

Feminist Legal Clinic

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Public consultation: Family violence amendments

Family Law Branch

Attorney-General's Department

3-5 National Circuit

BARTON ACT 2600

Friday 13 January 2017

Dear Madam/Sir

Proposed amendments to the Family Law Act 1975 to respond to family violence

I refer to the exposure draft and public consultation paper in relation to the Family Law Amendment (Family Violence and Other Measures) Bill 2017 and the call for submissions in respect to the same.

The Feminist Legal Clinic is a new legal practice operating in Sydney and focused on providing legal support to feminist organisations and services and the women who access them. This includes providing pro bono advice services to clients referred by the Women's Family Law Court Support Service (WFLCSS) which operates out of the Sydney Family Court.

We only assist women who are not eligible for legal aid and are unable to afford a private solicitor or to obtain other representation. Unfortunately, due to inadequate funding of legal aid this is a disturbingly large number of women and the demand is well beyond the capacity of our fledgling service.

All the women we have assisted to date in this jurisdiction have been subject to domestic violence and have been left to represent themselves against a violent perpetrator in an adversarial legal environment. Our experience of the Australian Family Court is that it is a formal and intimidating jurisdiction, not easily navigated by unrepresented litigants at the best of times and particularly daunting for women suffering the impact of domestic violence and abuse.

We therefore welcome amendment to the Family Law Act 1975 to respond to family violence and are grateful for the opportunity to provide comment on the proposal. Unfortunately, on reading the exposure draft and consultation paper we find little evidence of the "strong response" to violence promised by government.

Problems with multiple jurisdictions

The consultation paper correctly identifies the difficulties experienced by families having to engage with multiple jurisdictions. Currently to obtain protection for themselves and their children, women are required to navigate several courts and must re-tell their story, be repeatedly cross-examined (sometimes by the perpetrator of violence) and convince a variety of judicial officers of their case, with inconsistent outcomes and sometimes conflicting orders made.

The psychological toll of multiple proceedings, let alone the excessive time and costs involved and uncertainty of outcome, results in many women settling for arrangements giving violent and abusive men contact with their children against their better judgement and at significant risk to themselves and their children.

However, the proposed amendments do not appear to constitute an appropriate solution since they encourage these matters to be dealt with within Local Courts rather than a specialised jurisdiction. While it would be beneficial to have the family matters dealt with together with related criminal allegations of violence and abuse, it would seem more appropriate that this should all take place in a specialised jurisdiction properly equipped to give these matters due consideration rather than requiring magistrates to resolve these issues between dealing with traffic offences and other petty crime.

There is an urgent need to develop a specialised jurisdiction for family matters, including related violence charges and protection orders, which is informal and accessible and staffed by judiciary with specialist knowledge in both law and social sciences, including specific training in domestic violence and child abuse. The amount currently allocated by government for this purpose seems manifestly inadequate.

Powers to protect victims of family violence

We welcome the criminalising of breaches of personal protection injunctions. However, we would like more information about the process for obtaining these injunctions in the first place. Must family court proceedings be commenced before one of these injunctions can be obtained? Will police be able to apply for these injunctions on behalf of women in a similar manner to ADVO applications?

Without adequate support and assistance, it is questionable whether women will obtain the protection of these injunctions. Our service receives many accounts of solicitors advising women to not raise allegations of violence or child abuse unless they have definitive evidence due to the likelihood of their being perceived as a manipulative and “unfriendly” parent and accordingly at risk of losing primary custody.

Feminist Legal Clinic have been approached by a number of women who have experienced just this distressing outcome, with children removed from their care and placed with fathers who they claim are serious perpetrators of violence and/or child abuse. It is our experience that women’s allegations of violence and abuse are often regarded with scepticism by police and court staff, and that these mothers may be regarded as either neurotic and/or devious. This is exacerbated by the fact that these women are understandably in a highly emotional state and often self-represented due

to inadequacies in legal aid funding. As a result, it would appear children are regularly being placed in the primary custody of a father, despite unresolved allegations.

Furthermore, inadequate funding for the staffing of the existing Family Court has resulted in extreme delays in matters being heard, with the result that interim orders by registrars based on limited evidence often have the effect of final judgements since children may well be adult or close enough by the time the matter is listed for final hearing. This is exposing these children to unacceptable risk.

Protecting victims from family violence will require ensuring that police and judiciary take account of the gendered nature of family violence and the relative strengths of the parties, both physical and financial, when making their determinations. It also involves ensuring that parties receive adequate support and representation and introducing sanctions to ensure legal processes cannot be used to perpetuate abuse of women and children.

Power to dismiss unmeritorious claims

It is not clear to us that this power would necessarily be used to dismiss proceedings where a perpetrator is using the proceedings to inflict further trauma on a victim. If this is the intended purpose of this provision, it should be redrafted to clearly state that purpose. Currently, its wording is more likely to be used to ground applications to dismiss poorly conceived litigation, typical of proceedings brought by desperate self-represented parties. Self-represented parties in this emotionally charged context may well be perceived as vexatious litigants by judiciary untrained in the dynamic of family violence. Meanwhile the claims of those with legal representation are less likely to be regarded as unmeritorious.

None of the suggested amendments appear likely to achieve any appreciable improvement in the manner in which family violence is being addressed within the family law system. Government must reassess the urgency of the situation and take stronger measures to address family violence by working to provide a legal system that is accessible and readily navigated regardless of an individual's level of education or financial resources and that can provide timely and effective resolution of family disputes involving allegations of violence and abuse.

Please do not hesitate to contact the writer if further information is required.

Yours faithfully

Anna Kerr
Principal Solicitor