



Djinda Services

Perth Aboriginal Family Violence Prevention Legal Service

A partnership between Relationships Australia WA and Women's Law Centre of WA Inc.

20 January 2017

Public Consultation: Family Violence
Amendments Family Law Branch
Attorney-General's
Department 3-5
National Circuit
BARTON ACT 2600

By Email Only: familylawunit@ag.gov.au

Dear Colleagues

AMENDMENTS TO THE FAMILY LAW ACT 1975 TO RESPOND TO FAMILY VIOLENCE

Thank you for the opportunity to provide feedback on the proposed legislative amendments to the *Family Law Act 1975* as set out in the exposure draft of the *Family Law Amendment (Family Violence and Other Measures) Bill 2017* (Cth).

ABOUT DJINDA SERVICES

Djinda Services is the name given to the Perth Aboriginal Family Violence Prevention Legal Service. "Djinda" is a Noongar word meaning star. The star represents us as women who guide our families, shine brightly, survive against the odds and are strong in our determination to keep our families safe.

Djinda Services is run in partnership between Relationships Australia WA and the Women's Law Centre of WA Inc. We provide a specialised legal support service for Aboriginal and Torres Strait Islander women living in the Perth metropolitan area who have experienced or are at risk of experiencing family and domestic violence (FDV) and/or sexual assault.

The Women's Law Centre is responsible for providing the legal component of Djinda Services. We provide legal advice and representation in the areas of Violence Restraining Orders, children's care and protection, criminal injuries compensation where it relates to FDV or sexual assault and family law children's issues. Our service also provides community legal education in identifying and responding to FDV.

We are Aboriginal and non-Aboriginal women, mothers, grandmothers and sisters who care about the future of Aboriginal communities. We have personal and professional experience and an understanding of the FDV cycle.

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INTRODUCTION

We welcome the review of the *Family Law Act 1975 (the Act)* aimed at improving the family law system's response to FDV. With over 41 per cent of cases in the Family Court involving allegations of family violence, child abuse or both family violence and child abuse¹ the proposed amendments are timely.

The severity and frequency of FDV experienced by victims in our community is unacceptable. We consider it our responsibility as a society to ensure victims of FDV are not further traumatised as they participate in the Family Court process.

This is particularly true for Aboriginal and Torres Strait Islander women who are at a much higher risk of FDV compared to non-Aboriginal women. They are forty-five times more likely to be FDV victims and ten times more likely to be homicide victims than non-Aboriginal women.² **Aboriginal and Torres Strait Islander victims must therefore be a primary consideration in this review.**

RESPONSE TO PROPOSED AMENDMENTS

We agree in principle to the proposed legislative amendments to the Act but have reservations about how some of the proposed changes would operate in practice due to questions remaining about the sufficiency of long term federal funding to the court system and the expected future funding cuts to community legal centres.

We fully endorse the Women's Legal Services Australia submission dated 20 January 2017 and the recommendations they make in response to the exposure draft of the *Family Law Amendment (Family Violence and Other Measures) Bill 2017 (Cth) (the Exposure Draft)* and provide further points for consideration below.

Increasing the number of state and territory courts vested with family law jurisdiction

Whilst we acknowledge the volume of people applying to Family Courts has increased and current court resources are stretched to the limit, we have some reservations about expanding the family law jurisdiction to include courts of summary jurisdiction.

Organisations that support FDV victims have been advocating for specialised FDV courts for some time. Specialised courts can offer a more holistic service, including specialised procedures for victims' support and safety, and staff who are dedicated to, and trained in assisting FDV victims. We are concerned the proposed amendments are moving away from this idea and risk the pursuit of pragmatism at the cost of justice.

¹ 15/16 Annual Report, Family Court of Australia, pg 6.

² *Investigation into Issues Associated with Violence Restraining Orders and their Relationship with Family and Domestic Violence Fatalities*, Ombudsman Western Australia 2015, pg 107.

If we are to move away from specialisation then we must focus closely on education so that a victim of FDV seeking family law orders is treated the same way in a court of summary jurisdiction as they would if they were in the Family Court or a specialised FDV court. Further specific points regarding judicial training and education in respect of FDV and cultural training are made later in this submission.

It is equally important that judicial officers who have not previously had experience with family law jurisdiction are provided with appropriate training and guidance.

We also have concerns currently about the capacity of the summary courts to deal with family law matters in addition to their existing caseloads. From our experience with the Magistrates and Children's Courts in Western Australia they are already operating at full capacity. Without increased funding and resources or substantial systemic restructures, we are concerned that the summary courts would not be able to effectively exercise additional family law jurisdiction.

Criminalising breaches of personal protection injunctions

We support the criminalisation of breaches of personal protection injunctions. Research shows Aboriginal women are less likely to apply for a restraining order than non-Aboriginal women³ and this may be one way to circumvent the stigma that can be attached to restraining orders.

It will also enable those victims of FDV already undertaking proceedings in the family law jurisdiction who do not have a restraining order in place to stay within the one court system and apply for a personal protection injunction. The main benefit of this is that victims only have to explain events once to one court, which reduces the risk of re-traumatisation.

The other significant benefit is that criminal proceedings for breach of personal protection injunction can take place without as much involvement from the victim compared to that in existing Family Court contravention proceedings.

Strengthening orders issued by state and territory courts

We fully support the removal of the 21 day time limit on a state or territory court's variation of a family law order in interim domestic violence order proceedings.

We agree with the proposed amendment that the state or territory court's variation, revival or suspension of a family law order should continue to have effect until:

³ Goulding D, *The Role of Socio-Economic & Familial Factors in the Pursuit of Final Violence Restraining Orders for Women subjected to Family & Domestic Violence*, Centre for Social & Community Research, Murdoch University (in conjunction with Southern Communities Advocacy & Legal Education Services Inc.) 2007 pg 25.

- the time specified by the court in that order;
- a further order is made; or
- the interim domestic violence order ceases to be in force.

Increasing the power of the court to dismiss unmeritorious claims

We have concerns that while this amendment may be used for FDV perpetrators who use the court system as a way to perpetrate abuse, it may also be unintentionally used against FDV victims. Victims' applications can be incomplete or poorly formed due to fear, trauma, lack of education, lack of legal representation and cultural differences and as a consequence they can appear unmeritorious. We also find victims tend to minimise the violence they have suffered and consider some incidents are irrelevant or do not constitute FDV when in fact they do.

The current family law courts may be well placed to identify the difference between a litigant in person who is underprepared due to inexperience or trauma and a litigant whose case should be dismissed as an abuse of process or because it has no prospect of success, however in the event the family law jurisdiction is expanded we have concerns whether judicial officers in summary courts would be able to do the same.

We therefore recommend any power to dismiss unmeritorious claims be subjected to consideration of certain factors, including whether the claimant is a FDV victim, whether the claimant is of Aboriginal or Torres Strait Islander background, the level of literacy and education of the claimant and whether the claimant is legally represented. This would ensure guided and consistent decision making and minimise the unintentional risk of dismissing victims' claims.

To be able to properly address these considerations it is essential judicial officers have specific FDV training and culturally appropriate training in regards to how FDV affects Aboriginal and Torres Strait Islander victims so they may understand the nature and extent of FDV, including the multiple and complex factors contributing to the violence.

Enabling the court to explain orders in a manner that supports the best interests of the child (short form judgements)

We agree with the amendment for the court to explain the orders in a manner that supports the best interests of the child, but again we recommend guided decision making in order to ensure consistency and the consideration of factors such as FDV and cultural differences.

In addition we are concerned about the court using their discretion as a means to provide limited reasons or no reasons at all due to time constraints. It is important

procedural fairness is still afforded to all participants and there is a proper record of proceedings in the event of an appeal.

National Domestic and Family Violence Bench Book

We support the development of the National Domestic and Family Violence Bench Book (**the Bench Book**) to promote best practice and consistency in judicial decision making in cases involving FDV. However we stress that the Bench Book does not replace culturally specific FDV training as discussed below or teach a judicial officer how to interpret and apply the family law sufficiently.

Nonetheless we would hope all judicial officers still take the opportunity to read the Bench Book and accept the guidance and information it offers.

Judicial training and education

We see a number of clients who are reluctant to engage in the Family Court system to resolve parenting disputes because of the court's lack of understanding of Aboriginal and Torres Strait Islander specific issues, such as family structures related to specific regions and language groups, the strength of family and community ties and the potential detrimental impact on children who are already overrepresented in the Care and Protection system.

FDV is a complex and multifaceted problem that is further complicated by these issues. If Aboriginal and Torres Strait Islander victims are to obtain justice and be effectively supported through the court system, then judicial officers and other staff need to have relevant, regionally specific Aboriginal and Torres Strait Islander cultural training. In particular, this training will need to explore the differences in the context and nature of FDV amongst Aboriginal and Torres Strait Islander peoples, as well as its prevalence.

An understanding of how FDV differs amongst Aboriginal and Torres Strait Islander communities will be essential for judicial officers and staff to apply discretion in regards to the proposed amendments.

In addition to the above, FDV training must be continued over the long term rather than as a 'one off' session in order for key concepts to be reinforced and current issues to be addressed. As noted above, FDV is highly complex and it is unlikely that either sufficient understanding of the issues involved or attitudinal shifts would result from 'one off' training sessions.

ADDITIONAL RECOMMENDATIONS

In conjunction with the proposed amendments referred to in the Consultation Paper and accompanying Exposure Draft we raise the following additional recommendations

for consideration in improving the family law's response to FDV:

1. Court proceedings need to be accessible and safe for FDV victims.

There should be more facilities for victims to give evidence in remote witness rooms and the option for closed hearings. There should also be a restriction across the board preventing a perpetrator from directly cross-examining a victim.

2. Recruitment of any new judicial staff should include a selection criteria requiring experience in working with people affected by FDV.

Given the number of cases involving FDV it would stand to reason that judicial officers and staff working in the court system should have some understanding and awareness of what FDV is and how it can manifest, along with experience in dealing with victims (and perpetrators).

A few hours of training after someone has already been hired will not be enough to overcome long held beliefs and attitudes towards FDV. Having requirements included in the selection criteria for judicial officers and other court staff will help victims of FDV have a more positive experience in traversing the Family Court process.

3. Increased funding to support and grow existing specialised Family Courts.

Despite the growing number of family law applications in Family Courts across Australia, the capacity of the courts has not grown at a comparative rate. The government should look to appoint more magistrates, judges, family consultants and registry staff to those existing courts.

4. The government should consider setting a quota for the number of Aboriginal and Torres Strait Islander staff and interpreters of Indigenous languages employed within the court to assist Aboriginal and Torres Strait Islander women (and men) navigate the court process.

SUMMARY

It is essential that any amendments to the family law system be well funded and efficiently structured and that staff enacting the changes are properly trained. Without the necessary funding and properly trained staff, it is unlikely FDV victims will receive a just outcome.

CONCLUSION

Overall, we welcome the proposed changes to the *Family Law Act* and support the Australian Government's view that FDV and child abuse are unacceptable and require a

strong response from Australian governments.

Aboriginal and Torres Strait Islander FDV victims experience compounded trauma from both gender and racial discrimination. Given the disproportionately high number of Aboriginal and Torres Strait Islander women experiencing FDV and the continuing impacts of past injustices we urge you to take the specific cultural needs of Aboriginal and Torres Strait Islander women into account when finalising the proposed legislative amendments.

If further information is required, please do not hesitate to contact our Service on (08) 9200 2202.

Yours sincerely,

Djinda Services
WOMEN'S LAW CENTRE OF WA INC

LIST OF REFERENCES

15/16 Annual Report, Family Court of Australia, pg 6.

Investigation into Issues Associated with Violence Restraining Orders and their Relationship with Family and Domestic Violence Fatalities, Ombudsman Western Australia 2015, pg 107.

Goulding D, *'The Role of Socio-Economic & Familial Factors in the Pursuit of Final Violence Restraining Orders for Women subjected to Family & Domestic Violence'*, Centre for Social & Community Research, Murdoch University (in conjunction with Southern Communities Advocacy & Legal Education Services Inc.) 2007 pg 25.