**Review of Family Law System**

**Submission to ALRC**

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**Research Team**

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**Introduction**

The research team writing this submission have been undertaking research about family reports and family consultants since 2015. Our comments are limited to family consultations – specifically those who write family reports. We summarised our research in our earlier submission and will not repeat that information here. We rely on that submission for the detail which supports our views. As noted, we have published two papers to date from our research,[[5]](#footnote-5) and have a third under review. We also lodged a submission with the House of Representatives inquiry into the family law system and family violence in 2017 and were invited to evidence before that Committee.[[6]](#footnote-6)

**Proposals 10-1 to 10-3**

We agree with that core competencies suggested are all important. We particularly consider that an understanding of trauma-informed practice is critical. Family report writers (FRWs) must not only understand family violence and trauma-informed practice but must know how and when to use that approach. An important aspect of determining what might be in the best interests of children in the future is acknowledging the on-going impact of a history of family violence, particularly on mothers and children. Children who have lived with family violence suffer long term consequences the affect their mental and physical health and well-being.[[7]](#footnote-7) Mothers who have lived with family violence experience short, medium and long-term consequences – and are often the primary carers of children who are also experiencing impacts. At the point of an assessment by a FRW, the mother is often recently separated and still in an emotionally febrile and vigilant state. A trauma-informed approach by the FRW is essential to understanding and interpreting the post-separation conduct of the mothers and their response to the family report assessment process.

There is an excellent description of trauma-informed practice in a paper which concludes a 2018 special edition of the *Journal of Social Welfare and Family Law* about contact arrangements for children where there has been domestic violence. This type of practice focuses on the impacts of ‘trauma arising from interpersonal violence’ and the need to ‘protect the physical and emotional safety of consumers/survivors’.[[8]](#footnote-8) It requires awareness of both past and current experiences of abuse and ‘involves looking not just at recent and imminent risks to a child’s safety but at the cumulative impact of trauma on the child over time. Compounded experiences of multiple episodes of abuse diminish a child’s sense of safety, stability and wellbeing and affect their development, and this needs to be understood and addressed.’[[9]](#footnote-9)

Scholarly research demonstrates that children living with domestic violence or post-separation violence may be the most distraught in the population.[[10]](#footnote-10) Likewise, children can be negatively affected by the violence (before and post separation) experienced by the mother.[[11]](#footnote-11) Violence also tends to continue post-separation and can increase in severity. In many instances the perpetrators shift their focus of abuse after the separation; while the main target of victimisation is still the mother, the fathers tend to use and/or abuse children in order to intimidate and control their ex partners.[[12]](#footnote-12)

Where children are required to spend time with their abusive fathers, their exposure to violence continues directly or indirectly. Many perpetrators are perceived as skilful in using tactics to engage their children in their campaign of control and intimidation against their victim (the mother.[[13]](#footnote-13) Research also shows that children learn to manage their behaviours and their verbal communication around the perpetrator in order to ensure their safety.[[14]](#footnote-14) Further, the fear and violence mothers experience can impair maternal parenting and have detrimental effects on the mother/child relationship.[[15]](#footnote-15) This can also mean that a child’s recovery from the effects of domestic violence tend to be directly related the mother – her own recovery and continuing experience of threats or violence.[[16]](#footnote-16)

***Recommendation 1***

***That the core competency regarding trauma-informed practice read:***

* ***an ability to engage in trauma-informed practice when working with adults and children who have experienced, lived with or been exposed to family violence***

**Questions 10-7 and 10-8**

In respect of workers at Child Contact Centres we believe that there should be an accreditation process for these professionals who operate at the absolute front-line of family law services for families who have experienced family violence. We also consider that they should be required to attend training in family violence and the manifestations and impact of coercive control.

***Recommendation 2***

***That workers at Child Contact Centres should be accredited, should be required to hold expertise in family violence and should be expected to engage in continuing professional development consistent with the core competencies.***

**Proposals 10-9 and 10-10**

We agree that there needs to be a national accreditation scheme for private FWRs and that a public register should be maintained. Private FRWs should be required to possess the core competencies and engage in regular professional development. It would be useful if accredited persons could access the knowledge base and training available to FRWs employed at the family courts. It is also suggested that some form of supervision, peer-mentoring and / or debriefing across private and court-based family report writers be implemented. This will facilitate accountability, knowledge transfer and the sharing of experiences – which can only enhance the quality of the work.

As noted in the DP, there is insufficient information from our research to suggest any systemic differences in quality between family reports written by court based and private professionals, but more extensive research could reveal patterns. Certainly we need to know more about any differences. Family consultants at the courts have access to significant resources, training, professional guidelines and resources and it would be useful to try to understand how these contribute to quality and approach. Our research reveals that there are good family report writers at the court and in private practice, and we were also given negative information about both spheres.

We certainly believe that it is healthy to have a pool of FRWs who do not work at the courts, in addition to those at the courts. A cohort from private practice, who work in other areas of social science practice, or who undertake therapeutic as well as forensic work, allows a diversity of choice – provided quality and expertise is assured.

***Recommendation 3***

* ***An accreditation scheme should be implemented***
* ***On-going mandatory professional development should be required and accreditation should have to be renewed on regular bases***
* ***Domestic and family violence training should be regularly required, as well as specific training on coercive control***
* ***Accredited FRWs should have access to training, resources and supervision to ensure that they are as skilled and knowledgeable as court based FRWs***
* ***A central point of supervision would assist in understanding the diversity of practices, where more training or resourcing may be required, perhaps addressing or averting future problems with individual FRWs***

**Proposal 10-11**

We simply make the point here that our research showed that many documents that are called ‘family reports’ and are treated as family reports were not ordered under s 62G. Some are just organised by the ICL appointed to the case. Some are even arranged jointly by the parties. So instructions for a FRW may come from the judge, the ICL or the parties’ lawyers jointly (or the party themselves if unrepresented). It might be useful to develop a general guideline about the issues that should always be reported on that covers all family reports, not only those sourced in s 62G.

**Proposal 12-2**

As stated, we support an accreditation process and also support a centralised system for complaints. The difficulty in making complaints came through strongly in our research and was obviously a concern for the House of Representatives *Better Family Law System* inquiry. Careful thought will need to be given to structure and procedures. Some of the issues which will need consideration include:

* The diversity of professionals who may be included with FDRPs and FRWs holding a range of possible formal qualifications and practice experiences
* A triage process for dealing with vexatious complaints – of which there may be many
* A process for identifying individuals against whom many or similar complaints are made – eg two complaints about family violence was dealt with should raise a flag
* The size of the problem – this aspect of the work of the Commission could be quite busy
* Staffing and tribunal / hearing panel membership

**Proposal 12-11**

With respect, with do not agree with the comments of the DP in para 12.75, that s 121(9)(g) covers the situation of family reports or other documents from proceedings being made available to researchers. Although the Family Court of Australia considered that it might be possible for us to read family reports in matters that had been finalised, the Federal Circuit Court considered that any action could involve the mothers we interviewed in contempt of court.Family reports are often released under a specific order which restricts who they can be shared with. Of course, researchers cannot be part of such of order because the participants are recruited only after they have received a family report and they wish to keep their participation confidential from the other parties in the proceedings. And, due to the latter concern, it would not be appropriate to re-list the matter to ask for the report to be released. We believe that legislative reform is required to allow documents from family law proceedings to be accessed for the purposes of *bona fide* provided ethical approval is received from the relevant research bodies, and from the courts’ ethics committees, and that the information will be published in a non-identifiable form. This is particularly so where there is a restrictive court order in place.

This issue will also be relevant to making family reports available under the complaints mechanism described in para 12.66, dot point 2.

***Recommendation 4***

***That the FLA be reformed to ensure that there is a clear process to be followed for bona fide researchers to be able access and read documents filed in family law proceedings. Ethical approval for the research would be required from the relevant research body as well as the ethics committee of the relevant court. Such legislation needs expressly state that this rule operates as an exception to any restrictive order.***

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9. ibid, p 550. [↑](#footnote-ref-9)
10. J Callaghan, J Alexander, J Sixsmith & L Fellin, ‘Beyond “witnessing”: children’s experiences of coercive control in domestic violence and abuse’ (2018) 33(10) *Journal of interpersonal violence*, 1551-1581; G Hague, A Mullender, L Kelly, U Imam & E Malos, ‘How do children understand and cope with domestic violence?. (2002) 14(1) *Practice*, 17-26. [↑](#footnote-ref-10)
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