

Opening statement for the Joint Select Committee on Australia's Family Law System - Public Hearing

Emeritus Professor the Honourable Marcia Neave AO.

Basis of evidence

My evidence will be informed by a number of matters. In my previous academic career I published journal articles on family law issues and taught family law to graduates and undergraduates at two Australian Universities and in New York. However I have not practised as a barrister and I was not involved in adjudicating family law matters as a Victorian Court of Appeal judge.

I was the full-time chair of the Victorian Law Reform Commission during the period it reported to the Victorian Attorney-General on family violence reforms and I chaired the Victorian Royal Commission into Family Violence ('RCFV'), which reported in 2016.

Since the publication of that Report I have been involved in the implementation of its recommendations as a member of the Victorian Magistrates' Court Family Violence Reform Program Steering Committee. As the Committee will be aware, Magistrates' Courts have jurisdiction over some family law matters. I also chair the Judicial Advisory Committee on Family Violence which comprises judges from all Victorian courts and judge from the Family Court and the Federal Circuit Court. The inclusion of federal judges on that Committee is intended to facilitate information exchange about the processes operating in State and federal courts. As I will explain, most of my remarks refer to the role of Court Network in supporting those who are involved in, among other things, family law proceedings. However, I will also comment on a number of other matters covered by the terms of reference.

Primary purpose of my appearance

My main comments are made in my capacity as President of Court Network, a service which has provided trained Court Network volunteers in courts in Victoria for the past 40 years.

The primary purpose of my appearance before the Joint Select Committee is to address terms of reference (e) and (f), which refer respectively to:

'(e) The effectiveness of the delivery of family law support services and family dispute resolution processes' and

(f) the impacts of family law proceedings on the health, safety and wellbeing of children and families involved in those proceedings.'

Court network volunteers do not provide legal advice. Their role is to make available non-judgemental support, information and referral services, to people involved in court proceedings and their families. Such services have been provided to people

involved in family law proceedings in the Federal Magistrates Court (now the Federal Circuit Court) and in the Family Court of Australia in the Melbourne and Dandenong registries since 1990. They were available from 2006 to 2015 in the Brisbane Commonwealth Law Courts. Court Networkers also provide support related to family law matters to court users attending regional family courts and in State Magistrates courts.

Court Network has recently established a Telephone Support Service, which is available to all Family Court users across Victoria and Queensland. Unfortunately, due to ineligibility for funding under the National Legal Assistance Partnership Agreement for Legal Assistance, CN services at Family Courts in Victoria will cease to operate in June 2021.

My main comments relate to the need to continue funding for this service, and to extend its operation to other states, so that parties in family law proceedings, can be provided with appropriate support. Funding was withdrawn in Queensland in 2015 and in Victoria in June 2020, for reasons I will discuss. A generous donor has provided the relatively small amount (\$130,000) required to enable continuation of the service in Victorian family law proceedings until 30 June 2021.

My comments on this issue will cover three main points. These are

1. The difficulties experienced by people with family law problems, including the particular problems which arise when litigants have been subjected to or perpetrated family violence.
2. How the services provided by Court Networkers in family law jurisdictions increase the effectiveness of family law processes and support services and dispute resolution processes.
3. An explanation of the way that continuing funding of Court Network in the family law system could ensure more effective access to justice, connection and referral of parties to other important Commonwealth family law programs.

The Honourable Nahum Mushin AM will also contribute to discussion on these issues. His contribution will be particularly valuable because he is familiar with the value of Court Network volunteers in assisting parties in court and pre-court processes and in de-fusing situations which may lead to the distress or fear of litigants and sometimes to use or escalation of violence.

Court Network's role in the family law system

1. Difficulties experienced by people with family law problems.

As Professor the Honourable Mushin has observed, coming to court is a critical time for potential family disruption and stress. Many family court system users are attending court for the first time. They may come to court without informal and professional support and may not be legally represented. Without the assistance of the services provided by CN, people involved in the family law jurisdiction would otherwise face court with little to no understanding of what is required of them. They

will usually be unfamiliar with court rules and processes, lack knowledge about what is expected of them, not be able to understand or gain access to legal, community and social assistance and be in need of someone to listen, provide support, and to assist them in navigating the court system. They may have other vulnerabilities such as poor health, addiction and a history of experiencing trauma.

Lack of support, together with these vulnerabilities and the heightened emotional stress associated with resolving often protracted family court matters, increase the risk of serious family disruption. These factors have a negative impact on the stable, caring relationships children need and increase the emotional, social and economic costs associated with family disruption and separation. Overwhelmed by the complexity of the court process and emotional and financial stress, families with children, who are at risk of separating, or who have separated, may fail to engage with support services and miss on critical assistance that can lead to their improved wellbeing. The CN service provides an important contribution towards court users accessing justice, particularly for more vulnerable and disadvantaged court users.

Some of those involved in the family law system have been subjected to family violence and feel unsafe. Some may have used family violence in the past or be at risk of doing so in the future. They may need assistance to prevent them from threatening their former partner or behaving in a way that frightens their children. The trauma of having to go to court is often exacerbated by the need to seek orders in both the Magistrates' Court (and sometimes a Children's Court) as well as in the Federal Circuit Court or Family Court.

2. How Court Network services can increase the effectiveness of family law support services and dispute resolution processes

CN helps court users by building connections and pathways of timely support both in the community and court system, ensuring better court outcomes for families, a more efficient justice system and improved access and more efficient use of existing community services.

How does CN operate? Trained networkers connect with court users who need assistance predominantly through active outreach – 'working the floor' – on the day, introducing themselves to court users who are entering the court or waiting for their matter to be heard. They also accept referrals from court staff and service organisations (either on the day or prior to the court matter being heard). Networkers can also refer court users to other services, through 'warm referrals' to such organisations.

Networkers are highly visible and well-known to court staff and other services operating in both State Magistrates' courts and in the Federal Circuit Court or Family Court. By doing so, CN's services also provide direct benefit to the administration of justice by reducing the demands on other services inside and outside the courtroom, thus bringing economies to the courts' operations.

One of the unique features of Court Network is that its trained volunteers can provide non-judgemental support of both parties in family law proceedings.

Unlike most family violence services in court, our model ensures that each party can have access to a different Networker to receive information, referral and support. This ensures that our impartiality is maintained during service delivery and ultimately supports safety and risk planning for all. CN provides a daily team of a minimum of three Networkers at Family Courts to meet our commitment to impartiality and to enable service coverage requirements at court.

Enhanced Model of Support to Unrepresented Litigants

CN provides a significant amount of support to litigants who are not represented. In 2014, CN piloted and evaluated an enhanced model of support to unrepresented litigants appearing at Final Hearings in the Family and Federal Circuit Courts in Australia. The project also developed a highly-valued Resource Booklet specifically designed for unrepresented litigants that detailed in plain language the processes and terminology of the Family Law Courts in relation to final hearings, including translations into Vietnamese and Dinka.

Enhanced family violence support model

In 2015/2016 CN conducted a Family Violence Pilot Project which led to the development of CN's enhanced family violence support model that has since been expanded to all Specialist Family Violence Courts in Victoria. This model could be extended to federal family law courts. The Pilot identified that court users trusted trained community members in court and were more open with telling their story and identifying their concerns. This trust enabled networkers to support court users to get help both in the court and the community to address the family violence in their lives. 77% helped by Networkers in the pilot had no existing links to family violence services prior to a Networker's connections and over 60% were able to be linked to court and community support by Networkers during their day attending court.

The Enhanced Family Violence Support Model includes a tailored Family Violence training package for Networkers that can be delivered both in person and online and includes the following modules:

- Introduction to family violence
- Recognise family violence
- Family violence legal protection and processes
- Respond to identified family violence risk indicators
- Support court users who use family violence

3. *How reinstatement of funding for Court Network in the family law system could ensure more effective access to justice, connection and referral of parties to other important Commonwealth family law programs.*

As I have mentioned, continued funding of Court Network in the family law context is under threat. I will explain why this is the case.

In May 2015, the Attorney-General's department advised Court Network that Commonwealth funding would not be extended beyond 30 June 2015 due to the commencement of the National Partnership Agreement on Legal Assistance Services 2015-20. At that time, we ceased our service at the Family Law Court in Brisbane. In Victoria, Victorian Legal Aid (VLA) continued to apply discretionary funding (\$130,000 per annum) to Court Network, as it recognised our important role in supporting court users, particularly unrepresented litigants. However, VLA is now no longer in a position to continue the previous informal funding arrangement and stopped funding Court Network at the end of last financial year (June 2020), though we will be able to continue our operations until June 2021 as a result of one-off philanthropic funding.

It was always anomalous for CN to be funded as if it were a legal service. CN has been in the situation of having to compete with community legal services, despite the fact that it does not provide legal advice. Nevertheless, it provides significant support and connection to community programs for a very modest cost. I argue that, for the reasons discussed above, it is extremely short-sighted to cease funding for this very cost effective program and that its funding should be reinstated.

Supporting the Commonwealth funded FASS

CN works closely with the Family Advocacy and Support Service (FASS) in Family Courts in Victoria. While the FASS service has made a huge difference by increasing the availability of representation and recognising that there are needs beyond those dealt in courts, it cannot possibly address needs of all court users - CN fills these gaps. In the period January to December 2019 CN supported 2,484 court users in Melbourne and Dandenong Family Courts and referred 354 court users to FASS.

Cost-benefit analysis

In my remarks to the Committee I will submit that Court Network provides unique value in the family law system for very limited cost.

KPMG undertook a cost benefit analysis of CN's Family Court services in 2013. It found that the organisation returned benefits of \$3.40 for every \$1 funded in Victoria. The KPMG Report highlighted key benefits of CN operational model:

- Networkers are of greatest value to unrepresented litigants who do not have the information or support that they would otherwise receive from a lawyer.
- Networkers improve the court experience for people in an environment that can cause fear, anxiety and frustration. Networkers are familiar with the environment and can explain the court landscape, processes, system and language in terms that a court user will understand, making them feel more confident.
- Networkers play a key role in alleviating tensions and distress in cases involving family violence. They work sensitively with court users

involved in these cases, provide a secure waiting room and assist with their appearance in court.

- Networkers improve people's perception of the court system. Making the court process easier to navigate and more manageable for court users and providing information on how the justice system operates, is likely to leave court users with a more positive view of the court. Their perception of the justice system is also improved when they understand the rules and can anticipate the formality and processes ahead.
- Networkers enable court staff and duty lawyers to be more efficient and focus on their core roles and responsibilities. A number of people working at court are unable to step outside their roles to assist court users. Instead, they rely on Networkers to provide flexible support and work closely with them. Networkers also assist court users to find correct locations and facilitate access to the registry and duty lawyers in a timely manner, which assists court staff to manage their workloads.

4. Summary of remarks relating to Court Network

For the reasons given above I will argue for funding of Court Network over a four-year period in the family law courts in Victoria and Queensland and its possible extension to such courts in South Australia and Tasmania.

For information purposes I have attached an overview of the proposed model of service provision over this four-year period.

Secondary remarks

I have also had the opportunity of reading the remarks prepared by the Honourable Nahum Mushin AM, which bear on several other terms of reference as well.

I agree with those remarks and may wish to add some brief comments. I share his views on terms of reference (b) (c) and (k). In particular, I agree with his remarks on the inclusion of counselling services in the court's structure.

I also agree with his comment relating to claims that child abuse and violence are frequently fabricated for strategic purposes. Some groups have claimed that mothers commonly make false allegations of this kind.

There is now wide-ranging research and better understanding of the frequency of violence, including sexual violence, in family relationships. The evidence is discussed at length in the Report of the Victorian Royal Commission into Family Violence. I also gave evidence to the Parliamentary Inquiry into a Better Family Law System to Support and Protect Those Affected By Family Violence on 25 July 2017, which the Joint Select Committee may find useful.

It is important that both judges and court staff have a good understanding of the nature and impact of family violence, including its impact on children. It would be

useful for the Select Committee to make a recommendation that judges, counsellors and other court personnel attend regular training on the nature and effect of family violence.

Research does not support the claim that allegations of violence are frequently made up or invented for strategic purposes in family law claims. The RCFV heard evidence from a number of witnesses that when they mentioned family violence to their solicitors they were told that they should not mention it as they might be regarded unfavourably. We also heard of cases in which people had remained in relationships for many years but had not 'labelled' their experience as violence, even when they had been subjected to extreme forms of physical, financial or psychological abuse.

I hope this Opening Statement assists the Joint Select Committee.