



Engender
Equality

Submission to the Joint Select Committee on Australia's Family Law System
18 December 2019

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Preamble

The authors of this submission acknowledge that men may experience domestic and family violence and abuse. In no way do we disregard men’s experience. It is also acknowledged that women and people of other genders can use violent and abusive behaviours.

This submission is informed by the statistical landscape of domestic and family violence in Australia which is described via the Australia’s Bureau of Statistics Personal Safety Survey (PSS), 2016.

The PSS found that;

- Women were nearly three times more likely to have experienced partner violence than men, with approximately one in six women (17% or 1.6 million) and one in sixteen men (6.1% or 547,600) having experienced partner violence since the age of 15.
- One in six women (16% or 1.5 million) and one in seventeen men (5.9% or 528,800) experienced physical violence by a partner.
- Women were eight times more likely to experience sexual violence by a partner than men (5.1% or 480,200 women compared to 0.6% or 53,000 men).

Based on this information we believe it is critical that the Committee are accurately informed on the typical presentations of family violence, which are; men using abusive and violent behaviours and women as victims of abusive and violent behaviours.

Key Priorities

Children living in family violence situations are directly subjected to, and live within, the web of abuse woven by the dynamics of control and coercion maintained by people who use violence and abuse.

A pattern of behaviour and coercively controlling tactics underpin the more obvious incidents of family violence that widely referred to in legislation and policy. The same course of conduct often continues post separation despite women trying to address their fears for this in the family law court.

Through the practice experience of Engender Equality and our state-wide family violence counselling service we assert the following priorities:

- The Family Court must hold children's safety as the key priority in every dealing.
- Child Safety Services need to be able to act in a timely manner.
- A family violence framework needs to be imbedded within Courts, Family Dispute resolution and Child Safety Services.
- Gender-neutral frameworks need to be revised to consider the prevalence and extent of the gendered experience of family violence in its many varied expressions.
- Women who experience barriers to accessing services need to be adequately supported to navigate the family court and ensure that their rights are not further compromised.
- Any reforms need to be adequately funded or not progressed.
- Specialised legal grants need to be readily available to people who have been subjected to violence and abuse.
- Support services need to be relevant and accessible to women who experience marginalisation and barriers to services.
- Recognition of the role of grandparents in caring for grandchildren, with service provision and funding to reflect this role.
- Training to improve services and cultural practices that will work sensitively with people who have experienced family violence is critical.

About Engender Equality

Established in 1987, Engender Equality is the leading non-government agency in Tasmania supporting people who have experienced family violence. Engender Equality is a dynamic, evolving, professional organisation, founding our philosophies, practice and resources on current research. Engender Equality has a high level of skill, knowledge and experience working with women, children and families impacted by family violence and abuse.

Engender Equality's core work is in providing therapeutic counselling to people who are currently or have previously experienced family violence, abuse and other violations. Engender Equality provides training on family violence and gender inequality and plays an active role in Tasmania in advocating for systemic change to gender inequality and violence against women and their children.

Engender Equality believes that people have the right:

- To live free from violence and in safety
- To equality and respect
- To recognise their potential
- To make informed choices regarding their lives

Given Engender Equality's specialisation in working with women and families who have experienced family violence, this submission is primarily focused on their specific experiences. People who have experienced abuse are often significantly disempowered, and may not be able to engage in the kind of community participation that is necessary to ensure that their voices are heard and their concerns addressed. The Inquiry's call for submissions is an excellent opportunity for organisations to advocate on their behalf. Therefore, we believe it is our role to address the specific issues that are faced by women and children who are disproportionately disadvantaged because of current and historical family violence and gender inequality.

We note that our clients frequently seek Engender Equality services to support them through the legal process; assistance that is in addition to addressing the experience violence and abuse itself. It is also our experience that the legal response can fail to adequately address the severity of the violence and abuse, the impact on children and the ongoing effects of trauma. Post separation our clients often express their inability to create a safe environment in which to live and recover from the effects of a coercion, control and violence.

The impact of family violence

Family violence results in significant social, emotional and economic costs to victims, their families and the broader community (Laing & Bobic 2002). The costs to society are significant, ongoing and intergenerational. Family violence has a profound impact on physical and mental health. It can lead directly to serious injury, permanent impairment, disability or death. From an economic point of view, it has been estimated that the cost of violence against women and their children to the Australian economy was \$22 billion for the 2015-16 period (KPMG, 2016).

Family violence often has very severe negative impact on the well-being of the whole family. These effects may affect the family for the rest of their lives. The experience of family violence in childhood can have profound negative impacts that resonate not only across the lifespan, but with intergenerational impacts (Courtois, Ford, & Cloitre, M, 2009).

Children are very often present during family violence incidents (ABS, 2017). Children's physical health, learning, cognition, social and emotional development can all be severely impaired by experiencing family violence (Morgan & Chadwick, 2009). Exposure to the trauma of family violence can harm children's brain development (Perry, 2001), and secure attachment between a child and their carer can be disrupted. The World Health Organisation highlights the ongoing impact of childhood abuse; *"some children from households where there is intimate partner violence may exhibit increased rates of behavioural and emotional problems that can result in increased difficulties with education and employment, often leading to early school drop-out, youth offending and early pregnancy"* (World Health Organisation, 2010, p.5). Older children may also have an increase in health-risk behaviours such as drug and alcohol misuse and dependence (WHO, 2010). Adolescents who experience violence at home are at risk of experiencing or perpetrating violence in their own dating relationships (Flood & Fergus, 2008).

Alongside witnessing family violence, children living with a parent who uses abusive behaviour, are inevitably subjected to the course of conduct, attitudes and behaviours that underpin family violence. Children's experience of family violence is much deeper and broader than just "witnessing" or even helping to clear up after "incidents". The focus on "incidents" hinders the understanding of the nature of living with an abusive parent, even when there is an attachment between the child and the abuser. Family violence is a course of conduct, not occasional incidents.

Attitudes towards violence correlate strongly with exposure to violence and may be transferred across generations via learning processes, schools, the media and experience of violence. Exposure to, and experience of, family violence during childhood may lead to learnt models of behaviour regarding

the use of violence. Additionally, the absence of parental encouragement in regards to emotional regulation and self-esteem can lead a child to respond to emotionally distressing cues with assertion of power and violence or, alternatively, learned helplessness. These responses impact on their future adult relationships.

Improvement of legal support

Without legal support during family court, women can remain impoverished and be further economically disadvantaged. Victims of family violence need access to information regarding their legal rights. The Federal Government must prioritise funding for services. Budget cuts to legal services have significant negative impact on victims of family violence seeking legal protection. The Family Law system must address the challenges faced by victims of family violence attempting to establish physically and emotionally safe conditions for their children.

Terms of reference

a. Ongoing issues and further improvements relating to the interaction and information sharing between the family law system and state and territory child protection systems, and family and domestic violence jurisdictions, including:

- i. the process, and evidential and legal standards and onuses of proof, in relation to the granting of domestic violence orders and apprehended violence orders, and**
- ii. the visibility of, and consideration given to, domestic violence orders and apprehended violence orders in family law proceedings;**

While we support improvements in information sharing between systems, we urge the Committee to not see information sharing as a universal solution. We share the concerns expressed by Women's Legal Services Australia in relation to the ability to analyse and interpret the data in a (presumably created) shared database, privacy of sensitive and personal records as well as access to the records when parties do not have legal representation.

As opportunities to share information increase across government bodies, it is paramount that individuals are informed and consent is given that thoroughly describes who information is being shared with and for what purpose.

We encourage the government to ensure that only risk relevant information is shared and that there are safeguards against the inappropriate use of information. Men who use abuse and violence must be prohibited from accessing information about women and children affected by violence.

Family Violence Orders are often the first matter before a Court in the Family Law arena, and can be finalised prior to proceedings even being commenced in the Federal Circuit Court. It can be difficult to complete the application for a Family Violence Order if you're concerned about disclosing matters that will be relevant for family law proceedings, or draining to repeat yourself in both a Magistrates Court application and then subsequent Federal Circuit Court affidavit and notice of risk.

There are also often discrepancies between Family Violence Orders and Parenting Orders, furthermore may fail to detail relevant exceptions for parenting matters. This can cause frustration and confusions for the perpetrator which often leads to further breaches whilst they harass the protected person to change the Order, a decision which is not always solely in their hands.

With respect to child protection matters, the Child Safety Services are often reluctant to intervene when matters are already before the Federal Circuit Court. This can be problematic when both parents pose a risk to the child/children and when proceedings continue in the wrong jurisdiction, often to the detriment of both parents and the children. Increased flow of information would likely assist Child Safety Services in understanding the level of risk, and the need to intervene.

Child Safety Services often delay providing the Court with the requested information which may assist the Court in deciding that the matter needs to revert to the child protection jurisdiction.

Case Study- Jennifer*

"In 2018, a non-contact police family violence order (PFVO) which included our children was placed on my ex-husband due to new concerns regarding the risk he posed to their safety. At this time, he was considered by police to pose a significant risk to the lives of my children, however there were complications due to the different powers of State legislated PFVO's and federally legislated Family Law Court Orders. For me, this created a situation where current safety concerns in 2018 are given less weight than family law court orders that were now 4 years old.

The Family law system has failed to address the impact of family violence on my children, and has placed me in a position where I still have to engage with the perpetrator of family violence and allow him to continue to exert power and control over me, using the children as a vehicle for continued abuse. And again, I am back in the magistrate's court with matters relating to 18 breaches of the PFVO. Yet the Family Law system failed to acknowledge that family violence was a significant factor that needed to be addressed so that my children could be protected from further exposure".

- The Family Court must hold children’s safety as the key priority in every dealing.
- Child Safety Services need to be able to act in a timely manner.
- A family violence framework needs to be imbedded within Courts, Family Dispute resolution and Child Safety Services.

b. The appropriateness of family court powers to ensure parties in family law proceedings provide truthful and complete evidence, and the ability of the court to make orders for non-compliance and the efficacy of the enforcement of such orders;

Understanding family violence is critical to the improvement of the Family Law Court and associated processes. Family violence is much more nuanced than the relevant laws in Australia describe and adequate understanding needs to include the extent to which women are subject to coercive control. Coercive control is a significant and often under recognised aspect of family violence (Bagwell-Gray, Messing & Baldwin-White; 2015; Miller et al., 2010) and may or may not involve physical abuse (Allen, 2013; Johnson, 2008). Coercive control is a model of abuse that encompasses a range of strategies employed to dominate women and children in personal life; its centrality to family violence is of urgent relevance to Family Law.

Without specialist knowledge key details will be missed and situations will be misinterpreted.

Some features in relation to this are:

- There is minimal awareness across the community of coercive control, its impacts and what constitutes evidence.
- There is a need for greater resourcing and training to improve understandings of the nature and impact of coercive control at all points of contact within the criminal justice process.
- Coercive control can be seen as colluding or consenting to the abusive behaviour.
- Criminal justice routes that are usually considered as a prime collection ‘evidence’ may not always be a favourable intervention for many people - people may face difficult decisions as pursuing a prosecution can have a significant impact on their lives, and the lives of others close to them.
- Many people are unable to access justice interventions for examples, women with criminal histories, women whose ex-partner is a police officer, Aboriginal and Torres Strait Islander women and transgender women. In doing so, their situation is considered less serious or not as high-risk. (When in fact, people who do not access services are at greater risk of family violence, experience and severity, AIC 2009).

- Gender-neutral frameworks need to be revised to consider the prevalence and extent of the gendered experience of family violence in its many varied expressions.
- Women who experience barriers to accessing services need to be adequately supported to navigate the family court and ensure that their rights are not further compromised.

c. Beyond the proposed merger of the Family Court and the Federal Circuit Court any other reform that may be needed to the family law and the current structure of the Family Court and the Federal Circuit Court;

If this development goes ahead, the merger of the courts needs to be adequately resourced to make it an effective reform rather than a measure to cut spending.

- Any reforms need to be adequately funded or not progressed.

d. The financial costs to families of family law proceedings, and options to reduce the financial impact, with particular focus on those instances where legal fees incurred by parties are disproportionate to the total property pool in dispute or are disproportionate to the objective level of complexity of parenting issues, and with consideration being given amongst other things to banning ‘disappointment fees’, and:

- i. capping total fees by reference to the total pool of assets in dispute, or any other regulatory option to prevent disproportionate legal fees being charged in family law matters, and**
- ii. any mechanisms to improve the timely, efficient and effective resolution of property disputes in family law proceedings;**

Economic empowerment enables women to make their own choices, be resilient, in control and live an independent life with dignity. Being subjected to violence and abuse should not compromise this, therefore, women and children need to be supported to financially recover from family violence. Women’s economic recovery and financial security is of fundamental importance in promoting and achieving recovery and security.

Women who are experiencing financial hardship are particularly vulnerable to the impacts of family violence. Lack of financial independence is a powerful barrier for women attempting to leave abusive relationships and may limit the ability of women to care for themselves and their children, to pursue legal matters, and find appropriate accommodation. Engender Equality insists that the Family Court must adopt processes that can ensure women’s economic security is not additionally compromised.

It is also imperative that this Inquiry recognises that efforts to escape family violence can have devastating economic impacts. Safety planning often means significant life changes, for example moving house and relocating interstate. People in these situations need access to appropriate accommodation, civil legal services and legal representation as well as emotional support and financial assistance.

Commencing contravention or enforcement proceedings is yet another stress and financial burden to the Applicant, and lawyers often try to avoid this by lengthy negotiations, again prolonging the stress and emotional drain of the matter.

Case Study: Sally

“...the \$27,000 lawyer’s bills were worth every cent, feeling that child in my arms again. I have currently spent over \$35,000 on court and lawyer fees”.

- Specialised legal grants need to be readily available to people who have been subjected to violence and abuse.
- Support services need to be relevant and accessible to women who experience marginalisation and barriers to services.

e. The effectiveness of the delivery of family law support services and family dispute resolution processes;

Family Dispute Resolution Conferences (FDRC) through the Legal Aid Commission are a productive means of negotiations in some parenting matters, with the benefit of the parties being represented. Other mediation services, such as Relationships Australia, do not have solicitors involved, which means the parties often face each other directly despite the discomfort this can cause. Involving solicitors can be productive when there is a power imbalance, particularly in matters where there is family violence. Ideally, more FDRCs would be funded, and available to parties who are not legally aided to assist in matters avoiding Court. FDRCs can allow for review conferences and ensure parenting matters progress organically, out of a court timetable.

- A family violence framework needs to be imbedded within Courts, Family Dispute resolution and Child Safety Services.

f. The impacts of family law proceedings on the health, safety and wellbeing of children and families involved in those proceedings;

Family consultant reports or single expert reports, involving the entire family, can be intrusive and force people to relive and re-detail their experiences and emotions yet again. Unfortunately, they are also often necessary in shaping cases, and informing the judge and the Court about the way a matter should progress.

Often appointment times for each party are on the same date, which can increase the chance of parties seeing each other, or an agitated and abusive ex-partner waiting in the court precinct to “bump into” the other party. Security should be aware of matters where there are family violence allegations and concerns, and ensure parties vacate the court building to avoid the two parties interacting unwillingly.

Engender Equality supports Proposal 3.3, 3.4 in the *2017 ALRC Discussion Paper Review of the Family Law System*, addressing *The Principle of Safety and Best Interests of a Child*. Proposal 3.3 attends to principle s 60CA of the Family Law Act 1975 and states the child’s best interests must be the paramount consideration in making decisions about children, with the proposal recommending this be amended to ‘safety and best interests of the child.

Proposal 3.4 attends to the amendment of principle pt VII of the Family Law Act (1975) in section 60B and proposes that;

- Arrangements for children should not expose children or their carers to abuse or family violence or otherwise impair their safety;
- That children should be supported to maintain relationships with parents and other people who are significant in their lives where maintaining a relationship does not expose them to abuse, family violence or harmful levels of ongoing conflict;
- Decisions about children should support their human rights as set out in the Convention on the Rights of the Child and the Rights of the Persons with Disabilities.

These proposals are in line with Engender Equalities position on re-centering the safety of the child as the priority, above maintaining a relationship with an abusive parent or carer. In Engender Equality’s experience as a specialist family violence counselling service, we have seen that forcing a relationship with an abusive parent or carer creates more harm and trauma, than provision of care.

Case Study - Sally

Sally has been fighting for custody for her child through the Family Law court, and feels frustrated that equal access to both parents is prioritised over the safety of children.

“My question to you is simply, who is protecting our children? Because the family court isn’t. I feel like my daughter is being strapped into a runaway car, I’m yelling for child services, the police and family court to stop it but all I can do is strap her in and hope the impact isn’t too detrimental. I am being financially ruined by the family court because my daughter deserves better, but it would seem my abusive ex has more rights than that of a 9-year-old.”

Case Study - Jennifer*

“For two years from 2016 to 2018, my daughter who has experienced trauma related to being exposed to family violence as a young child, begged for me to take her to a psychologist to get help. Suffering significant anxiety, and struggling emotionally with spending time with her father, her schooling suffered, and her sense of wellbeing was rapidly declining. Her father did not agree. Without his agreement, I could not get her the psychological support she needed. Even when she expressed suicidal ideation and our GP provided a referral stating that in her case, the needs of the child out-weighed the need for both parent’s consent, I still could not access a psychologist because of orders that had been made 4 years previously”.

Case Study- Deborah

“I saw the effects holiday contact with their father had on our three daughters 2003-2008 where they were constantly exposed to verbal abuse, witnessed episodes of drunken behaviour by the father and continued and prolonged denigration of me, their mother, a woman who had just left an extremely violent and abusive relationship of 17 years, where the children regularly witnessed their father hitting me, threatening me with a gun (twice by putting the gun to my head), throwing me down stairs by the hair, trying to suffocate me and on and on...”

These incidents were put before the family court yet were dismissed as having little emotional trauma on the children because their father 'didn't abuse them directly' and my pleas for supervised contact in the context of having been abused by the father, did not give me an advantage in court. Rather I was deemed hysterical and possibly unfit to parent”.

➤ The Family Court must hold children’s safety as the key priority in every dealing.

g. Any issues arising for grandparent carers in family law matters and family law court proceedings;

Engender Equality recognises that grandparents often become carers as a result of the impact of family violence. A 2010 study, conducted by the Social Policy Research Centre, (Community Affairs, 2014, pg.10) found that domestic violence made up 22 % of cases where grandparents became carers. Ensuring they have adequate support to overcome identified barriers such as:

- poorer health,
- lower incomes,
- access to legal expertise such as through Legal Aid and
- navigating familial tensions that arise as a result of legal proceedings.

This will equip them more appropriately for the challenge of becoming carers to their grandchildren (Community Affairs 2014).

The role of grandparents in Aboriginal and Torres Strait Islander communities is embedded into the support structures of the children in their community. This results in a large proportion (estimated at around 50%) of Aboriginal and Torres Strait Islander grandparents finding themselves as the informal primary carer when the parent is unable to care for their child (Community Affairs, 2014). A Senate Enquiry, *Grandparents who take primary responsibility for their grandchildren* (Community Affairs 2014), found that Aboriginal and Torres Strait Islander grandparents faced additional barriers to accessing support when caring for their grandchildren such as:

- impact of intergenerational trauma on Aboriginal and Torres Strait Islander grandparents accessing support services,
- support services being culturally inappropriate,
- lack of funding to Aboriginal and Torres Strait Islander services,
- geographical barriers to accessing services when living in remote Australia and
- lack of legal providers in some regions resulting in a service facing a conflict of interest when asked to represent multiple family members.

(Community Affairs 2014)

- Improve recognition of the role for grandparents in caring for grandchildren, with service provision and funding to reflect this role.

h. Any further avenues to improve the performance and monitoring of professionals involved in family law proceedings and the resolution of disputes, including agencies, family law practitioners, family law experts and report writers, the staff and judicial officers of the courts, and family dispute resolution practitioners;

The delivery of services to people who have experienced family and sexual violence and those who use violence and abusive behaviour is a complex field that demands a nuanced practice framework and requires in-depth working knowledge of gender, power and control. People who are trained and subsequently employed to work in the family law need to hold this expertise to a high degree. A family violence framework provides an integrated and specialist response to family violence to address the causes and impacts of family violence and violence against women.

A family violence practice framework emphasises:

- The safety and rights of adults and children
- Respect and empowerment
- Trauma-Informed Care and Practice
- Systemic advocacy & addressing the primary drivers of family violence.

It is essential that all related family law services have a basic standard clinical governance structure that considers gender and family violence. A clinical governance framework also incorporates an internal audit of organisational structures, to embed family violence prevention practices within organisations as well as in service delivery.

Case Study - Sally

“After a failed attempt at mediation, family assessments and false accusations in relation to myself and family, we eventually found ourselves in the family court system. I was literally defending my right to be seen as a parent. I went through the humiliating task of sitting there while her lawyer accused my father of sexual misconduct towards her (my ex-partner), my apparent lack of emotional connection with my daughter and the fact that I was raped at 17 therefore not having the ability to protect myself so how will I protect a child?

Imagine that, being told that because you were raped you are automatically a parent who would let a predator digress boundaries with your own daughter seems outrageous but it is true”.

- Training to improve services and cultural practices that will work sensitively with people who have experienced family violence is critical.

i. Any improvements to the interaction between the family law system and the child support system;

One of our main concerns with the current Child Support system is that by failing to adequately provide policies and processes that address family violence, women who have experienced such violence may not receive the specialised services that they require. Women who have experienced family violence are often uncomfortable self-identifying as a victim or asking for special assistance. Their own safety and wellbeing, and that of their children, is typically their priority, often to the detriment of their financial security, which may lead to reluctance in pursuing options that risk exacerbating an already dangerous situation. The likelihood that women will notify Child Support workers of an abusive situation is further minimised because of the widespread lack of awareness that financial, psychological, and emotional abuse constitute family violence, so that women may not even recognise their situation is abusive.

Because of the low rate of self-disclosure by women who have experienced violence or abuse, the onus is on Child Support workers to be able to recognise cases where domestic or family violence exists, and to provide the information, support, assistance, and referral that may be required. Specialised training about domestic and family violence is thus needed for all frontline Child Support staff, and this training should be provided according to international standards of best practice, incorporating the expertise of trainers who have worked extensively with people who have experienced violence or abuse.

j. The potential usage of pre-nuptial agreements and their enforceability to minimise future property disputes;

Binding Financial Agreements (BFAs) may have benefits in providing for what happens to matrimonial property in the event of a separation, however run the risk of forcing parties to sign away future rights and entitlements, unaware of what the future holds. Often women remain the primary caregiver after separation, and therefore under the Family Law Act they should receive an adjustment of the property pool to recognise this, the lower earning capacity they likely face and the potential future need to retrain or complete further study down the track. A BFA cannot predict future contributions, health, care of children or other factors which would be taken into account during standard property division negotiations.

BFAs often also provide for no spousal maintenance to be paid, again which would likely prejudice the caring parent, often being the mother.

k. Any related matters

From a human rights perspective, it is incumbent upon the family law system's duty of care to:

- Address the matter that people who use abusive and violent behaviours are well able to subjugate and entrap female partners and children without the use of identifiable and substantiated physical or sexual violence, but via a course of conduct that ensures their own agendas are met even if at the expense of the child's legitimate developmental needs.
- Create a trauma informed legal response to family violence that protects women and children from the post separation perpetration of control and coercion rather than leaving them exposed to it.
- Address and be well informed by the research that describes the overlap between the course of conduct between violence perpetration and parenting style and capacity.
- Consider the capacity of people who use abusive behaviour to parent as well as their capacity/likelihood that they will bring further harm to the women and children via coercive control of post separation parenting arrangements.
- Provide training and ensure practice standards for all family law court personnel, including judges, in the scope of behaviour and conduct that is at the core of family violence and coercive control.
- Address the inequality of the relationship produced by coercive control and the traceable consequences for the women and children on all levels, i.e. financially, socially, sexually, emotionally, rights, responsibilities, opportunities
- Become informed by the experiences of people who describe what it was like growing up with family violence.

Engender Equality advises that it is critical not to separate the two roles of *perpetrator* and *parent*. Family violence is not about incidents that the children may witness but about a course of conduct that involves the children. Coercive control influences children's upbringing, it impacts on their sense of self and it impacts on their relationship with their mother. Coercive control, the core of family violence, is complex, well researched, and relies on tactics that keep control in ways that disregard, obstruct or overwhelm the legitimate rights, needs and boundaries of all members of the family e.g. the mothers, children and often pets.

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