

Women's Legal Service



Introduction

Women's Legal Service Inc. (WLS) is a specialist community legal centre providing legal and welfare advice and assistance to women in Queensland. We have operated for over 30 years and assisted over 60,000 women. In the last financial year (2013/14), we assisted over 3,200 women. Forty percent (40%) of our clients are from rural, regional and remote areas of the State. We provide assistance in the areas of family and domestic violence (FDV), family law, child support and some child protection. Despite the services offered there are at least a further 24,000 requests per year for assistance that we are unable to meet.¹

WLS has a particular interest in the intersection of legal processes and the law and women's experience, as well as in issues of violence against women and children. Our submission is informed by the direct experience we have with women providing legal advice, representation and welfare support.

Women often approach WLS, either at a time when they are thinking about separation or when they have separated from their partner. Separation is well recognised as the most dangerous time for women and children escaping violence. However, danger for women and children peaks again when women take steps post-separation towards permanent separation e.g. the finalisation of family law matters that can take place 12-18 months after separation.² Women are therefore involved in legal proceedings in the Magistrates courts, Children's and Family Law Courts and possibly criminal matters, at a time when they and their children are at most risk.

WLS welcomes the opportunity to provide a brief response to the Royal Commission mainly concerning the intersection between family law and domestic violence. We understand that our sister Service, Women's Legal Services Victoria will be providing a comprehensive response. We have not had a large amount of resources to devote to this submission and have mainly highlighted issues, concerns and recommendations made previously in different forums.

¹ WLS recently conducted an independent evaluation by the Ithaca Consulting Group of its Statewide telephone line and evening advice service and it was found that we were missing 2000 telephone calls for help on average each month and 90% of these were individual callers (rather than women telephoning repeatedly).

² Hardesty Jennifer L. "Separation Assault in the Context of Post-divorce Parenting: An Integrative Review of the Literature" Violence against Women 2002 quoting Ellis (1992) at p. 600.

The Family Law Council's current reference should include the FDV court system

The Family Law Council holds a current reference considering the intersection of child protection and family law. This is no doubt an important topic. We believe that the opportunity should have been taken up to consider the common intersection between family law, child protection and the FDV court system³ and how the FDV court system could better interact and collaborate with these other two court systems.

Recommendation 1

That the Royal Commission support a recommendation to the Federal Attorney-General to expand the Family Law Council's current terms of reference considering the intersection of family law and child protection to include the FDV system.

Recommendation 2

That the Family Law Council's expanded terms of reference include a consideration about how the FDV system could better interact and collaborate with the Family Law Courts and the children's courts including but not limited to a consideration of:

- how evidence/better evidence of FDV could assist court decision-making;
- the making of domestic violence protection orders (DVOs) that include children and their impact on family law and children's court orders;
- any issues about consistency between DVOs and family law orders;
- whether there were any ideas that would assist the better operation, improvement or encouragement of the use of S. 68R and S. 68T of the Family Law Act especially in urgent/priority matters; and
- how each court could share information and work in a more integrated way.

³ Although noting that some of our clients are also involved in the criminal court jurisdiction (perhaps about breaches of protection orders or other issues), and a myriad of other legal and quasi legal agencies. Eg. Centrelink, Child support Agency, FDR services.

The need to recognize the important role of courts in perpetrator accountability and setting/reflecting community standards

The issue of violence against women and children in Australia occurs at alarming rates and is one of the greatest human rights challenges that we as a country face.

The statistics are startling.

Violence against women and children in Australia is extensive and occurs at unacceptably high rates. One in three women experience violence and one in five women experience sexual violence in their lifetime. One in four children witness violence in their home.⁴

In Queensland, reported occurrences of FDV have increased in the last four financial years; there was a 7% increase in reports to the police during 2010/11, a 9.6% increase during 2011/12, a 10.8% increase during 2012/13 and a 2.7% increase during 2013/14. As the Queensland Taskforce on Domestic Violence noted, on average, there are 181 incidents reported to the police every day in Queensland.⁵ And we know these are just the tip of the iceberg, as victims are often reluctant to report partner violence.⁶

Intimate partner violence was found to be the main contributor to death and disability to women aged 15 to 44 in Victoria.⁷

Domestic violence claims the lives of more Australian women under 45 than any other health risk, including cancer.⁸

Every three hours, a woman is hospitalised from domestic violence.⁹

Aboriginal and Torres Strait Islander women are up to 35 times more likely to be hospitalised.¹⁰

In Queensland, the Domestic Violence and Family Violence Death Review Unit reports that approximately 45% of all homicides between 1 January 2006 and 31 December 2012 occurred within an intimate partner or family relationship.¹¹

⁴ ABS 2006.

⁵ *Not Now, Not Ever Putting an End to Domestic and Family Violence in Queensland*, a Report of the Queensland Domestic Violence Taskforce 2015 p. 47.

⁶ Ibid at p.75 quoting Australian Bureau of Statistics (ABS) 'Action Taken in Response to Partner Violence', Personal Safety Survey, Australia 2012.

⁷ <http://www.vichealth.vic.gov.au/Programs-and-Projects/Freedom-from-violence/Intimate-Partner-Violence.aspx>.

⁸ Ibid.

⁹ Pointer S & Kreisfeld R (2012) Hospitalised interpersonal violence and perpetrator coding, Australia, 2002-05. Injury research and statistics series no. 77.

¹⁰ Australian Institute of Health and Welfare (2006) Family Violence among Aboriginal and Torres Strait Islander peoples.

¹¹ Op cit. *Not Now, Not Ever Putting an End to Domestic and Family Violence in Queensland* at p. 76.

This year on average, two women per week in Australia have been killed by their partner or ex-partner. Fifteen women so far this year have been killed in Queensland alone.

Domestic violence is not a “post code” crime and affects all socio-economic, cultural and religious groups.

This is not an issue that can be solved by action by governments alone. Every individual has a role to play in eliminating violence against women and the Queensland Domestic Violence Taskforce Report, *Not Now Not Ever* recognised this and challenged community members, individuals, faith communities, community organisations and sporting clubs to reflect on their behaviour and the behaviour they witness, and to speak out against attitudes that support FDV.¹²

Institutions such as the Family Law Courts, Child Safety, Legal Aid, the Child Support Agency and family dispute resolution services interact with high numbers of victims and perpetrators of violence in their respective client bases, and are therefore instrumental in the way violence against women and children is considered and acted upon in the public sphere. These institutions can send powerful messages to the community in the decisions they make every day about not excusing violence, prioritising safety, supporting victims of violence and making perpetrators accountable. It is important therefore that their role in stopping violence against women and children and preventing its continuation is acknowledged.

Accountability is critical and the courts have a significant role in promoting perpetrator accountability in the kinds of orders they make. Until this occurs, significant resourcing is required by victims of violence and their children to support them through the legal system so that they have the best chance of obtaining long term safety. This includes the family law system.

Recommendation 3

That the courts, including the Family Law Courts, recognise their important role in sending the correct message in their decision-making to the community about FDV by holding perpetrators to account for their use of violence.

Recommendation 4

That relevant courts and legal policy makers understand the important role of the family law system in ensuring women and children’s long term safety from FDV.

¹² Ibid. p. 16.

Resources

In 2008, it was estimated that the expenditure on responding to FDV in Queensland was \$111 million.¹³ This figure is projected to increase. Although we exist in a tight fiscal environment, there is a significant cost to the community by **not** appropriately responding to FDV.¹⁴ The investment for government is worthwhile, as it has been shown in the KPMG Report that for every woman whose experience of violence can be prevented there is a cost saving of approximately \$20,766 across all affected groups in society.¹⁵

It is also clear that public education campaigns and media reports of FDV increase awareness about violence in the community, but as a result of increased awareness, rates of reporting FDV will increase before they begin to decrease. Increased reporting rates can be a result of greater awareness of the issues and a greater confidence in getting a positive community response.¹⁶

It is therefore essential that greater resources be dedicated to frontline services in order to respond to this increase.

Children's safety is inextricably linked to women's safety

There is a tendency for the Family Law Courts to view violence against women and violence towards children as two separate and distinct issues. Priority appears to be given to violence/abuse directed towards children. However, WLS would argue that this approach should and must change.

The safety of women and their children are inextricably linked. No matter how collaborative systems are, no matter how much information they share and goodwill they possess towards each other, the Family Law Courts will put women and children in danger if they:

- concentrate their effort only on the investigation of direct child abuse whilst ignoring FDV;
- only recognise or acknowledge physical abuse;
- fail to recognise or acknowledge post-separation violence and believe that FDV stops when protection orders are made;
- fail to assess for, or understand power and control dynamics;
- fail to recognise and assess that FDV represents an attack on the mother-child relationship; and
- fail to recognise, assess, or disregard the long term impacts on children's health and wellbeing when placing children with perpetrators of violence, or making orders that allow for their continued exposure to violence/abuse.

¹³ Ibid.

¹⁴ KPMG, *The Costs of Violence Against Women and their Children*, a Report prepared for the National Council to Reduce Violence against Women and their Children, March 2009.

¹⁵ Ibid.

¹⁶ Liz Forsyth, Partner KPMG at the WLS Thought Leader Forum 20th May 2014 at Queensland Parliament House.

Children's exposure to FDV is a significant issue and it is recognised as a form of child abuse.¹⁷ Research has shown fairly definitively that 'violent households are significantly more likely to have children than non-violent households and that violent households have a significantly higher proportion of children aged five years and under'.¹⁸

As the Benevolent Society highlights in their *Social Issues Snapshot: The impact of domestic violence on children*,¹⁹ safe outcomes for women and children who live with domestic violence are inextricably linked:

Children's experiences of domestic violence are extensive and complex. They include witnessing or being exposed to violence, being the victim of direct abuse, being injured while trying to intervene, and exposure in utero. Research show that the severity of the impact on children is similar regardless of whether they witness violence or experience physical violence themselves... Violence towards children (or threats of violence) is also a strategy used by perpetrators to exert control over their partner or ex-partner and to undermine their parenting and the mother-child relationship. For mothers, such strategies create feelings of helplessness around protecting their children.

Children's safety and emotional well-being are directly linked to the safety of their mothers.

Addressing the needs of the mothers strengthens the mother-child relationship, as it supports mothers to respond effectively to their child, which in turn reduces the impact of the trauma of domestic violence on the child.

Recommendation 5

That there is an urgent need to recognize, at every decision-making level in family law processes, that children are at significant risk where there is violence towards women caring for them. The best chance for a child's recovery when there is FDV is to provide long-term safety to the victims of violence to support and strengthen mothers to better provide for the emotional needs of children.

¹⁷ Edelson, Shin and Amendariz "Measuring Children's Exposure to Domestic Violence: The Development and Testing of the Child Exposure to Domestic Violence (CEDV) Scale (2008) 30 Children and Youth Services Review 502-521; C Humphreys, Domestic Violence and Child Protection: Challenging Direction for Practice Issues Paper 13, Australian and Domestic and Family Violence Clearinghouse, Sydney 2007 and M Flood and L Fergus, *An Assault on Our Future: The Impact of Violence on Young People and their Relationships*, White Ribbon Foundation, 2008, p. 8.

¹⁸ Eastael P and Grey D "Risk of harm to children from exposure to family violence: Looking at how it is understood and considered by the judiciary" (2013) 27 Australian Journal of Family Law at p.59 citing K Richards, Children's Exposure to Domestic Violence in Australia, Trends and Issues in Crime and Criminal Justice No 419, Australian Institute of Criminology, 2011.

¹⁹ Originally published 2012 and re-printed July 2013.

In extreme cases, children can lose a parent to homicide as a result of FDV and this has devastating and lifelong impacts on them; in effect they lose both parents – one to the homicide and the other to the criminal justice system and processes. It is impossible to understand the grief, trauma, emotional aftermath and confusion such an event has on children.

The sad reality is that FDV can also result in child homicide. There have been a number of recent high profile cases that have highlighted the motive of killing a child as revenge against the mother²⁰ (a final and definitive act of power and control). Jaffe et al argue there is little research that has identified the connection between adult domestic violence and child homicide.²¹

However, there is some research that indicates that child homicides are often preceded by a family history of child abuse, prior agency involvement and domestic violence.²² Jaffe et al's review of the literature indicates that children living in homes with domestic violence may be at risk of homicide, although the risk for lethality may not appear obvious in some cases due to the absence of a history of child abuse.²³

The researchers above considered 17 domestic violence death review committee reports in the United States and Canada and found that children are at risk of being killed in homes where there is domestic violence. They note that what is not clear is the potential risk factors that may indicate lethal risk for a child. As children are not always physically attacked or directly abused in cases of domestic violence homicide, there may be different risk factors that may contribute to child homicide. They recommend building on the existing literature of DV risk factors for adults deaths to identify factors specific to the risk of lethality for children.²⁴

The issue of child deaths as a result of domestic violence is an issue of concern for Queensland. According to the Queensland Child Death Case Review Committee (CDCRC) in 2012/2013, domestic violence was the second most common parental and family issue identified in the child deaths investigated.²⁵ Child deaths were investigated at this time only if the child was a child known to Child Safety in the three years prior to their death.²⁶

²⁰ The case of Luke Batty who was killed in 2014 and the case of Charles Mihayo <http://www.theage.com.au/victoria/killer-dad-charles-mihayo-dressed-up-filmed-daughters-before-murdering-them-court-told-20141105-11h7u6.html> are examples.

²¹ Jaffe Peter G., Campbell Marcie, Hamilton Leslie HA, Juodis Marcus *Children in danger of domestic homicide*, Child Abuse and Neglect 36 (2012) 71-74.

²² Ibid.

²³ Ibid. p. 72.

²⁴ Ibid. p. 73.

²⁵ Queensland Child Death Case Review Committee: Annual Report 2012-2013 http://www.cdrc.qld.gov.au/pdf/reports/annual_report_2012-2013/CDCRC-Annual-Report-2012-13.pdf.

²⁶ More updated statistics are unavailable because of a change to the way child deaths are investigated in Queensland. Following a recommendation of the Carmody Inquiry, they are intra-departmental and reports are given to the chief executive of the department and to our knowledge are not publically available.

We support the recommendation by the researchers for the development of FDV child risk factors. The issue of child homicide is a matter of concern for Australian society as a whole and should be of particular concern to both the child protection and family law systems because of the high levels of families affected by FDV that use and interact with these legal systems.

Recommendation 6

That the Family Law Courts introduces a FDV risk screening and assessment process across all courts that can be shared across jurisdictions and that this be developed with acknowledged experts in FDV.

Recommendation 7

That experts with acknowledged expertise in FDV be engaged by the Victorian Government to fund the development of the identification of specific risk of lethality factors for children, building on the existing literature of FDV risk factors for adult deaths.

Co-occurrence between FDV and children's exposure and need for a holistic response

The rate of co-occurrence of Australian children experiencing *physical* abuse and being exposed to domestic violence, and experiencing *sexual* abuse and being exposed to domestic violence have been estimated at 55 percent and 40 percent respectively.²⁷ Bedi and Goddard state that 'families in which child abuse and intimate partner violence co-occur clearly represent a significant proportion of those in which either is present'²⁸.

These statistics exemplify that children's exposure to FDV may be one of the types of violence/abuse present in a family and it is important to conduct a full assessment that considers all the dynamics in a holistic way.²⁹

²⁷ Richards, Kelly *Children's Exposure to Domestic Violence in Australia* Trends and Issues in Crime and Criminal Justice in Australia No. 419 quoting Bedi and Goddard.

²⁸ Ibid.

²⁹ Ibid.

Family Reports and assessments in Child Safety

The high correlation between child abuse and FDV underscores the need for experts in FDV to make family assessment reports in the Family Law Courts.

Women’s Legal Services Australia (WLSA) has been aware of the poor quality of some of these assessment reports for some time and has called for specific training about FDV and accreditation for family report writers.

Family reports are highly influential in both the outcome achieved in the courts and the parties’ ability to obtain legal aid funding. For these reasons they may result in major detrimental impacts on women’s and children’s lives when they minimise the violence or miss it altogether. Unfortunately, we remain concerned that voluntary and minimum standards will be insufficient.

Recommendation 8

That an accreditation system for family assessment report writers be developed to improve standards and promote consistency in the assessment of FDV in the family law system.

Is a forensic approach the best way to obtain evidence of FDV/abuse /trauma?

Evidence of FDV/abuse/trauma ought to be obtained through specialised screening and assessment conducted by experts.

Screening tools which are not specialised may not be effective. For example, we understand that a tool for assessment of harm of children used in Queensland child protection matters does not contain specific references to FDV. Instead it frames violence issues as “relationship issues”, which may mutualise violence.

Assessment reports should be undertaken by FDV experts to properly obtain high quality evidence of FDV or abuse or other trauma. This approach is intended to ensure that evidence of FDV is not misconstrued or overlooked where it is not specifically sought and appropriately addressed by a report writer.

Recommendation 9

That FDV expert reports be introduced as a matter of routine assessment in family law for families where there are allegations of FDV.

Recommendation 10

That the Royal Commission check that the Victorian Child Protection Agency's assessment of harm tool includes accepted risk factors for FDV and children's exposure to FDV, and if not, that these be developed with acknowledged experts in FDV.

Learnings from FDV deaths to inform systems reform

Some States and Territories have FDV death review committees that consider FDV deaths and make recommendations about systems reform. However, not all States and Territories have death reviews, and there are a variety of different models. For example, in Queensland, the FDV death review unit consists of one person in the coroner's office.

The current State-based approach to FDV death review means that there are a number of gaps, so at a national level, we do not have a comprehensive knowledge of FDV deaths in Australia.

There are also issues with federal agencies being adequately addressed in the State-based reviews and doubt surrounding whether the right questions are being asked.

Recommendation 11

That a national approach to FDV deaths (both adults and children) be implemented to collate data and investigate system failure, that is publically accountable, able to make recommendations, and act on these learnings in a timely manner, building on the existing FDV review committees that exist at a State level.

Recommendation 12

That protocols be established between State FDV death review bodies and responsible Federal agencies to ensure identified systemic issues with Federal agencies and systems are properly exposed and adequately addressed, if they are not already in place.

The family law system

There are a range of reasons why women who experience FDV find it difficult for their experiences of violence to be heard in the family law system. At worst this leaves them (and their children) exposed to further violence through the family law system. These reasons can include a problem in proving the violence to the satisfaction of the legal system. There are systemic barriers that impede a woman's ability to achieve this including:

- a failure by the police apply for protection orders or take action in relation to breaches of protection orders;
- a failure of child protection systems to properly investigate or be resourced to do so;
- a lack of understanding by professionals of FDV dynamics and the impact on victims (professionals can miss coercive and controlling behaviours);
- a failure by professionals within the system to understand the relationship between violence against women and violence against children;
- lack of Legal Aid and legal representation;
- fragmented and disjointed systems; and
- community services that are under-resourced and over-stretched.

Despite the extent of FDV in the wider community and in the family law system itself, the dominant discourse in research, policy and practice relates to high conflict families, common couple violence or separation instigated violence. The emphasis on 'conflict', separation violence and mutuality can direct attention away from issues of safety and risk.

FDV can be minimised in family law practice as being an isolated, uncharacteristic incident caused by the distress of a separation, rather than as a risk marker for severe or even lethal violence in the context of a pattern of historical abuse. Violence towards the mother can be assessed as separate from issues of risk and safety for the children. For example, it can be regarded that the perpetrator is a bad husband, but a good father. Despite FDV being highly relevant to the determination of parenting orders, its importance can be minimised in the context of parenting.

When FDV cases are categorised as high conflict, common couple or as separation violence - the effect on the victim is that the violence is mutualised and the responsibility for stopping the violence and protecting the children is shifted solely onto the adult victims.

In telling research by Patricia Easteal and Dimian Grey³⁰ in their consideration of 60 family court judgements where the facts included allegations of family violence and exposure to family violence and/or child abuse, it was found that orders for no time or even for only supervised time are not the norm in cases involving allegations of either child abuse or exposure to FDV.

Most of the cases applied the 2006 reforms to the Family Law Act, and only four applied the 2012 reforms. Unsupervised contact was granted in 70% of the cases – a trend that is consistent with research outcomes over the past 15 years. This is consistent with our clients' experiences and the reasons that women seek assistance from our Service – they are concerned about their own safety as well as their children's safety post-separation, particularly in relation to family law outcomes. These concerns are ongoing despite the changes to the Family Law Act in 2012 that clearly prioritised the protection of children.

Emphasis on shared parenting and presumption of equal shared parental responsibility (ESPR)

Many women who seek assistance from our Service believe that they must give their children's father, who is the perpetrator of violence, equal time with the children. The presumption of ESPR and emphasis in the Family Law Act on shared parenting was not changed by the 2012 amendments. There is continued confusion in the community between ESPR and equal time. Many members of the community believe there is a presumption of equal time, which is not legally correct.

It is often difficult to prove violence/abuse to the satisfaction of the court because it occurs behind closed doors. Many victims can be unrepresented in court because of limited legal aid and many matters are settled in family dispute resolution (mediation), often without legal assistance. When orders for ESPR are made, the court is required to consider equal time or alternatively, orders for substantial and significant time. The presumption continues to place victims immediately on the back foot in the court or in mediation, resulting in orders/agreements that include ESPR or shared parenting provisions that can:

- expose adult victims of violence and their children to ongoing violence, intimidation and manipulation;
- allow ample opportunities for perpetrators of violence to exert ongoing control and decision-making in the family;
- provide opportunities for the mother's parental authority with the children to be continually undermined; and
- effectively deny many children the therapeutic assistance they require through domestic violence or trauma counselling, because the law requires the permission of the perpetrator and this is often refused or it is unsafe to undertake counselling because the perpetrator will have unsupervised contact with the child.

Women's Legal Services Australia has long advocated that parenting arrangements should be in the best interests of each child, worked out on a case-by-case basis. The safety and wellbeing of families

³⁰ "Risk of harm to children from exposure to family violence: Looking at how it is understood and considered by the judiciary" *AJFL*(2013) at 59

is too important to not take the time to judge each case on its own merits, especially when domestic violence and abuse are involved.

Women's Legal Services and domestic violence groups advocated strongly against the 2006 changes to the Family Law Act that emphasized shared parenting. There was concern about promoting shared and joint parenting in a legal system where:

- there are so many cases involving FDV and abuse,
- often the victim of violence is not legally supported by Legal Aid,
- Child Safety will not respond if they assess there is a 'protective parent',
- there is no specialised DV risk assessment and
- the adult victims are made to feel unsupported and that they are solely responsible for protecting their child.

This in turn impacts upon State agencies, as FDV resources are re-directed to support women post-separation dealing with family law processes.

Recommendation 13

That the Royal Commission consider improving outcomes in the family law system for victims of FDV, not only because State and Federal issues are intertwined in individuals' lives, but also because the State budget is directly impacted as community services provide support and assistance to victims of FDV who are involved in Federal legal processes.

Abuse on Contact training package

Women's Legal Service developed an *Abuse on Contact: Keeping Children Safe on Contact* training program in conjunction with a local domestic violence service (DV Action Centre) and a children's domestic violence service (Carinity-Talera). The training was developed with the assistance of a grant from the Ian Potter Foundation Fund, and the training took place in Brisbane, Toowoomba and the Gold Coast during 2014

The target audience involved community, children and generalist workers, with the aim of providing practical skills workers can implement in their day-to-day practice to increase the safety of women and children post-separation. The abuse on contact training package builds on the work of the Service in this area for the last 15 years.

Abuse on contact is harm that occurs when both adult and child victims of family or domestic violence are exposed to ongoing violence post-separation as a result of the legal requirement to comply with family law orders, parenting plans or other agreements that allow or promote time with the perpetrator of the violence. The training traversed the intersection of the legal system and violence towards women and children.

The training included the assessment of domestic violence risk for women and children up to and including lethality. Training to the broader community about FDV risk factors has been a consistent recommendation of international FDV death reviews that underscores the belief that no one sector has the responsibility for responding to FDV and we all must take responsibility. Not all FDV victims will go to specialist FDV services.

The training was also premised on the basis that perpetrating FDV was child abuse and had the same effect on children as direct abuse. Increasing the knowledge in the community about the effect on children of FDV could assist medical and therapeutic assessment of children, as FDV trauma can often be missed.

Legal options and practical tips were also provided that could increase women and children's safety through use of the legal system.

Queensland Taskforce on Family and Domestic Violence

The recent Queensland Taskforce on Family and Domestic Violence Report *Not Now Not Ever* identified the workings of the law and justice system as in need of improvement in responding to FDV.³¹ It particularly noted the court response must be improved, particularly when family law issues arise:

*The Taskforce considered advice and submissions received on the structure of the courts in Queensland and on how the domestic and family violence judicial system intersects with the family law system. From this, it was plain to the Taskforce that the gravity of domestic and family violence can and does get lost in the processes of the court.*³²

To assist the Taskforce deliberations, an opinion was obtained from Kathryn McMillan QC and Crown Law about options to reduce or eliminate any duplication, gaps and inconsistencies between family law issues and FDV. The advice forms part of the appendices to the report and is publically available. It considered two options – a Federally-based one-court model (dealing with family law and FDV matters with the possibility of child protection and youth justice issues) and a State based one-court model (again considering all these issues, but within a State based court).

The report recommended a middle ground approach (See Recommendations 96-98) with the establishment of a specialist domestic and family violence court with specialist magistrates, as the other two approaches involved significant political, constitutional and financial hurdles.

It was envisaged that these specialist courts would deal with civil and criminal domestic and family violence matters and could possibly deal with child protection and family law children's matter obtained by consent to create efficiency and connections.

³¹ *Not Now, Not Ever Putting an End to Domestic and Family Violence in Queensland* at p. 13.

³² *Ibid.*

The Taskforce's reasoning is that the specialisation of the court and use of specialist magistrates might improve the current under-utilisation of the powers to consider family law orders in FDV matters.³³ The specialist courts would sit within, and be part of, a wider community integrated response to FDV that linked in with victim support services, perpetrator programs and other government and non-government agencies.

Consent issues would be dealt with by support agencies and lawyers working together as part of the integrated response. In particular, perpetrator consent for the court hearing family law issues would be obtained through perpetrator programs, assisting to focus on the needs of children and to decrease the trauma to the other party and children.

The Queensland Government's response to the report is due by July 2015.

If the specialist court model is accepted by the Queensland Government that includes the family law matters by consent and child protection jurisdiction, this may present a unique opportunity for the Federal and State Governments to work together from the ground up on a court model that could be utilised as a pilot for a one court model of FDV, family law and child protection in Australia.

We are supportive of this model, which focuses the court on the FDV context, as this may mean there may be a greater prioritisation on issues of safety in decision-making and allows access to wider community service supports available through the integrated response practice.

Recommendation 14

That the Royal Commission consider the recommendations and reasoning of the *Not Now Not Ever* Report on FDV in Queensland and the opinion of Kathryn McMillan QC and Crown law in relation to family law and FDV issues.

Family Dispute Resolution – alternative pathways to court

Family Dispute Resolution (FDR) can be an effective and efficient way of resolving disputes in family law however, it is sometimes used inappropriately where there has been family violence and there are significant power imbalances between the parties. There are complex reasons why FDR proceeds where there has been family violence in the family including:

- Family Disputes Resolution Practitioners (FDRPs) may not appropriately screen for issues of violence and power imbalances;
- some FDRPs believe their processes sufficiently taken into account power imbalances and they have the skills to manage an appropriate and safe outcome;

³³ Ibid. p. 282.

- women hide the issues of violence as they want to proceed with FDR, preferring it to litigation and wanting to limit their chances of being exempted;
- women may not disclose as they are unaware themselves that they are victims of violence;
- FDR may be the only option as parties are not eligible for legal aid and cannot afford litigation;
- a court can refer parties to FDR even where a FDRP has certified that the matter is not appropriate for FDR.

If parents enter into inappropriate or unsafe arrangements for their children via consent orders, it can be very difficult to change these orders at a later date. In this situation, a party can be stuck with inappropriate or unsafe orders, have no grounds to apply for a variation and must comply with the existing regime. Alternatively, they might not comply with the orders and end up in contravention proceedings in the Family Court for failing to comply with the orders. These are quasi-criminal proceedings with penalties attached.

For FDR to operate in the best possible way, it must be part of a system where there are real choices for parties in the alternative if FDR is not safe or appropriate or if it fails.

We understand that Women's Legal Service Victoria currently runs a successful program with Relationships Australia where lawyers participate in FDR roundtables.

An alternative model worth considering is the Coordinated Family Dispute Resolution (CFDR) model which was developed by the Women's Legal Service in Brisbane for families where there was family violence. It was piloted in five sites around Australia and evaluated by AIFS³⁴. Its features included specialist risk assessment and both perpetrators and victims being provided with counselling support and legal advice and representation at the FDR session. Child consultants were also involved where it was deemed necessary and helpful. There was potential for other professionals to be involved if the needs of the family required it.

It was a ground-breaking model that was the first of the kind in the world. It filled a gap in service delivery for parties who required specialised assistance to try to reach agreement and would otherwise be exempted out of FDR. Unfortunately, due to funding constraints, the pilot was not rolled out by Government. The clear need for such a model has not gone away as victims of FDV continue to use FDR services in great numbers, often without even legal or other support.

There continues to be a high need in the community for an alternative dispute resolution model that specifically takes into account the dynamics of FDV and is a step beyond general FDR offered in the community.

³⁴<http://www.ag.gov.au/FamiliesAndMarriage/Families/FamilyLawSystem/Documents/CFDR%20Evaluation%20Final%20Report%20December%202012.PDF>

Coordinated Family Dispute Resolution (CFDR) – Potentially wider benefits in streamlining

CFDR also had potentially wider benefits in matching parties to the right dispute resolution process.

To undertake CFDR, parties generally were assessed by the FDR service provider as inappropriate for general FDR and requiring the specialist model. A domestic violence risk assessment was undertaken by domestic violence professionals of both parties and this was fed into a case management meeting of professionals, who would collectively determine whether it was safe to proceed with CFDR or to refer parties to court. Risk assessment was ongoing in the model.

If the matter was deemed to unsafe to proceed with CFDR the parties were referred to court. The CFDR FDR service provider would provide parties with a letter advising of their involvement in the CFDR process so that Legal Aid and the court were aware, and so a court application could be made without referral back to FDR or to a Legal Aid conference.

The better option would require legislative change so that the FDR provider could have provided parties with a CFDR exemption certificate pursuant to the Family Law Act (S. 60I). The option involving a letter was a more practical solution in the context of the CFDR pilot undertaken.³⁵

Recommendation 15

That a Federal/State expert advisory group be established including representatives from the community sector, academia as well as Government representatives, to advise Government on issues of FDV and family law processes.

³⁵ We are able to provide further information about this model for your consideration if required.