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The Honourable Kevin Andrews MP  
Chair, Joint Select Committee on Australia's Family Law System  
PO Box 6100  
Parliament House  
Canberra ACT 2600

By email: [familylaw.sen@aph.gov.au](mailto:familylaw.sen@aph.gov.au)

05 February 2020

Dear Chair,

## Re: Joint Select Committee on Australia's Family Law System

### Introduction

Victim Support Service (VSS) & Women's Legal Service South Australia (WLSSA) wishes to thank the Joint Select Committee on Australia's Family Law System for the opportunity to comment on the inquiry into Australia's Family Law System.

VSS is a non-government organisation based in South Australia that provides therapeutic counselling, as well as court and safety support services to victims of crime, violence and abuse, including victims/survivors of domestic and family violence\*. A significant number of those we support through specialist trauma counselling seek protection in the form of intervention orders and are engaged in family law proceedings for parenting and property orders.

WLSSA is a specialist community legal centre that provides free legal services, assistance and representation to women across South Australia. The primary areas of law are domestic and family violence, family law, child protection, immigration, debt and victims of crime compensation. Over 60 per cent of our clients identify domestic and/or family violence in a current or past relationship and the majority of our representation caseload is in the family law arena.

As might be expected, across the various criminal and civil courts, which operate in both the state and federal jurisdiction, there can be differing experiences of how DFV is understood and how it is relevant to the matters before those Courts.

VSS and WLSSA support the Women's Legal Services Australia (WLSA) Five Step Plan, which prioritises safety in the family law system. In brief, this plan calls for government to:

1. Develop a specialist response for domestic violence cases
2. Support those who are most at risk of future violence
3. Intervene early and provide effective legal help
4. Support women and children to financially recover
5. Strengthen understanding of all family law professionals on family violence

In addition to supporting this plan, we note that many reports and recommendations already exist that can inform this inquiry, such as the Australian Law Reform Commission (ALRC) *Family Law for the Future: An Inquiry into the Family Law System – Final Report* and the House of Representatives Standing Committee on Social Policy and Legal Affairs 2017 report, *A better family law system to support and protect those affected by family violence*. We suggest that this Inquiry offers an opportunity for the Government to consider how it might implement recommendations arising from those reports.

We take this opportunity to speak from our extensive experience working with South Australian victims/survivors of domestic and family violence, which may include sexual violence and abuse, and make the following recommendations.

## Recommendations

**Recommendation 1:** That there be improved information about therapeutic counselling support and legal services for people accessing family courts, in recognition of the risks of re-victimisation within the context of the family law system. With this increased information, increased funding to provide trauma-informed therapeutic support and specialist legal services for victims/survivors and their children.

**Recommendation 2:** Family Violence training is provided to all those participating in this inquiry, as well as more broadly across governments, as recommended in the submission of the Law Council of Australia. We would add to this that training should also include the dynamics of coercive control, which are often poorly understood across agencies and the broader community.

**Recommendation 3:** Further training for judicial officers in family violence, with an improved focus on the effects of coercive and controlling behaviours as a form of violence. This includes improving the understanding of the significant impacts of non-physical violence, including psychological and emotional harms, and the financial consequences of economic abuse for victims/survivors.

**Recommendation 4:** Through administration of the SA Family Safety Framework, VSS frequently observes the risks that arise from the interaction between intervention orders issued by lower state courts and the federal jurisdiction of the Family and Federal Circuit Courts, which override orders made to protect victims/survivors. We believe that improved information sharing across Courts which sets out the reasoning for the orders should be implemented so that decisions are better understood when determining parenting and property matters for families affected by domestic and family violence.

**Recommendation 5:** As an extension of those recommendations above, VSS & WLSSA advocate for Specialist Courts for family law matters where domestic and family violence is identified as relevant to the proceedings. We recommend that further research be undertaken around overseas specialist court models, such as the court in New York, and that Australia take steps urgently to progress a specialist court model consistently across all states and territories.

**Recommendation 6:** That government policy broadly, and family law systems specifically, take a trauma-informed approach to children and parenting issues, recognising the serious harms that can arise from a lack of understanding of the effects of domestic and family violence on children who are witness to it.

Across all of the above recommendations, VSS and WLSSA emphasise the need for an intersectional approach to the issues raised, with special focus on the needs of people who experience domestic and family violence at higher rates, including Aboriginal and Torres Strait Islander people, people with disability and the LGBTIQ+ community.



## Discussion

Australian Bureau of Statistics data from 2016 shows that one in six women has reported physical violence perpetrated by a partner, and one in four experiencing partner emotional abuse.<sup>i</sup> A recent House of Representatives Committee Report noted,<sup>ii</sup> more than half of parenting cases that proceed to family courts involve domestic or family violence, with some studies suggesting that this figure could be as high as 85%.<sup>iii</sup> Post-separation, the risks of serious violence and homicides is well documented.<sup>iv</sup>

It is widely accepted that domestic and family violence does not end at separation and that it continues to be perpetrated through legal systems that include family law. Where parties continue to have contact around parenting and property issues, victims/survivors may continue to experience legal systems abuse.<sup>v</sup> An improved understanding of coercive and controlling behaviours in the context of domestic and family violence is required by all actors in this context, to prevent the courts becoming another tool for perpetrators to employ post-separation to continue abuse.

Many victims/survivors also experience secondary victimisation in the family court system. According to research, core themes of silencing, control and discrediting experience may be perpetuated in family law hearings. The experience of victims/survivors in court settings is often described as isolating, with very little understanding of the nuance and complexity of how coercive control is perpetrated, and its effect on families.

A number of recent judgements reviewed in related research<sup>vi</sup> continue to cite a lack of evidence for harms arising from violence, and appear to misunderstand the harms which may arise from non-physical violence. Despite research that shows the effects of emotional and economic abuse are often significant and long-term, few property matters reflect that understanding in terms of evaluating financial and non-financial contributions of parties or in contemplating their future needs.

Importantly, we also know from working with victims/survivors that trauma-informed court experiences, with a focus on procedural fairness, have the potential to contribute to violence prevention and can be important to the recovery of victims/survivors. When properly supported, provided appropriate information and connected with resources throughout their experience in the family court system, victims/survivors have the potential to experience better outcomes in regards to recovery. Wrap around services, which can provide victims/survivors with multi-layered support, are especially valuable in their ability to provide trauma-informed support in a variety of capacities throughout a victim/survivors' experience in the family law system, helping to better outcomes for both the direct victim/survivor of violence and their children.

### **Education of Government broadly, including Committee Members for this Inquiry about the Effects of Domestic and Family Violence**

VSS fully supports the recommendations made by the Law Council of Australia, that all Committee Members for this Inquiry be required to undertake training on the nature of domestic and family violence, including coercive control. This would greatly assist the Committee to understand the nuance and complexity of domestic and family violence as well as be mindful of the risks of re-victimisation and vicarious trauma for all participants in this Inquiry.

Of concern are comments that have been made by individuals who will participate as Committee Members for this Inquiry. In the words of Dr Renata Alexander, "it is necessary to address the ill-informed claims"<sup>vii</sup> that allege "false accusations of domestic violence" for the purpose of preventing men having access to their children.

While there may be a small number of cases where false allegations arise, these are often in fact perpetrators denying family violence has occurred. Dr Alexander notes that "those who claim otherwise are distorting the data and are often aggrieved by personal experiences and seek to drive their own agendas".<sup>viii</sup>



Safety from domestic and family violence should continue to be the key priority for government, in terms of legislation and policy. To date, the media commentary from some individuals, with no evidence base, suggests that there may be misinformation on this issue and risks apprehension of bias in any findings made by the Committee.

### **Education of All Professionals in the Family Law System including Judicial Officers and Legal Practitioners, about the Effects of Domestic and Family Violence**

It is well understood that judicial officers across all legal systems are provided with education about domestic and family violence including the dynamics of coercive control, so that they can respond appropriately to the needs of victim/survivors and their families.

Given that the judicial officers in the Family Court jurisdiction sustain high caseloads infrequently pressured work environments where they are required to stay atop changing legislation, changes in technology and court systems, there are certainly challenges for generalist courts to maintain specialised skills in an area as complex as domestic and family violence.

As mentioned briefly above, case law on domestic and family violence in family law matters suggests that there is still a lot misunderstanding in the family court system, across both parenting and property matters, about the impact of non-physical violence on victims/survivors.

In our view, the courts should build on their capacity to recognise reasons why victims/survivors may be reluctant to raise issues in a courtroom environment, such as the unfamiliar setting which is often described as intimidating and fear of retaliation from the other party, both of which are valid reasons why victims/survivors may appear difficult or uncooperative. Support within the court environment is also vital so that victims can participate safely during proceedings.

We suggest that professional development for judicial officers should focus on trauma-informed practices to improve the court experience for victims/survivors. Judicial officers who are appropriately skilled will be able to identify and respond appropriately when domestic and family violence presents and engage effectively, safely and respectfully with victims/survivors.

VSS & WLSSA recommend that a national accreditation and monitoring scheme be established for family consultants, family assessment report writers and children's contact services. The accreditation scheme should include compulsory topics on trauma informed practice, domestic and family violence, cultural safety, mental health, LGBTQI awareness and disability awareness. A national scheme would also ensure that there is consistency and minimum standards across the sector. Most importantly it would reduce the risk of victims including children, being re-traumatised by legal proceedings.

### **Case Study 1**

**Stephanie is the mother of 4 children. There is a history of family violence with her ex-partner, Josh. Stephanie however has asked for charges to be withdrawn by the police and has revoked a previous intervention. Stephanie was forced to apply urgently in the family law courts because Josh withheld the youngest children following a weekend visit to their fathers. Peter the oldest child wants nothing to with his father, Josh, as he was also subjected to family violence. Peter's mental health as a result of the family violence is not good. The mere mention of his father could lead Peter to have a mental health breakdown. Peter sees a psychologist and other professionals on a regular basis.**

**At the family assessment, the report writer insists on speaking to Peter about the family violence. Peter becomes more and more agitated as the report writer keeps questioning Peter about the violence and why he does not want a relationship with the father. The report writer is abrupt in her communication**



style and does not give Peter much time to digest and answer before repeating questions. Eventually after 20 minutes of questioning Peter suffers a breakdown. Stephanie struggles to calm him down. The other children become distressed upon hearing and witnessing Peter's distress. Stephanie also leaves the appointment in a fragile state.

The report writer recommends that the other children should spend more time with Josh because of Peter's needs. There is no exploration as to the underlying reasons for Peter's response or the violence. There is also no exploration as to whether there is any potential for risk of harm for the other children given the entrenched history of family violence.

Clear procedural guidelines regarding the response of family assessment report writers and the family law courts to children who disclose information but have requested information to be withheld due to safety concerns needs to be considered. The success of the current family assessment report writing regime depends on all parties being open and frank as to the issues and dynamics within families. However, we increasingly see that this process puts at risk potentially vulnerable children who make disclosures, as reports are provided to legal representatives and their clients. VSS and WLSSA recognise that procedural fairness requires that parties be notified of information, but procedures need to be instituted to protect highly vulnerable children.

### Case Study 2

Patricia who was 10 years old attended a family assessment with her two brothers, mother and father, Brad. There had been allegations of family violence with Brad named as the perpetrator. Chloe, Patricia's mother had an intervention order against him.

Patricia during her one on one conversation with the family assessment report writer states "please don't tell Dad this because he would get angry at me ...." Patricia explained to the report writer violence she witnessed happening in her household and what the father, Brad had said to her and her siblings regarding the proceedings. It was clear from Patricia's statement that the father, Brad had warned her about mentioning any of the family violence or inappropriate conversation that he had held with her and her siblings. The conversation that Patricia had with the report writer was transcribed word for word in the family assessment report. Brad was spending time with the children on during the week of the release of the family assessment report. No consideration was given to any potential safety considerations given Patricia's disclosure. At a second family assessment appointment, Patricia refused to say anything.

Without capacity building around support for victims/survivors, any proposed law reform, no matter how well drafted, will be less effective and may not result in procedural fairness for both parties. For this reason, we advocate for specialist courts and services who are best placed to provide a safe and appropriate legal response.

### Multiple Courts and Jurisdictions creates uncertainty and complexity for victims/survivors

In Australia, a victim/survivor of domestic and family violence will be required to move between various courts and jurisdictions. A person may seek an intervention order in a Magistrate's court, appear as a witness in a criminal matter in a District or Supreme Court, while also having a parenting or property matter before the family court. There can be discreet issues which arise in each different jurisdiction currently that create additional risks to safety.



We note that there is a persistent theme of a lack of information sharing between these courts for victims/survivors. Family Court matters may be heard without the benefit of a lower court history related to an intervention order or a breach thereof, lacking a full appreciation of the pattern of violence, which often includes, intimidation, control and coercion.

We know from research that best practice requires court information systems are improved so judicial officers across all relevant jurisdictions in matters involving family violence, whether child safety, criminal or family matters court proceedings, have access to all the records relevant to the specific case.<sup>ix</sup>

Currently, a victim/survivor may be advised that they should not pursue an intervention order, as a federal order can override a lower court state court order, regarding contact. This is an issue that arises frequently in Family Safety Framework meetings, where there are discussions about how to keep women at high risk of violence safe.

The Australian Law Reform Commission has previously made recommendations that formal information sharing arrangements between state and territory courts, the federal family courts, police and other agencies be established to deal with family violence issues<sup>x</sup> consistent with the National Plan to Reduce Violence against Women in Australia.<sup>xi</sup>

We absolutely hold that processes for information sharing are necessary for the safety of victims/survivors and should be in place. Additionally, we advocate that a specialist court could provide a best-practice model for supporting families throughout the family law system.

### **Specialist Domestic and Family Violence Courts**

We support the Australian Law Council's recommendation that the government does not go ahead with the proposed amalgamation between the Family Court and Federal Circuit Courts. We believe that risks dilution of the specialist capability of the Family Court, which has particular significance in keeping victims/survivors of domestic and family violence safe, and acting in the best interests of their children.

Specialisation is important because it can provide for training and knowledge and training for judicial officers, registrars and court staff to equip them to identify and manage risk, in order to protect children and victims/survivors in need of the courts' assistance.

Specialised court infrastructure is also important to support children and families, for example when giving evidence or appearing in matters involving the alleged abuser. Moving away from a stand-alone specialist court with co-located legal and non-legal support services goes against the advice of expert reports and research, including the Australian Law Reform Commission review.

VSS & WLSSA propose that a better model for responding to domestic and family violence in the family law context might be the introduction of specialist integrated domestic and family violence courts, and believes that Australia should consider the New York integrated domestic violence (IDV) court system as a model that could be introduced here. It has been observed that the IDV model could be used to inform specialist family violence court systems in Australia, to improve efficiency, perpetrator accountability and victim/survivor satisfaction.<sup>xii</sup>

The integrated model brings multiple stakeholders together to increase transparency, improve safety and enhance perpetrator accountability, while also improving case management and processing.<sup>xiii</sup> "Integrated Courts are presided over by judicial officers trained in multiple areas of law who are supported by a state-wide domestic violence training and education programs".<sup>xiv</sup>



Across Australian jurisdictions, the approach to specialist family violence courts has been described as ad hoc, with specialist DFV courts being introduced in most states and territories. The first specialist family violence court was introduced in South Australia twenty years ago and these courts now operate at all metropolitan courts across Adelaide.

We therefore advocate for a consistent, national response on this issue, and consider that South Australian agencies and services who have led in this context are well placed to contribute further to the Inquiry on this issue. We would suggest that serious consideration is given to bring a Committee hearing to South Australia to further this discussion.

### **Children's experiences arising from Family Court matters**

Specialisation is particularly important with respect to domestic and family violence and responding to children at risk. These children are often silent victims of violence, but are often the most vulnerable to harms arising from their sensitivity to emotional distress, and are particularly relevant in terms of fatality risk.

Domestic and family violence, whether or not it is directed towards the child, has the potential risk of traumatisation that is now well understood to produce long-term effects on psychological and physical wellbeing. It can affect future relationships and have significant ongoing emotional impacts. It is acknowledged in research that children experience violence perpetrated against a parent in a similar way to having had that violence perpetrated directly against them.

Given our knowledge and experience from working with survivors of child sexual abuse, we recommend trauma-informed assessment of children to determine the potential risks for a child who has regular contact with a parent who perpetrates violence, in terms of their safety, emotional wellbeing, broader relationships and socialisation.

VSS & WLSSA also recommend that Independent Children's Lawyers (ICL) be required to comply with the Guidelines for Independent Children's Lawyers. ICLS as per the guidelines should ensure the participation of children either through hearing views and/or explain the process and outcome of legal proceedings to the children. We also support ICLS being trauma informed and being taught child development and engagement.

Lastly, we recommend that as part of the family assessment report writing requirement that report writers be required to gather and take into account evidence from professionals who are working with children. These professionals may include psychologists, counsellors, mental health workers and teachers.

### **Property Matters**

We have found that often in the context of domestic and family violence situations that failure to comply discovery of documents. This is exacerbated when the other party is self-represented as they seem to be given greater leniency. It is not uncommon for matters to be listed for conciliation conferences where solicitors may not have any or all of the necessary documents. Failure to comply with procedural orders mean that matters are unnecessarily delayed. For many victims of family violence, this may mean that family homes that could have been sold by the parties, with a small amount of equity left for redistribution, is eliminated by banks and financial institutions foreclosing.

### **Related matters**





In addition to the identified terms of reference, we encourage that:

- More resources be directed towards the family law courts to enable greater provision of services to people living in rural, regional and remote areas of South Australia. Currently, the family law courts do not provide a regular and consistent outreach to the north of South Australia. There is an outreach circuit to Mount Gambier. For clients living in areas where there is no access to family law courts attendance at court and at court ordered assessments, appointments or conferences mean that families incur substantial costs.
- Adequate funding and expansion of the Aboriginal and Torres Strait Islander List. In 2018, commenced delivering an Indigenous List at the Federal Magistrates Court in Adelaide. The establishment of the List in Adelaide was possible with support from Sydney registry and in particular their Aboriginal & Torres Strait Liaison Officer. The Aboriginal and Torres Strait Islander List enables Aboriginal and Torres Strait Islander families to develop culturally safe solutions to issues relating to children. The List has expanded to Alice Springs (2019) and Melbourne (2020). We also strongly recommend that Aboriginal and Torres Strait Liaison Officers should be employed in each family court registry.

## Conclusion

The Council of Attorney Generals has not looked into the issue of national domestic and family violence laws since 1999, beyond the context of domestic violence orders. We consider that the next step for government should be implementing a national legislative framework that encompasses an improved understanding of domestic and family violence, contemplating coercive control, which includes reform of family law systems.

Realistic funding for safety, legal and therapeutic services should be a key outcome of this Inquiry. Further investment is needed to improve community education in order to break the cycle of violence and abuse in families.

South Australia continues to innovate in this area through legal representation, such as the Women's Domestic Violence Court Assistance Service SA and domestic violence units including InDIGO located at Christies Beach, and non-government services delivering trauma-informed wrap around services for victims of family violence, both in crisis and with tertiary support.

VSS & WLSSA would welcome the opportunity to provide further commentary as part of this inquiry.



- <sup>i</sup> Australian Bureau of Statistics. (2017). 4906.0 - Personal Safety Survey, Australia, 2016.
- <sup>ii</sup> House of Representatives Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, A Better Family Law System to Support and Protect Those Affected by Family Violence (2017); citing Research Professor Richard Chisholm, *Family Courts Violence Review*, 2009, p. 4.
- <sup>iii</sup> Australian Institute of Family Studies, *Evaluation of the 2012 family violence amendments: responding to family violence*, 2015, p. 66; see also Professor Rachael Field, Ms Zoe Rathus AM, Dr Samantha Jefferies, and Dr Helena Menih, *Submission 122*, pp. 4-5.
- <sup>iv</sup> National Domestic and Family Violence Bench Book 2019 <https://dfvbenchbook.aija.org.au/dynamics-of-domestic-and-family-violence/factors-affecting-risk/>, citing NSW Domestic Violence Death Review Team, *Annual Report 2012-2013* (Department of the Attorney General and Justice (NSW) (2015); Office of the State Coroner (Qld), *Annual Report 2013-2014* (2014); Ombudsman Western Australia, *Annual Report 2016-2017: Family and Domestic Violence Fatality Review* (2017).
- <sup>v</sup> Douglas, Heather, "Legal systems abuse and coercive control", *Criminology and Criminal Justice*, 18 1: 84-99. doi:10.1177/1748895817728380
- <sup>vi</sup> Upcoming paper of Allan Perry, University of Adelaide and Celia Moodie, Victim Support Service, concerning the case of *Kennon* and recent decisions in property matters where family violence is raised as an issue.
- <sup>vii</sup> Renata Alexander, "We don't need another family law review – we need to act on what we already know", ABC News, 21 September 2019, <https://www.abc.net.au/news/2019-09-21/family-law-review-unnecessary/11532074>.
- <sup>viii</sup> Ibid.
- <sup>ix</sup> Taylor, A., Ibrahim, N., Wakefield, S. & Finn, K. (2015) *Domestic and family violence protection orders in Australia: An investigation of information sharing and enforcement: State of knowledge paper* (ANROWS landscapes, 16, 2015).
- <sup>x</sup> Australian Law Reform Commission, *Family Violence: A National Legal Response* Report 114; NSWLRC Report 128.
- <sup>xi</sup> Council of Australian Governments, 2011, *National Plan to Reduce Violence against Women and their Children 2010–2022*.
- <sup>xii</sup> Fitz-Gibbon, K. E. (2018). *The Peter Mitchell Churchill Fellowship to examine innovative legal responses to intimate partner homicide in the UK, USA and Canada: Report*. <https://doi.org/10.26180/5bab1a596fde4>
- <sup>xiii</sup> Rickard E (2010) Civil protection orders in integrated domestic violence court: An empirical study. Available at: <http://nrs.harvard.edu/urn-3:HUL.InstRepos:4772900>.
- <sup>xiv</sup> Kirby M, (2016) Integrated Domestic Violence Courts. Research Report. Office of Legislative Research, Connecticut.