Child Safety's resources by diverting the issue to the Family Law Courts. However, it also perpetuates powerful myths: that women lie about violence and abuse of their children, and they do so to obtain advantage in the Family Law Courts. Unfortunately, it can leave very vulnerable children exposed to ongoing violence and abuse. Separation does not stop violence and abuse. It can be a time of increased danger and risk and can be an opportune time for violence/abuse to be directed at the children who are often having unsupervised contact with the perpetrator. The Family Law Courts do not have an investigatory arm and this means without evidence; they will invariably maintain contact, including significant time arrangements.

We note this issue was raised and a recommendation made in the 2010 ALRC/NSWLRC *Family Violence – A National Legal Response Final Report*:

.....the Commissions are also concerned that the problems outlined above [the investigatory gap] have been identified for many years, that recommendations to deal with them have been made in numerous ways and that, in some locations at least, no solution has been found. The Commissions note the strength of support from stakeholders that this issue be dealt with effectively. In the interests of the children concerned, these problems should not be allowed to persist.

The Commissions are of the view that investigatory services in Family Court cases should be provided by state child protection agencies. Further, there is strength in the proposal of the National Abuse Free Contact Campaign and the National Council of Single Mothers and their Children that there should be a specialist section in state child protection agencies to undertake this work [investigations]. This arrangement would have several advantages including:

- *drawing on existing child protection expertise;*
- *providing a dedicated service responsive to the particular needs of Family Courts;*
- *developing expertise within child protection agencies in the needs of Family Courts; providing a resource of people familiar with both systems who can 'translate' between the systems and educate participants in both systems; and*
- *providing a service that is not in competition with resources that need to be devoted to state child protection matters.³*

WLSQ supports implementation of ALRC/NSWLRC recommendation 19.1:

Federal, state and territory governments should, as a matter of priority, make arrangements for child protection agencies to provide investigatory and reporting services to family courts in cases involving children's safety. Where such services are not already provided by agreement, urgent consideration should be

³ ALRC/NSWLRC, *Family Violence: A National Legal Response*, 2010, paragraphs 19,95-96, Recommendation 19.1

given to establishing specialist sections within child protection agencies to provide those services.

In addition, we recommend⁴:

That a formal, independent, transparent and open investigation take place into the way that child sexual abuse matters are currently being approached and handled in the family law courts.

Recommendation 23

WLSQ supports the ALRC/NSWLRC recommendation in the Family Violence Report (19.1) that Federal, state and territory governments should, as a matter of urgency, make arrangements for child protection agencies to provide investigatory and reporting services to family courts in cases involving children’s safety. Where such services are not already provided by agreement, urgent consideration should be given to establishing specialist sections within child protection agencies to provide those services.

Recommendation 24

That a formal, independent, transparent and open investigation take place as a matter of urgency into the way that child sexual abuse matters are currently being approached and handled in the family law courts and make recommendations about change to prioritise issues of child safety.

CONTINUOUS IMPROVEMENT

The family law system currently has no overarching internal process for critically reviewing cases where there has been a domestic violence death of a child or person involved in family law proceedings. Child Safety in Queensland will urgently review any death of a child in care to try to identify any systems failure and rectify these as a matter of urgency. It will also conduct a more thorough review with a full Child Death Panel at a later stage to more thoroughly consider the matter.

The family law system may be critically reviewed to an extent through state coronial processes and Domestic Violence Death Review Boards, if the state has one. These approaches are disjointed and can tend to have a state system’s focus rather than a federal one and critical issues of service improvement may be missed.

WLSQ believes there is merit in considering a family law system death review approach similar to the approach currently taken by Child Safety in Queensland.

Recommendation 25

That consideration be given to the establishment of a family law system death review approach that would be activated by the death of a party or a child in family law

⁴ Women’s Legal Service Qld, Submission to House of Representatives Parliamentary inquiry into a better family law system to support and protect those affected by family violence, 2017, Recommendation 20.

proceedings and that would be similar to the current approach taken by **CHILD Safety** in Queensland where there is a death of a child in care.

Recommendation 26

The committee's investigation should be open and transparent and should include independent experts that would conduct a case review to identify systemic failings and make recommendations for change.

UNMERITORIOUS AND VEXATIOUS APPLICATIONS

The family law system as a whole would benefit from being domestic violence informed as this will also assist with responding to unmeritorious and vexatious claims. If judicial officers and decision makers are able to identify the existence of domestic violence early in a family law matter, then view matters through a domestic violence lens and ask critical questions from a domestic violence perspective it will become easier to identify systems abuse.

It is usual in considering vexatious matters that the family law courts only consider family law courts' litigation. However, perpetrators of violence will use all systems at their disposal to be able to continue their abuse and control of the victim and the family. The issue of systems abuse needs to consider litigation and administrative processes outside the family law courts and also consider child support administrative reviews, child protection matters, criminal matters and litigation in the domestic violence courts or criminal courts or any other court/process involving the parties.

Recommendation 27

That unmeritorious and vexatious applications will be more easily identifiable if the court becomes more domestic violence informed.

In identifying issues of systems abuse all court and administrative applications involving the parties should be considered, not just family law applications.

Recommendation 28

That professionals within the family law system including judicial officers undergo training from domestic violence professionals who work with violent men to more fully understand the tactics, risk and concerns of domestic violence from this perspective including professional collusion and systems abuse.

2. Property and spousal maintenance

WLSQ supports the proposal (3-17) to develop a tool to assist parties with splitting orders but request this also includes military and defined benefit schemes

Recommendation 29

That any superannuation tool developed to assist parties to split superannuation include military and defined benefit schemes.

WLSQ supports a proposal whereby third parties could be bound by family law court orders assigning and/or indemnifying debt. We are obviously particularly concerned about cases involving domestic violence and in particular financial abuse.

Recommendation 30

That the Family Law Act be amended to allow third parties to be bound by family court orders assigning debts and/or indemnifying debt particularly in circumstances of domestic violence and/or financial abuse.

WLSQ supports the clear drafting around the BFA provisions and importantly a setting aside clause for domestic violence and any other circumstances that justice and equity require. WLSQ is aware of BFAs being used to financially abuse vulnerable women particularly those from culturally and linguistically diverse backgrounds.

Recommendation 31

That the BFA provisions be amended, simplified and include a setting aside clause for domestic violence and/or any other circumstance that justice and equity require.

WLSQ supports spousal maintenance being located in a separate section of the Act dedicated to spousal maintenance applications but the continued consideration of these issues within property determinations. We strongly support the inclusion of family violence in spousal maintenance considerations which will especially assist vulnerable women on visas who are subject to domestic violence in the relationship, have no access to Centrelink or government benefits and rely on this court application for financial survival.

We also strongly support further investigation into the consideration of developing an administrative assessment for spousal maintenance.

Recommendation 32

WLSQ supports the recommendation to locate spousal maintenance in a separate dedicated section of the Family Law Act but there be continued consideration of these issues within a property settlement context.

WLSQ supports family violence being particularised as a consideration in spousal maintenance applications.

WLSQ supports in principle the idea of administrative assessments for spousal maintenance and supports this being further investigated.

3. Gun licences

WLSQ strongly supports state and federal police being required to enquire about whether a person is currently involved in family law proceedings before they issue or renew a gun licence. We would support this being extended to having ever been involved in family law proceedings or has a current family law order. This provision would need to cover all the courts involved in family law in Australia including the magistrate's courts especially in rural localities.

The AIFS data on the extent of domestic violence in family court litigation means that when parties are or have been involved in family law litigation this markedly increases the likelihood that there is domestic violence in the family.

Recommendation 33

WLSQ supports state and federal police being required to enquire about whether a person is currently involved in family law proceedings or has ever been involved in family law proceedings including whether any personal family law injunction has been ordered and these inquiries must include all courts that deal with family law in Australia including the magistrate's courts.