



AASW

**Australian Association
of Social Workers**

*Australian Law Reform Commission
Review of the Family Law System*

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Introduction

Who we are

The Australian Association of Social Workers (AASW) is the professional body representing more than 10,000 social workers throughout Australia. We set the benchmarks for professional education and practice in social work, and advocate on matters of human rights, social inclusion, and discrimination.

The social work profession

Social work is a tertiary-qualified profession recognised nationally and internationally that supports individuals, families, groups and communities to improve their wellbeing. Principles of social justice, human rights, collective responsibility and respect for diversity are central to the profession and are underpinned by theories of social work, social sciences, humanities and Indigenous knowledge.

Social workers practice in a diverse range of settings and fields, including but not limited to the justice system, mental health, family violence, health, family supports, disability and child protection. Social workers consider the relationship between biological, psychological, social and cultural factors and how they influence a person's health, wellbeing and development. Accordingly, social workers maintain a dual focus in both assisting with and improving human wellbeing; and identifying and addressing any external issues (known as systemic or structural issues) that may have a negative impact, such as inequality, injustice and discrimination.

Responses

SIMPLER AND CLEARER LEGISLATION

Response

The AASW supports the recommendation that the legislation should be re-drafted; and also supports the principles proposed for this. The AASW strongly supports the proposed framework for clarifying the importance of the safety and best interests of children.

Proposal 3-3.

The AASW welcomes the retention of the principle that the child's best interests must be the paramount consideration in all decisions concerning children, recognising that this proposal conforms with the provisions in the Convention on the Rights of the Child.

The AASW also welcomes the proposal to amend the wording of the Family Law Act (the Act) to specify that the child's safety should be included along with their best interests. Ensuring that 'safety' is both specified and elevated to the paramount status is regarded by social workers as an important development in the improvement of the system

Comments Proposal 3-4.

The AASW also endorses the proposed guidelines for interpreting the provisions governing parenting arrangements. This proposal demonstrates the relationship between the violence perpetrated by one party in a relationship and their inability to promote the child's best interest in their capacity as a parent.

There needs to be an understanding when talking about the best interests of the child, that a father who has perpetrated violence against the mother of a child is not a good father – end of discussion. Many judges absolutely do not understand this. It is not in the best interests of the child to live with an abusive parent because the other is living in their car as a result of (family violence).

- AASW member

The AASW strongly supports the proposal that decisions about the care of Aboriginal and Torres Strait Islander children should support their right to maintain their cultural identity.

GETTING ADVICE AND SUPPORT

Response

The AASW endorses the proposals to create Families Hubs (hubs) and to expand the Family Advocacy and Support Service (FASS).

Proposal 4-1

The AASW is confident that Families Hubs, as described in the proposal have the potential to improve the outcomes from people's time in the Family Law System. Nevertheless, social workers who have worked in the Family Law System have observed:

This proposal seems to assume that all members of the family will be supported by the one hub in the court / location. In power and control relationships this could be problematic, People separating after violence feel unsafe accessing a service where the person who has used power and control also attends.

(AASW member).

Proposal 4-3. Families hubs services

The AASW endorses the range of services identified for the hubs as being important supports for the safety and wellbeing of families as they progress through the Family Law System. Social workers have observed that people in the family law system may need support services for a longer period than their time in the system, and so it will be important that hubs act as the entry point to ongoing services. The model of hubs as single entry points into other services, who have stationed their workers within the hub is therefore supported by the AASW. This model is preferred over establishing the hubs as stand-alone services, without connections to the broader service system, because it means that members of families can continue to receive support after their actual time in the Family Law System is finished. Nevertheless, more work needs to be undertaken to determine how that continuity can be facilitated once people have moved out of the Family Law System.

Social workers have observed how effective the principles of trauma informed practice can be, when applied at organisational, program and individual level. One element of such practice has been steps to reduce the number of times that people need to repeat their story, so if the hubs can facilitate this, they will be helpful for people. On the other hand, this raises potential issues relating to the sharing of information and the maintenance of confidentiality, which will be discussed in relation to section 11.

Other comments by AASW members concerning hubs have been:

- *Care needs to be taken to ensure that people are not forced into services they do not want. Some people in the system will already be in contact with services similar to the ones operating from the hubs, and may have a preference to continue with support from that service. This must be respected.*
- *The inclusion of family dispute resolution as a service offered by the hubs raises issues to do with whether mediation is appropriate for all families. Social workers have participated in evaluations of relationships centres that currently do the mediation for separating couples. These studies discuss how relationships centres are not picking up family violence, and that many of their workers are not sufficiently trained to be able to do so. This is very important because statistics show that women are most likely to die following separation.*
- *Even where it is appropriate that families participate in mediation, funding cuts have compromised the ability of mediation services to achieve the best outcome for all parties. Families used to be entitled to get three free mediation sessions, but this has now been reduced to one. Many families are having to pay a great deal of money as they work through parenting plans. It is difficult enough for people to work together at the time when they are least likely to be able to do this as a couple.*
- *The staff in the hubs need to have specialist skills in identifying where coercive control or family violence is present within the family, regardless of whether family members*

volunteer that information. If that is the case, the staff in the hub need to be able to adapt their support of the family in such a way that every member receives the support that will promote their best interests.

Social workers with experience in the Family Law System recognise that the work in the hubs will require specialist skills and knowledge. Therefore, attention should be dedicated to the level of qualifications and credentials required for these roles.

Recommendation

- That Families Hubs be staffed by professionals who are trained in identifying coercive control within families and family violence, and in working to support people who are living with these.
- That the positions in Families Hubs be established as specialist roles requiring an advanced level of expertise, and that they be filled by qualified social workers who are eligible for membership of the AASW and remunerated accordingly.

Proposal 4-5

Social workers also agree with the proposal to expand the FASS service for families using the courts and to emphasise identifying and assisting high risk families. Central to the success of this service will be whether the staff are sufficiently skilled to identify the presence of coercive control within the family or family violence. Social workers' experience is that women who are separating from an abusive partner, and have not previously disclosed the presence of violence can be reluctant to volunteer this information at this stage, for fear of delaying the resolution of their case. Similarly, the staff need to be able to identify instances where family members falsely allege that there has been previous violence to prevent the other parent from gaining access to the child.

In instances where family members do wish to make use of this service, the care co-ordination staff will be required to develop strong working relationship with a wide range of services. It will be easier to facilitate this if the care co-ordination staff are employed by the Court, rather than any particular service.

Proposal 4-6

Social workers welcome the proposal to make Care Co-ordination, or Case Management available for families with complex needs or in high-risk situations if they have no other means of obtaining this. Again, this work requires specialist skills and therefore should be recognised as a specialist role.

It will be important that this role has a degree of authority. In instances where a family member has been subjected to multiple violent or potentially violent breaches of intervention orders, the service will need to work with the police, and the Family or other Court to ensure the safety of the other partner and the children.

(AASW member)

Recommendation

- The Care co-ordination role in the FASS should be established as a role for qualified social workers with a specialist family violence credential from the AASW, and that it should be remunerated accordingly.

RESHAPING THE ADJUDICATION LANDSCAPE

Response

The AASW supports the proposal for a triage process to identify high risk situations and to direct certain categories of families into specialist lists. The AASW also agrees with the proposal for a specialist high risk family violence list.

Proposal 6-2

The family violence list should include all cases where power and control have been identified by highly trained professionals, including social workers. This should not just include those where there is a risk of physical harm but also those where psychological control is evident. Successfully directing families to the appropriate list depends on having highly skilled and experienced staff who have been trained in identifying the indicators of violence even if the information is not volunteered by any members of the family. Professionals undertaking this work also need to be skilled in working in a cross cultural context, using culturally appropriate practice.

Proposal 6-7

A benefit of specialist lists in general is that they enable the development of a specialist knowledge base for the participating professions and enables them to focus more tightly on promoting the best outcomes for all people using the system.

The AASW strongly supports the proposal that all the professionals in these roles should have specialist family violence knowledge and experience. The AASW takes this principle further and submits that all professionals should be subject to accredited professional development and be required to maintain their accreditation. In the past, social workers have observed instances where reports were written for the court by people whose qualifications or experience were less important than their reputation amongst lawyers for delivering reports that served a specific purpose.

Indeed, the AASW has recently launched its Accredited Family Violence Social Worker credential. This is a recognition that many members of the AASW have specialist expertise and post qualifying academic credentials in working with people living with and perpetrating family violence. The AASW would be happy to share what it has learned from implementing a credentialing program for professionals, should that be requested.

Question 6-1. What criteria should be used to establish eligibility for the family violence list?

Apart from the obvious criteria of previous instances of violence towards and abuse of a partner, the criteria for eligibility for the family violence list should include:

- Harming of pets
- Breaches of intervention orders
- Low regard for safety of children
- Threats of or actual use of weapons
- Control over access to money and other resources
- Threats of or actual manipulation of visa or immigration processes, including control over a person's passport
- Request for multiple or repeated payments of dowry.

Recommendation:

- That all judges, registrars and consultants working in the family violence should have specialist expertise and credentials in working with people who experience and perpetrate family violence.

CHILDREN IN THE FAMILY LAW SYSTEM

Response

The AASW strongly supports the mechanisms for protecting the best interests of children as contained in the proposals in this section.

Proposal 7-2

The AASW supports the proposal that the hubs should include out-posted workers from specialist children's and young people's services, such as qualified social workers who are eligible for

membership of the AASW.

Proposal 7-3; 7-4

The AASW strongly supports proposals that enable children's views to be considered. Social workers' experience is that before this can occur, there needs to be an assessment by a skilled clinician to ensure that the children feel safe in doing this and that they are not being subjected to pressure from either parent.

Even if there are no allegations of violence or abuse, a child who repeatedly does not want to be with a particular parent needs careful observation by a skilled clinician.

(AASW member)

Even when it is evident that children want to express their views, social workers have observed that it is valuable to have someone working with them who is skilled in facilitating that and supporting them through the process.

Proposal 7-7

The AASW also welcomes the recognition that there will be instances in which the children in a mediation or dispute do not wish to express a view. Children should not be required to express a preference for one parent over another.

Proposal 7-8

The AASW welcomes the proposal to create the role for a Children's Advocate as the means to determine whether participation in family law proceedings or mediation processes is safe for children, will advance their well-being and will promote their developing sense of agency. In the instances where it can be concluded that this is the case, the Children's Advocate's role of facilitating participation has the potential to improve the outcomes for children and represents a positive development in the evolution of the Family Law System.

Social workers welcome the creation of the role of Children's Advocate as a mechanism to separate the well-being of the children from the adversarial nature of the dispute resolution process that might otherwise be conducted between the parents.

The AASW also endorses the recognition that this is the work of a skilled, specialist children's professional. Social workers have described instances where professionals undertook this role without the appropriate level of expertise and how this resulted in outcomes that did not promote the best interests of the child. It has been particularly concerning for social workers to observe instances where this role was filled by people who were registered as a Family Court report writer without relevant qualifications, but who had favourable reputations with particular lawyers

Children's Advocates should only be filled by workers who can demonstrate family violence expertise; and understand parental alienation and how this is used as a tool in family violence. Children will not be aware of what has been done to them when they are used in this way.

(AASW member)

Recommendation

- That the position of Children's Advocate be created as a skilled professional whose distinct role is to support the informed involvement of children in family law proceedings as well as the expression of their views.

REDUCING HARM

Response

The AASW welcomes the proposals in this chapter, as they enhance the ability of the Family Law System to protect people from the harm caused by family violence.

Proposal 8-1

That the AASW supports the proposal to redefine family violence and to specify that misuse of systems, emotional and psychological abuse and technologically facilitated abuse constitute family violence.

Question 8-1

Many social workers have observed the harm done to children by living in a family in which there is violence between the adults, and have been dissatisfied that this has not been adequately recognised by courts in Child Protection decisions or Family Law decisions. Therefore, the AASW submits that there will be tangible benefits to children on the proposal to include exposure to violence as an element of harm. For many social workers in the child protection field, the recognition that harm accumulates through a collection of small acts and omissions has been a powerful instrument in protecting the rights of children. The AASW submits that a limitation of the definition of family violence is that it does not give adequate acknowledgement of the cumulative nature of the harm that flows from children from acts that appear to perpetrators as small or trivial.

Question 8-2

The AASW continues to maintain that financial and economic control should be included as one of the behaviours that constitute family violence. The AASW also strongly supports the proposal to make it clear in the legislation that direct or indirect exposure to family violence is a form of harm.

Proposal 8-3

The AASW welcomes the proposal that the use of systems and processes to cause harm, distress and financial loss should be include in the definition of family violence.

Proposal 8-6

The AASW supports the notion of protected confidences.

Controlling, abusive and violent adults will use the existence of a mental health plan against their ex-partner in court, to argue that they are not mentally fit to care for the children. In many of these instances women have mental health plans to deal with the consequences of living with the abuse, and have created a mental health plan so that their children can also access services to deal with the consequences for them of the abuse.

(AASW member)

Nevertheless, the wording of this proposal implies that the court must be made aware of the information shared in confidence in order to be able to dismiss it from the evidence. Social workers have observed instances where the process of making the court/judge aware of information that was pertinent to the case jeopardised the welfare of a vulnerable client.

Proposal 8-7.

The AASW welcomes the recognition that further work is required and that the complex nature of the issues to be resolved will require collaboration across the legal, health and community sectors. Many members of the AASW have specialist expertise and post qualifying academic credentials in working with people living with and perpetrating family violence. They are keenly aware of the complexity of the issues raised by the interface of systems and their implications for the sensitive management of information. The AASW would welcome the opportunity to participate in the work to implement this proposal.

Recommendation:

- That further work is needed to devise safe processes for material contained in protected confidences to be presented to the Family Court in order to consider it for exclusion.

A SKILLED AND SUPPORTED WORKFORCE

Response

The AASW wholeheartedly supports the development of a comprehensive workforce capacity plan.

Proposal 10-2

The AASW supports the inclusion of core competencies, professional development and accreditation systems as elements of the workforce capability framework. The AASW is currently launching a collection of specialist credentials for its members and would welcome the opportunity to participate in the implementation of this proposal.

Proposal 10-3

The AASW strongly supports the inclusion of these topics in the core competencies for all members of the Family Court system workforce. The AASW recommends that the list of competencies should also include awareness of

- dowry abuse,
- exploitation of the visa sponsorship process;
- trafficking of people
- the forms of slavery currently existing in Australia.

The core competencies should also include culturally inclusive practice encompassing identifying violence, abuse and harm within diverse communities; and responding in culturally appropriate ways.

Proposal 10-6

The AASW supports this proposal. The professional development in family violence that legal practitioners undergo should conform to the same standards of rigour, currency and comprehensiveness as do the accredited professional development courses in family violence required for other professions.

Recommendation:

- That the comprehensive workforce capability framework specify core competencies, accreditation programs and professional development standards to which all professional groups working in the Family Law system must conform.

INFORMATION SHARING

Response

Recognising the complexity of the issues raised with respect to sharing information, the AASW welcomes the proposal for a principles-based framework for information sharing.

Proposal 11-2; 11-3

The AASW fully supports the proposal to develop a systematic, comprehensive, principles based framework which identifies whether it is appropriate to share information, and if so, the circumstances of and limitations on the sharing. The AASW predicts that successfully implementing the proposals in this section will require extensive and detailed collaboration across all professions and representatives of service users (including children and young people); and would welcome the opportunity to participate in this work.

Proposal 11-4; 11-8; 11-11

Social workers who work in the Family Law System have observed the ethical and legal complexities associated with the sharing of information. The AASW believes that the issues raised in these proposals should be brought under the scope of the information sharing framework and appreciates

that the proposals in this section will require extensive and carefully considered work to implement them while protecting all parties. The AASW would welcome the opportunity to participate in the planning, implementation and review of new provisions in this area.

Question 11-1

The AASW believes that the range of information that is relevant to Family Court proceedings should be extended to include information about whether a dowry was paid as part of the marriage, whether further requests for dowry have been made by the husband and whether the husband made his sponsorship of the wife's immigration visa conditional on dowry payments. The experience of social workers has been that these can be indicators of coercion and control within that marriage.

Question 11-3

The AASW submits that the principles articulated for sharing information within the framework proposed under 11-2 should also apply to the sharing of information with family relationships services, and children's contact services. The AASW envisages that the guidance in that framework would enable every instance to be assessed on its merits.

Question 11-5

The AASW does not support the suggestion that all information gathered by services in the hubs should be available to be shared freely with the courts. Seamless access to the range of services needed by families with complex needs requires that vulnerable people are able to trust that they can speak with confidence.

By contrast, a blanket provision that information can be freely shared will seriously compromise the ability of the services in the hubs to support the individual members of families. It would limit the extent to which vulnerable people describe their situation and limit their ability to gain assistance they need. It would create incentives for false accusations to be made under the guise of a confidence

- *Great care needs to be taken concerning the sharing of information between the services in the families hubs and the family courts. On the one hand there are circumstances where some limited information might need to be made available to the court but not to the other party, eg. A child's fear of his father – a psychological assessment that could lead to victimisation of a child or parent. On the other hand, any information that provides clues as to whereabouts, school, work, home need to be protected if one party seeks it or it is deemed appropriate by a professional accepted by the court.*
(AASW member)
- *Because Australia's legal systems are based on adversarial processes, information gathered will be used in systemic abuse of victims of family violence by the perpetrator and his legal representatives. Given that we have supported the inclusion of systems abuse in the definition of family violence, I am afraid that automatic access to information will facilitate this form of abuse.*
(AASW member)
- *Where women have experienced family violence, it takes a long time for them to regain power over their own decisions and lives and a proposal that removes their ability to make decisions is not at all empowering. Perhaps there should be a clause in relation to all family violence cases which ensures that they have the right to veto any material that they consider harmful; or that there are processes that will ensure that their psychological and physical safety needs are addressed in the obtaining and handling of any information.*
(AASW member)
- *Sharing of information needs to be made explicit so that all parties know what information will be sought and admitted.*
(AASW member)

Proposal 11-7

The AASW supports the easing of access to services that derives from co-location, but submits that this proposal raises issues of the relationship between the work undertaken within the child protection context and that of the family court. The issues of continuity, interface and record sharing with other services are similar to those discussed under proposals 4-3 and 8-7, but the significance of the statutory powers within the child protection system will require specialist expertise to implement this proposal.

Proposal 11-8

The AASW supports this proposal, but submits that information sharing is only part of the interface of multiple systems. Solving the issues around information sharing will only partly resolve the broader issues about effectively supporting families with complex needs. Social workers have observed instances where the complexity of the interface between different systems can create confusion or can conflict with each other, compromising the outcomes for the people they are meant to assist. Sadly, the interface between the family court and child protection remains one of the most serious of these:

Child Protection workers need much more training in family violence. The police and Child Protection often wrongly identify the woman as perpetrating family violence. This mis-identification stays with the woman and can have huge ramifications in the Family Court if the information is shared around. Instead, child protection workers need to be skilled in promoting 'safe at home models' and to understand the full range of protective behaviours employed by victims of family violence for their children. In that way, they can enable the system to hold perpetrators responsible for their violence.

(AASW member)

Conclusion

The AASW recognises the painstaking work that has created this discussion paper, and congratulates the Australian Law Reform Commission on the detailed and considered nature of its proposals. The AASW would welcome the opportunity to participate in planning their implementation.

Submitted By And For The Australian Association Of Social Workers



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