



About Us

Victorian Women Lawyers (VWL) is a voluntary association that promotes and protects the interests of women in the law and in the legal system. Formed in 1996, VWL now has over 800 members. VWL provides a network for information exchange, social interaction, and continuing education and reform within the legal profession and broader community.

Details of our publications and submissions are available at www.vwl.asn.au under the 'Publications' tab.

Inquiry into a Better Family Law System – Submission and Response

Since 1996 VWL has advocated for the equal representation of women and promoted the understanding and support of women's legal and human rights by identifying, highlighting, and eradicating discrimination against women in the law and in the legal system, and achieving justice and equality for all women.

The Australian Human Rights Commission highlights that 'domestic and family violence violates a wide range of human rights'.¹ However, according to Australia's National Research Organisation for Women's Safety, one in four women have experienced violence by an intimate partner.²

The Department of Human Services' Family Violence Risk Assessment and Risk Management Framework and Practice Guides 1-3 lists recent separation as a significant risk factor for women.³ In circumstances where there are children and/or property of the relationship, women who have been victims of family violence may find themselves with matters before the Family Court of Australia or the Federal Circuit Court of Australia ('the Courts').

Accordingly, the federal family law system must ensure that women and their children are afforded speciality intervention and assistance in family law matters where a history or risk of family violence is present.

VWL welcomes the opportunity to make a submission to the Committee of the Australian Parliament in relation to a Better Family Law System to Support and Protect Those Affected by Family Violence ('the Committee').

¹ Australian Human Rights Commission, *Why is domestic violence a human rights issue?* <<https://www.humanrights.gov.au/our-work/family-and-domestic-violence/why-domestic-violence-human-rights-issue>>.

² Australia's National Research Organisation for Women's Safety (ANROWS), *Violence against women in Australia: Additional analysis of the Australian Bureau of Statistics' Personal Safety Survey, 2012* (2015) <<http://anrows.org.au/file/1356>>.

³ Victorian Government, Department of Human Services, *Family Violence and Risk Management Framework and Practice Guide 1-3*, (April 2012) <http://www.dhs.vic.gov.au/_data/assets/pdf_file/0010/718858/1_family_violence_risk-assessment_risk_management_framework_manual_010612.PDF>.



Comments on the Terms of Reference

The Committee has provided a number of terms of reference to inquire into and report on how the federal family law system should be improved to better protect people affected by family violence.

VWL has elected to narrow the focus of our submission to comments on *“how the family law system can more quickly and effectively ensure the safety of people who are or may be affected by family violence”*. This submission will address both *“facilitating the early identification of and response to family violence”* and *“considering the legal and non-legal support services required to support the early identification of and response to family violence”*. VWL’s submission is made in the context of family law matters relating to parenting disputes.

Early Identification Approach and Response – Specialty Family Violence Court Lists

VWL submits that, in order to ensure safety, promote early intervention and facilitate adequate responses to family violence, the Courts should hear and determine family law matters with family violence history and risk in specialty family violence court lists (‘Family Violence Lists’).

VWL will expand on this submission by providing suggestions for the allocation of matters to Family Violence Lists and by considering the scope of assistance (both legal and non-legal) that could - and should -be provided to the matters heard in Family Violence Lists.

Forum for Managing Matters with a Family Violence ‘Lens’

Currently, all family law matters with hearing dates before the Courts are allocated to a ‘Daily Court List’. A large number of matters are heard in these lists and each listed matter often has limited time before a judge.

The establishment of specialised Family Violence Lists could provide matters with a family violence history and risk more time before judges. As a consequence, this could result in family law *and* family violence matters being handled in a tailored way, which takes into account the particular challenges faced by families in family violence situations. Specialty Family Violence Lists could also provide a forum for complex family law and family violence matters to be dealt with the required expertise, care, sensitivity, and support; the matters could be dealt with through a family law ‘lens’.

VWL also submits that matters allocated to the Family Violence Lists could be monitored more closely by the Courts, for example, by providing such matters with expedited return dates if required and, consequently, revisiting orders more frequently as the parties progress with non-legal supports.



VWL further considers that there should be ongoing training of judges and judicial officers hearing matters in the Family Violence Lists to ensure that their roles are effective in supporting and protecting victims of family violence. Training and awareness activities would also be instrumental to ensuring that judges and judicial officers are aware and informed of developments in family violence research, risk assessments, and scope of external support services.

Allocation of Matters

Allocation Following Initial Triage of Applications

VWL submits that early identification and response to family violence could be facilitated through the Courts' adoption of triage practices at the initial filing stage of matters. The aim of this process could be to assess and determine a possible family violence history and exposure to risk of a party and children in matters. The triage process could further streamline existing federal family law obligations, procedures, and forms.

The Courts currently mandate the filing of a Notice of Risk form ('the **Form**') when a party files an Initiating Application or Response seeking parenting orders. According to the Federal Circuit Court of Australia website, the Form is used to assist the Federal Circuit Court of Australia 'to meet its obligations pursuant to section 69ZQ of the *Family Law Act 1975*', for 'timely notification to relevant child protection authorities' and 'to facilitate the early identification of a range of risks'.⁴

The Form, once completed by the relevant party, contains critical information about family violence allegations. VWL submits that this information should be actively reviewed by the registry staff to ascertain if a family violence history and risk is present and/or likely.

In cases where family violence allegations raise safety concerns, or where a significant family violence history is presented, the registry staff should allocate the matter for hearing in a Family Violence List.

If a party elects to file materials via the Commonwealth Courts Portal, the filing party should be given the option to defer the automatic court date allocation to the registry to enable triage and referral to the Family Violence Lists, if required.

Allocation of Matters by Judges

In circumstances where a family violence victim is a Respondent in a proceeding, the matter

⁴ Federal Circuit Court, *Notice of Risk* (12 January 2015)
<<http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/forms-and-fees/court-forms/form-topics/family+law/notice-risk>>.



may not have the opportunity to be allocated to a Family Violence List prior to the first hearing date of the matter.

Judges should have discretion to reallocate such matters, allowing for matters to be transferred to a Family Violence List at any stage of the proceeding. This will ensure that matters are still appropriately dealt with if family violence is overlooked or undetected at the initial filing stage or where family violence issues arise during the proceedings.

Further, once a matter has been allocated to a Family Violence List, the parties should have immediate access to the same legal and non-legal support services available to matters in Family Violence Lists, regardless of the next hearing date of the matter.

Support Services – Priority Access to Supports for Matters in Family Violence Lists

In addition to approaching matters through a family violence ‘lens’, the Courts, when hearing matters in the Family Violence Lists, should also offer referrals to specialty services and prioritise involvement of and access to legal and non-legal supports.

The Courts already have critical mechanisms in place to address complex matters (for example court ordered Child Inclusive Conferences), however VWL submits that these mechanisms should be improved to focus on issues of safety, intervention, and response to family violence.

Further, the Courts should expand on existing relationships with non-legal support services, including organisations which provide housing or financial support to families in violence situations, to develop a framework for referral, and monitoring, of matters.

Priority Access to Child Inclusive Conferences

Pursuant to section 11F of the *Family Law Act 1975* (Cth), the Courts can order the parties of a proceeding (including a child / children) to attend a conference with a family consultant, known as Child Inclusive Conferences (‘the **Conferences**). According to the Family Court of Australia, the Conferences are intended ‘to give the Court an understanding of the family situation, particularly of the children’s experience’.⁵

Greater and urgent access to the Conferences may assist in providing a guide and framework for the Courts in dealing with family violence and early intervention in matters. VWL considers that the Conferences should be ‘refocused’ to assist with safety measures, response, and support for the families for matters in Family Violence Lists. This could include liaising with police services, and providing family members with techniques to deal with violence

⁵ Family Court of Australia, *Child Inclusive Conferences* (1 November 2013) <<http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/publications/child+dispute+services/child-inclusive-conferences>>.



situations

The Family Consultants (‘the **Consultants**’) who facilitate the Conferences should work with the parties to establish not only the parenting orders that each party is seeking, but also the family violence supports that each party (including the children) may require.

While this practice may already be in place, VWL submits that more time should be allocated to ascertaining the specific family violence allegations and understanding the history and complexity of the relationship, including particulars of the culture(s) and/or religion(s) of the parties and community pressures and expectations of the parties. The Consultants should then consider and recommend any appropriate family violence supports, programs, and referrals.

The Courts already have the power under section 11E of the *Family Law Act 1975* (Cth) to seek the advice of the Consultants ‘as to the services appropriate to the needs of the person and the most appropriate provider of those services’.⁶ Ideally, the Consultants should provide the Court with a recommended framework for the parties that includes suggested living and time spent arrangements as well as mandated family violence support services that the parties should be referred to.

Under section 13C of the *Family Law Act 1975* (Cth), the Courts also have the power to order a party to attend family counselling or ‘to participate in an appropriate course, program, or other service’.⁷ Therefore, there is large scope for the Courts to order a party or the parties to participate in or seek access to family violence support services, as recommended by the Consultants.

The matters allocated to the Family Violence Lists can then be closely monitored to ensure that a party is, or that the parties are, complying with orders in relation to these referrals. Additionally, the matters in the Family Violence lists should be revisited by the initial Consultants for further recommendations as the matters progress.

To ensure best practice of the Consultants, the Consultants should be provided with ongoing specialty training to assess risk, scope, and impact of family violence.

Court Referrals and Partnerships with Non-Legal Support Services

The Courts, including the registry, judges, and judicial officers and Consultants should work with external family violence support services to develop guidelines and regulations for court ordered support services, focusing on the key supports already in place by family violence services, for both victims and perpetrators, and addressing areas of support that are lacking or that are not commonly recognised or dealt with by the Courts.

Partnerships between the Courts, Consultants and external family violence support services

⁶ *Family Law Act 1975* (Cth) s 13E(1)(e).

⁷ *Ibid* s 13C(1).



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may result in support pathways that could run simultaneously alongside the matters in the Family Violence Lists.

While these programs would require a level of transparency of the scope of supports offered to parties, the parties should still be offered a confidential service, with the exception of any supporting reports that are ordered to be provided to the Courts.

The Courts should place significant weight on the independent reports of the family violence services that each party and the children are accessing.

Concluding Remarks

VWL submits that the development of Family Violence Lists could assist the family law system to more quickly and effectively ensure the safety of people who are or may be affected by family violence.

Matters could be allocated to the Family Violence Lists at the initial filing stage of the proceedings, and matters heard in Family Violence Lists could be approached and monitored through a family violence ‘lens’. Further, such matters could have priority access to legal supports, such as Child Inclusive Conferences.

In addition to development of Family Violence Lists, training of the Courts’ registry, judicial officers, and judges could result in a more supportive approach to complex family violence matters. Finally, the Courts could work with external family violence support services to establish partnerships and obtain referral pathways.

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