



Supplementary Submission to the Committee on Social Policy and
Legal Affairs in relation to the

**Parliamentary Inquiry into a Better Family Law
System to Support and Protect Those Affected by
Family Violence**

inTouch, Multicultural Centre Against Family Violence

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inTouch, Multicultural Centre Against Family Violence, appreciated the opportunity to participate in the Public Hearing to the Parliamentary Inquiry on 24 July 2017. Further to our original submission this document details views and recommendations on questions raised during the hearing process.

1. Early identification of those at risk

The early identification of, and the provision of assistance to, families experiencing family violence when they come into contact with the family law system is vitally important. Early determination of the risks at the time of filing court applications by the Registrars would ensure earlier listings before the Judges, which could result in better risk assessments and potentially better overall decisions. Additional court resources could help identify risks at an earlier stage and additionally facilitate a reduced number of cases in the court system for the final hearing stage - as such matters could potentially be settled earlier. In this context, we fully support appointment of additional registrars, family report writers and judges.

2. Ongoing Funding of Community Legal Centres

Lack of ongoing funding for employment of family lawyers at community legal centres is an access to justice issue and especially so for the clients of inTouch. Certainty of service provision through secure on going funding would go a long way in ensuring victims of family violence who access the services of inTouch Legal Centre can better participate in family law proceedings. Importantly, this would also assist in their being able to protect their children more effectively.

3. Changes to the Family Law Act 1975

This legislation is very complex and difficult for users to understand. It would benefit greatly if its clauses were simplified. By way of example, the legislation is problematic, as it does not make it abundantly clear that the safety of a child is a priority.

The definition of “family violence” in s 4AB of the *Family Law Act 1975* should be broadened and be in similar terms to the definition in s 5 of the *Family Violence Protection Act 2008* (Vic).

There are also some inconsistencies in the approach of different judicial officers. This is specifically in regard to the weight they place on the “benefit of the relationship” between a child and a violent parent, the psychological harm to a child of this relationship and the primary carer of the child. We propose inclusion of some key presumptions specifically:

- **Presumption 1-** A person who uses or used violence against a parent or carer of a child does not act in the best interests of a child or is deemed unsafe for a child to be

around. A decision on the conditions of time spent between a child and that person who used violence should be made by a court, only if such time is in the best interests of the child and there is strong evidence to support that contention. There should be evidence to indicate what supports or assistance a person who has been violent has received to support their understanding of respectful relationships and how that person changed their behaviour.

- **Presumption 2-** Exposing a child to violence is deemed to not be in the best interests of a child. A person perpetrating violence may be deemed as a person with whom a relationship is not to be promoted.
- **Presumption 3-** A parent who has a child residing with that parent has a right to make decisions about medical, psychological or psychiatric treatment of that child upon an application being filed at the court exercising jurisdiction under the Family Law Act 1975. Such presumption can be overturned upon hearing of the evidence or by consent of the parties at any stage of the proceedings.
- **Presumption 4-** A parent who has a child residing with that parent has a right to make decisions about educational needs of that child and enrol a child at school or change schools upon an application being filed at the court exercising jurisdiction under the Family Law Act 1975. Such presumption can be overturned upon hearing of the evidence or by consent of the parties at any stage of the proceedings. A decision to enrol a child at school or change schools can be made unilaterally by a resident parent if it is not safe for such parent to seek the consent of the other parent, or when such consent is unreasonably withheld, or the location of the other parent is unknown and cannot be known after reasonable attempts have been made to locate the other parent, and the school requires the consent of two parents.

4. Family Violence in Property matters

Family violence is not consistently taken into account by judicial officers in property matters. The effects of family violence on the perpetrator's victims, the effect on the victim's ability to look after their children, how family violence affects the victim's health or future ability to find employment or fulfil their parental duties are not considered. Prohibitive legal costs, court delays and having to deal with the recovery from the impact of violence may result in women not pursuing a property settlement. This is particularly so for women from diverse cultural backgrounds who in many instances do not know or understand their legal rights.

Family violence should be considered as "the negative contribution" made by the perpetrator to the relationship as the violence makes it a more arduous task for a woman to look after the children and carry out household duties. Family violence should also be

prescribed in the list of relevant factors in determining property orders under s 79 (for married couples) or s 90SM (for de facto couples) of the Act. The effects of family violence should be one of the factors for consideration when property orders are determined.

We support the Women’s Legal Services Australia *Safety First in Family Law- A Five Step Plan (2016)*, particularly in relation to the government investing in creating a new list, such as a divorce list, for determining small property divisions. This would make small property settlements accessible, particularly if the court filing fees are reduced for small property settlements and the court forms for small property pools are simplified.

5. Dowry in Property matters

Dowry practices are relatively unknown in the Australian legal system and for this reason are overlooked when property is divided. Due to jurisdictional limitations, there are some difficulties associated with dividing property that is located outside of Australia.

Consideration should be given to making dowry-related property demands illegal in Australia, whether such demands or proposed exchanges are made in or outside of Australia. We recommend the division of assets be adjusted in accordance with any dowry-related returns, which have already been made. Family violence perpetrated during the relationship should be regarded as a “negative contribution”. We are not aware of any examples when an Australian court has taken property located outside of Australia into account in property division here.

6. Impact of family violence on Children

inTouch documented the impact of family violence on culturally and linguistically diverse children in its report: **‘What about the Children? The voices of culturally and linguistically diverse children affected by family violence’**.¹ The findings are supported more broadly by the family violence services sector and well documented by other studies. The impact can vary from short to long term effects and can lead to children developing emotional and behavioural problems, such as becoming aggressive or destructive and becoming perpetrators of violence themselves.²

7. Family Consultants

It is vitally important that consistent standards are put in place alongside appropriate accreditation in relation to dealing with victims of family violence where family consultants

¹ <http://www.intouch.org.au/our-work/research-and-advocacy/>

² <https://www.betterhealth.vic.gov.au/health/healthyliving/domestic-violence-and-children>

are concerned – especially given they provide expert information that influences decisions made in family law proceedings.

They need be equipped and trained to appreciate cultural nuance, be culturally competent and understand how to interview survivors of family violence and their children with sensitivity and regard for their circumstances.

8. Magistrates courts exercising jurisdiction under the Family Law Act 1975

Magistrate courts in most states have the power to make orders in certain matters under the *Family Law Act 1975*. There are, however, many reasons for the Magistrates Courts not to exercise their powers under the Act.

We urge the government not to pursue the proposal of Magistrate courts exercising their powers under the Act. Due to the complexities of the family law matters and many matters coming before the courts with family violence allegations, Magistrate Courts do not have the resources, like family report writers, or the time in their busy lists to consider the complexities of the family law disputes.

The Federal Circuit Court and the Family Court of Australia are better placed given their level of expertise to deal with these matters.

9. Barriers to the Justice System faced by women from migrant and refugee backgrounds experiencing family violence

The inTouch report '*Legal barriers for CALD women experiencing family violence*', speaks to the obstacles women from diverse cultural backgrounds face in relation to access to the justice system.

In short these include: language barriers; misunderstanding of the concept of family violence; lack of access to information; not knowing their rights; the fear of social isolation; visa dependency; fear of authority; unsympathetic interpreters and/or police; confusing and intimidating processes; prejudicial attitudes; lack of cultural awareness by legal and support services; challenges when working with interpreters; and inadequate support from the services.³

In addition, there is no information about Family Violence Provisions in the Migration Act so those provisions are not well known more broadly. If translated materials accompanied granting of a Temporary Partner Visa then women impacted, and diverse communities more broadly, would have some basic understanding about the system and eligibility criteria.

³ <http://www.intouch.org.au/our-work/research-and-advocacy/>

General lack of awareness by service providers of the Partner Visa holders' rights and where to refer clients for professional assistance also contributes to women staying in violent relationships for the fear of being deported as their key source of information about their rights is typically from their abusers.

10. Use of Interpreters

Every effort should be made to ensure interpreters are appropriately qualified and proficient in relaying the nuance of legal language used by a court or lawyers. It is often the case that best practice is not followed in terms of engagement of interpreters and there are frequently no arrangements made for their presence at hearings or appearances. Further, assumptions are often made about the language spoken by a woman requiring assistance with little or no understanding of what she might actually need. For example, some languages such as Arabic, and its different dialects, are spoken by people from over 22 countries so it is vitally important to determine which dialect the person who needs the assistance of an interpreter might speak based on their country of origin. It is also important to have a female interpreter for a female client given the sensitivities of the issues being addressed. Representatives of the court should undertake appropriate cross-cultural training to be better equipped in handling these matters with fitting cultural sensitivity.

11. Exposure Draft- Family Law Amendment (Family Violence and Cross-examination of Parties) Bill 2017

The proposed legislation in its current form in s 102 NA refers to *"a family violence order (other than an interim order) applies to both parties"*. Whilst cross-examination could occur at an interim stage, the protection offered when there is a final order will not protect the victim at the interim hearing from cross-examination when an interim intervention order might be in place. The section also refers to the order that applies *"to both parties"*. We believe it should be revised to say *"a party"* as the order normally applies to one party only.

An additional concern lies with s 102 NA (2)(b). Specifically that the witness to ask questions during cross-examination be *"a person appointed by the court"*. We strongly recommend the person appointed by the court be a lawyer, not any other person, given lawyers are bound by ethical obligations and further understand the relevance of questions to issues in dispute and are not likely to use cross-examination to further harass a victim of family violence.