



YWCA CANBERRA

Submission to the Joint Select Committee on Australia's Family Law System
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About YWCA Canberra

YWCA Canberra is a feminist not for profit organisation that has provided community services and represented women's issues in Canberra since 1929. YWCA Canberra provides essential, quality services for women, girls and families in the ACT and surrounding regions. We work in the areas of children's services, community development, homelessness and affordable housing, youth services, personal and professional training, women's leadership and advocacy. Through its national Affiliate Association with YWCA Australia, YWCA Canberra is part of the World YWCA network, which connects 120 countries across the globe. YWCA Canberra's mission is 'We strengthen communities by supporting girls and women through our services and advocacy'.

About this submission

YWCA Canberra has been one of the signatories of the joint statement along with over 100 peak bodies and practitioners working to prevent and respond to violence against women and children rejecting the legitimacy of the Government's new Family Law Inquiry. We believe that this Inquiry is unnecessary, and we will use this submission to reiterate these points.

This submission will refer specifically to the following Terms of Reference.

- a. Information Sharing
- b. Evidence of domestic and family violence in family law courts
- c. Reforms in the family law system (beyond court restructure)
- e. Family law support services and family dispute resolution
- h. Core competencies of family law practitioners

a. Information sharing

a. ongoing issues and further improvements relating to the interaction and information sharing between the family law system and state and territory child protection systems, and family and domestic violence jurisdictions, including

- the process, evidential legal standards and onuses of proof, in relation to the granting of domestic violence orders and apprehended violence orders, and
- the visibility of, and consideration given to, domestic violence orders and apprehended violence orders in family law proceedings;

Need for improved information sharing

Child protection and family law systems often do not work together properly. In focusing on the safety of children, child protection systems can sometimes fail to adequately consider the situation of the parent who is experiencing violence. In contrast, the family law system often does not have enough resources devoted to the safety of children and young people. The parent who is experiencing violence is sometimes reluctant to have contact with child protection services, because these services often place on them the responsibility for protecting children from the perpetrator of violence, while not taking into account the bigger picture and impact of family violence. In some cases, gaps between the two systems are resulting in children being returned to a perpetrator.¹An effective mechanism for

¹ Standing Committee on Social Policy and Legal Affairs (2017) A better family law system to support and protect those affected by family violence. Report; Women's Legal Services Australia (2017) Submission to the parliamentary inquiry into a better family law system to support and protect those affected by family violence.

information sharing developed between the child protection and family law systems would go some way to mitigating these gaps.

Decisions regarding children should be made in the best interests of the child with the safety of the child as paramount. Child protection services need better training on family violence and cultural competency to prevent them from reinforcing the unjust barriers, marginalisation and control exercised against those who experience violence in cultural settings particularly Aboriginal and Torres Strait Islander women and their children.

YWCA Canberra recommends that the Australian Government ensures that only risk relevant information is shared and that safeguards against the inappropriate use of information are implemented. Perpetrators must be prohibited from accessing information about women and children affected by violence. Most importantly the consent of those who experience violence should be a mandatory requirement before sharing their information in every instance.

b. Evidence of domestic and family violence in family law courts

<p>b. the appropriateness of family court powers to ensure parties in family law proceedings provide truthful and complete evidence, and the ability of the court to make orders for non-compliance and the efficacy of the enforcement of such orders;</p>

Ingrained disbelief in experiences of domestic and family violence

The premise of this inquiry reflects an ingrained disbelief in the experiences of domestic and family violence survivors, where doubt is cast on the validity of those who have experienced violence speaking out about their experiences within the family law system.

YWCA Canberra calls on the Committee to unequivocally reject this premise and, instead, affirm the rights of survivors to build lives free of violence, including the right to speak out.

While domestic and family violence is unfortunately prevalent, this prevalence has not manifested in a system that is sympathetic or responsive to the needs of survivors or their children. In fact, there remain persistent and damaging patterns of survivors being subject to system-wide doubt of the violence they have been subjected to. We strongly object to this damaging culture of scepticism that continues to influence the way systems such as family law operate and contribute to unjust court outcomes for those who experience violence.

System safety for those who experience violence

The family law system as it operates at present does not place the safety of victims/survivors and their children at its heart. Disclosures of family violence are frequently to the detriment of the survivor as they encounter a system which culturally has failed to believe them. The system itself does not do enough to present itself in any other light. For example, a presumption of shared parental responsibility is still being applied in practice by judges, a practice that privileges the rights of those who use violence to maintain contact with their children as opposed to prioritising the safety of the children and the parent who is experiencing or witnessing violence.

Recommendation:

- We strongly believe that early risk assessments and capacity for early determination of family violence by the court needs to be in place
- This will require sufficient training and resourcing for courts, starting from the underlying premise that safety is the primary consideration
- Members of the judiciary and all other professions coming into contact with the family law system must undertake training in family violence to be able to apply that lens to their practice and identify potential circumstances of violence to support safe disclosure

Misuse of systems and processes as family violence

Vexatious misuse of legal process and courts systems by perpetrators constitutes family violence. By endlessly pursuing legal processes despite evidence or witness statements identifying them as perpetrators, those who use violence can continue to exercise behaviours of control and intimidation pressuring the targets of their violence to enter into court orders that do not address family violence or dragging them through legal procedures that unnecessarily increase costs and stress for the other party.

Recommendation:

- We reiterate the need for a better training of family law professionals and better procedures to prevent perpetrators from vexatiously using the legal system and hold perpetrators to account
- We support the recommendation of the final Australian Law Reform Commission report to include the ‘use of systems or processes to cause harm, distress or financial loss’ in the definition of family violence.²

c. Reforms in the family law system (beyond court restructure)

c. beyond the proposed merger of the Family Court and the Federal Circuit Court any other reform that may be needed to the family law and the current structure of the Family Court and the Federal Circuit Court;

Strengthen family violence response in the family law system

The safety of children and adult survivors of family violence requires increased specialisation in the family law system. Action can be taken now to increase family violence specialisation by:

- Introducing effective ongoing court-based family violence risk assessment practices
- Introducing early determination of family violence, and
- Increasing family violence competency of all professionals in the family law system.³

The risk assessment should be consistent across Australia, be multi-method, multi-informant, while emphasising the victim’s own assessment of risk, be culturally sensitive and supported by appropriate training. The Victorian Common Risk Assessment Framework (CRAF) or the NSW Domestic Violence Assessment Tool could be used during the design of the national risk assessment framework.

² ALRC Final Report proposal 8-3.

³ Ibid (Open letter).

Without early risk identification, safety risks for those who experience violence are not managed from the onset and outcomes that fail to appreciate the magnitude of violence are more likely to occur. It is common that those subjected to violence featuring coercive control behaviours feel pressure to agree to parenting arrangements and consent orders that are not in the best interest of their children and which do not take the dynamics of family violence into account.⁴

Recommendation:

There is an urgent need to:

- Strengthen family violence responses through a specialist family violence pathway or specialist family violence family law courts
- Introduce effective ongoing family violence risk assessment practices
- Promote and resource the early determination of family violence, through a family violence informed case management process and the early testing of evidence of family violence.⁵

Removal of a presumption of equal shared parental responsibility

There is an urgent need to remove the presumption of equal shared parental responsibility. This damaging misconception holds that both parents retain equal rights to children even in situations where one parent uses violence, even against the children in question.

The presumption of equal shared parental responsibility remains and The Family Law Act 1975 (Cth) and states that when making a Parenting Order, the Court must apply a presumption that it is in the best interests of the child for the child's parents to have equal shared parental responsibility for the child.⁶ This means that parents must consult with each other and share responsibility for decisions about major long term issues in regard to the children. This presumption has damaged countless survivors and children and is a court sanctioned loop-hold allowing perpetrators to continue to use violence during sanctioned access and in negotiating access.

While the presumption is not meant to apply in cases of domestic and family violence, women and children are still negatively impacted by this presumption due to system-wide doubt that survivors are subjected to (discussed about) and because it can be difficult to identify or prove violence to the standard required by the Courts, particularly in cases of emotional or financial abuse.

Recommendation:

- Remove the presumption of equal shared parenting responsibility from the Family Law Act to shift culture and practice towards a greater focus on safety and risks to children.

Appoint more judges, registrars, family consultants and liaison officers

Another important aspect of reform is the resourcing of the family law system. Lack of sufficient funding creates pressure on the judiciary and other court officials and leads to ongoing court delays that those who experience violence cannot risk. The Law Council of Australia reports that "it is not uncommon for there be 30 or more cases before a judge on the first hearing date, which gives each

⁴ WLSA (2019) Safety First in family law. Five steps to creating a family law system that keeps women and children safe.

WLSA (2017) Submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs. Submission to the parliamentary inquiry into a better family law system to support and protect those affected by family violence.

⁵ WLSA (2019) Safety First in family law. Five steps to creating a family law system that keeps women and children safe.

⁶ Family Law Act 1975 (Cth) s 61DA

case about 10 minutes.”⁷ Appointing more judges to family courts will improve the early identification of risks.

There is also a need to employ culturally diverse who are tasked with responding appropriately to the diversity of people coming before the courts.

Recommendation:

- Appoint more judges, registrars, family consultants, Aboriginal and Torres Strait Islander Liaison Officers and Multicultural Liaison Officers in family courts
- Establish Cultural Diversity Committees, introduce multicultural plans, and actively recruit employees from migrant and refugee backgrounds

e. Family law support services and family dispute resolution

e. the effectiveness of the delivery of family law support services and family dispute resolution processes;

The role of specialist women’s service in the family law system

Lack of funding to specialist women’s and community legal services creates additional barriers for women and children subjected to violence. Women often have limited capacity to obtain access to justice because of financial barriers, and are often unable to access legal information, advice and/or representation due to the high cost of private legal representation⁸. This can be particularly relevant in circumstances where the violence featured financial controlling behaviours or social isolation. Given the lack of access to free specialist and/or legal services, when self-representing in family courts, women are at risk of unsuccessful settlements as well as further re-traumatisation and abuse.

Recommendation:

We recommend that the Australian Government incorporates specialist women’s services into family law systems, and adequately funds these services, by:

- prioritising the engagement with specialist women’s services in responses to family violence matters;
- funding specialist women’s services that provide embedded services in state and territory courts to continue to support clients with family violence issues when they move to the family law system to seek parenting or other orders;
- embedding workers from specialist women’s services in the family courts and Family Relationship Centres; and
- rolling out and better resourcing of Family Advocacy and Support Services within the family law system and Women Domestic Violence Court Advocacy Service within local and district courts.

⁷ Law Council of Australia (2017) Parliamentary inquiry into a better family law system to support and protect those affected by family violence.

⁸ Women’s Legal Services Victoria Submission Domestic Violence in Australia pg 5, Productivity Commission, Access to Justice Arrangements – Inquiry report No. 72, 3 December 2014

h. Core competencies of family law practitioners

h. any further avenues to improve the performance and monitoring of professionals involved in family law proceedings and the resolution of disputes, including agencies, family law practitioners, family law experts and report writers, the staff and judicial officers of the courts, and family dispute resolution practitioners;

Core competencies of family law practitioners is key in improving our response to the people who use family law system. Hence all participants in court processes, judges, lawyers and court staff should have a thorough understanding of the nature and dynamics of domestic and family violence, such as an understanding of the tactics a perpetrator may utilise within the court system to perpetuate a pattern of dominance and control. All professionals working in the family law system should have access to high-quality and best-practice ongoing training and professional development, both on the gendered dynamics and impacts of family violence and on gender equality more broadly

Recommendation:

We recommend comprehensive training of all staff within the judicial system to include the following topics:

- the nature and dynamics of family violence;
- working with vulnerable clients;
- cultural competency and safety (working with Aboriginal and Torres Strait Islander people and people from culturally and linguistically diverse backgrounds);
- working with people who identify as LGBTIQ;
- disability awareness and accessibility;
- intersectionality of clients' needs that includes recognition of structural inequalities arising from the interconnectedness of gender, age, sexuality, disability, culture, religion, race and/or other experiences;
- trauma- informed practice;
- the intersection of family law, child protection and family violence;
- the intersection of family law, family violence and migration status;
- technology facilitated abuse; and
- the intersection of family violence and family law in property determinations that includes:
 - the financial impacts of family violence
 - the nature and impacts of economic abuse;⁹
- understanding and working with influencing systems including child support and child protection;
- working with interpreters

Additional resources, such as videos, factsheets and toolkits regarding these topics could also be provided to support judicial officers better understand the barriers to justice, and to access information and resources of relevance to the context of their work.

⁹ Smallwood, E. (2015) Stepping Stones: Legal barriers to economic equality after family violence, Women's Legal Service Victoria, Melbourne.