

Submission to the Parliamentary inquiry into better family law system to support and protect those affected by family violence.

Women's Council for Domestic and Family Violence Services

Term 5. Capacity of family law professionals.

### **ABOUT THE WOMEN'S COUNCIL FOR DOMESTIC AND FAMILY VIOLENCE SERVICES**

The WCDFVS is the peak non-government body in Western Australia committed to improving the lives of women and children in society, and ensuring they live free from family and domestic violence. The organisation provides a voice on domestic and family violence issues to help facilitate and promote policy, legislative and programmatic responses relevant to women and children who have experienced domestic and family violence.

The organisation has five core functions: promoting the protection of women and children through representing their needs to policy and decision makers; representation and advocacy on a range of national committees and advisory bodies; community education; research and training on emerging issues and trends related to FDV; and information and referrals to sections of the community that would provide appropriate help to women and children.

The WCDFVS has a few key goals:

- To strengthen their unified voice on domestic and family violence issues.
- To maintain the Women's Council for Domestic and Family Violence Services (WA) as an independent viable and credible organisation.
- To improve the access of women and children to Women's Refuges and services who are experiencing domestic and family violence.
- To provide leadership in the area of domestic and family violence issues to key stakeholders and the community.
- To increase the community awareness of the incidence, effects and responses to domestic and family violence.
- To collaborate with key stakeholders in the development of policies, legislation and programs which impact on women and children experiencing domestic and family violence.
- To ensure access and equity for all members in remote/rural locations.

The WCDFVS supports a number of innovative practices in operation at the Family Court of WA and believes they would be beneficial to be considered by the Family Court of Australia to improve the capacity of the Family Court practitioners to respond more effectively to family violence matters.

1 The Family Court Reference Group: The group meets three times annually for 1.5 hours and is chaired by the Chief Judge. The group has been active for over six years and has a relevant and wide ranging membership, senior practitioners from the Family Court including the Principle Registrar and Director of Court Counselling, senior managers/directors from Department of Child Protection and Family Support legal unit, Family Law practitioners Association, Legal Aid, Department Child and Adolescent Health, Family Pathways Network, Aboriginal Legal Service, Community Legal Services, Citizen Advice Bureau, Anglicare, Communicare, Relationships Australia, Centrecare and the Women's Council for Domestic and Family Violence Services.

The meetings provide an opportunity for services outside the court but integral to its work to improve their understanding of the functions, constraints and opportunities to improve the experience of the court for our clients. The range of service providers bring a vast knowledge and expertise for the court to draw on when making its decisions in family violence cases.

The strength of these meetings is reflected in the willingness of the Chief Judge and other court staff to be very open and inclusive in the information provided and this has generated a high level of trust and cooperation across all the meeting participants.

2 The Court has had a co-located Senior Child Protection officer based full-time in the Family Court for over three years. This position provides Magistrates and Judges with immediate access to relevant Department of Child Protection and Family Support case files. This reduces delays in interim decision times, provides informed and knowledgeable information directly to decision makers and reduces the risk of information being missed or lost.

3 Single Expert Witness. The court has managed the challenge of finding adequately qualified SEW by restricting the ability of parties in Family Court proceedings from making a complaint to the Psychologists Board about a SEW report. This decision has maintained the pool of SEW but has the potential to allow poorly functioning or biased Single Expert Witness to go unchallenged.

**The Council believes both Family Courts would benefit from a much clearer and freely available information on the qualifications, skills and knowledge of Single Expert witness report writers (family report writers), the role of the report writer in the court process, what avenues an applicant or respondent can access if they have evidence that indicates a report is factually wrong.**

**The Council recommends that due to the complexity of family violence and its impact on all family members including extended family, all professionals working in the family law area to have compulsory and frequent professional education on the issue.**

**In the last ten years our understanding of the impact of family violence on the brain development of children and young people continues to develop at a rapid rate. We must support family law professionals to access the most current and relevant knowledge by requiring attendance at seminars and conferences that expose them to a greater understanding of the complexities and ramifications that decisions made by the court have on the safety and well-being of family members.**

**Family Law professionals need to be embedded in the Family Violence sector networks and interagency committees, currently most Court and family law practitioners sit outside of the collaborative networks of community and government agencies that respond to the issue of family violence.**

**This results in individuals who lack up to date knowledge on the complexities of family violence, who lack knowledge of support services available for their clients and who bring unchallenged their personal beliefs and myths about the issue.**

Ministerial Advisory Council on Child Protection (MACCP)

In 2016 the Women's Council for Domestic and Family Violence Services (WA) ('The Council') was contracted by the Department for Child Protection and Family Support ('CPFS') to hold a series of consultations with women who

are currently residing or still receiving outreach support through a Women's Refuge. The aim of these consultations are to gain insight into women and children's experiences of domestic and family violence and the system service responses they have received or are receiving.

A Participatory Action Research framework was used to collect qualitative data and actively involve participants in the research process. A series of targeted focus groups and interviews were carried out with selected participants. The collection of data involved women who were or are currently receiving support from a Women's Refuge, Outreach or a part of the Safe at Home Programme and who have experienced domestic and family violence in Western Australia. Focus groups and telephone interviews were held across the state including Perth metropolitan region, Port Hedland, Goldfields, South-West and Wheatbelt regions. A total of 25 women were interviewed.

The targeted consultations were conducted mostly through focus groups and telephone interviews. The questions were based broadly on:

- What works well now in terms of women's experience of the service system;
- What barriers women and children experienced in accessing services;
- What would make their experience more supportive?

One of the consumer recommendations was:

Members of the Judiciary who deal with cases of domestic violence, whether it be in the criminal arena or family law arena, need to address the inconsistent and sometimes harsh attitudes to women and children experiencing domestic and family violence. Mandatory training in understanding the dynamics and complex nature of domestic and family violence needs to be undertaken by all members of the court.

## FINAL REPORT June 2014

One of the three key themes from the Law reform commission report into Enhancing Family And Domestic Violence laws in WA was :

### **LACK OF AWARENESS AND UNDERSTANDING OF FAMILY AND DOMESTIC VIOLENCE**

The Commission observed in its Discussion Paper that the need for professionals working in the legal system to understand properly the nature and dynamics of family and domestic violence has been repeatedly identified in past inquiries and reports.<sup>1</sup> Inconsistency in decision-making and lack of understanding of the nature of family and domestic violence was a frequent complaint during the Commission's consultations for this reference. In particular, the Commission was told by a number of people that there is a wide divergence in approaches by judicial officers, police and lawyers and the main reason for this is differing levels of understanding about the nature and dynamics of family and domestic violence among professionals working in the legal system.

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<sup>1</sup> Law Reform Commission of Western Australia, *Enhancing Laws Concerning Family and Domestic Violence*, Discussion Paper, Project No 104 (December 2013) ('LRCWA Discussion Paper') 30–2. See, eg, National Council to Reduce Violence against Women and their Children, *Time for Action: The National Council's plan for Australia to reduce violence against women and their children, 2009–2012* (2009) 19; Australian Law Reform Commission/New South Wales Law Reform Commission (ALRC/NSWLRC), *Family Violence – A National Response* (2010) [31.1]; Victorian Law Reform Commission, *Review of Family Violence Law*, Report (2006) [6.21], [12.19].

Commission was told that some judicial officers have made inappropriate comments with the effect that the victim may be re-traumatised and/or discouraged from accessing legal avenues for protection in the future. Further, the Commission was informed that some judicial officers still hold the view that family and domestic violence is not as serious as other forms of violence, and that some believe that when victims cancel violence restraining orders or discontinue their applications this means that they either accept the violence or that the violence never occurred. There was also concern expressed that if victims 'fight back' they may be seen as contributing to the violence rather than responding to and managing the violence. It was also mentioned that there is a lack of understanding about particular issues faced by people with additional vulnerabilities (eg, people from culturally and linguistically diverse backgrounds, people with disabilities and Aboriginal people, especially those from remote areas) and a lack of appreciation of the detrimental impact of children's exposure to family and domestic violence.

#### **RECOMMENDATION 70**

##### **Judicial education programs**

That the Western Australian government provide sufficient resources to enable the heads of jurisdiction in each Western Australian court to provide regular judicial education programs in relation to the nature and dynamics of family and domestic violence.

#### **RECOMMENDATION 71**

##### **Training for court staff**

That the Department of the Attorney General develop and provide training programs in relation to family and domestic violence for all court staff including associates, judicial support officers, administrative staff and court security staff.

#### **RECOMMENDATION 73**

##### **Continuing Professional Development for legal practitioners**

That the Law Society of Western Australia and other relevant approved CPD providers are encouraged to ensure that CPD programs are available in relation to the contemporary nature and dynamics of family and domestic violence including specific issues in relation to Aboriginal communities, multicultural communities, people with disability and children and that, wherever possible, these programs be developed and delivered by individuals and agencies with expertise in family and domestic violence.