

Women's Legal Service
Submission to Queensland Child Protection Commission of Inquiry
September 2012

Introduction

Women's Legal Service welcomes the opportunity to submit to the Queensland Child Protection Commission of Inquiry as the Inquiries' terms of reference directly impact upon our work with women who come into contact with the family law, child protection and domestic violence systems.

The Women's Legal Service (WLSQ) is a Brisbane based community legal centre which has been operating since 1984 and has forged a strong reputation in Queensland for providing high quality legal and welfare services to women. Our staff comprises lawyers, social workers and administrative staff and we work in a holistic way with our clients, embracing a broader approach rather than looking to legal proceedings as a solution for the complex problems faced by our most disadvantaged clients.

We provide around 4000 advices each year. As many of our services are provided by telephone, more than 30% of our clients are from outside the Brisbane metropolitan area. Our clients come from diverse racial, cultural and religious backgrounds. We also undertake community education and community development work through which we learn about a wide range of women's experiences in the legal system. WLSQ also provides legal advice on a fortnightly basis to women incarcerated in the Brisbane Women's Correctional Centre.

Our comments in this submission are drawn from our research, our contact and collaboration with other organisations, and most importantly, our work assisting women. A common theme of our client's experiences is the lack of comprehensive interface and collaboration between the bureaucratic and legal systems involved in child protection, family law and domestic violence systems, resulting in system failures putting children at risk of harm, despite a mother who is able and willing to protect their child from harm.

Interface between Child Protection, domestic violence and family law systems

The evidence on the importance of the consideration of domestic violence in assessing the safety of women and children is well established and compelling. There is a high co-existence between family violence and other forms of child abuse and family violence is identified as a prominent primary risk factor for child abuse¹. It is important that the Commission of Inquiry

¹ J Edelson *The overlap between child maltreatment and woman battering* Violence Against Women, vol.5, no.2, 1999, pp 134-154;



considers the impact of domestic violence in identifying systemic gaps for the safety of women and children who are escaping violence.

Issues of violence against women and violence against children and their inter-relationship and the devastating and long-term impacts of family violence are not well understood by the family law and child protection systems. Serious threats to women can be disregarded or downgraded by the child protection and family law systems because they are not directly related to the children. There is a tendency to categorise violence against women and violence against children as two separate issues and this can have devastating consequences, as highlighted by recent high profile cases involving the murder of children by their fathers, post separation.

A common scenario for our clients is that they are told by the child protection agency to separate from the perpetrator of violence, otherwise their children will be removed because the mother will be deemed a parent "not able or willing to protect a child from harm". Additionally she is directed to seek protection for herself and her children by the child protection agency by obtaining a domestic violence order with the children included on it, despite the fact that the inclusion of children can be very difficult to obtain. Further she is directed to obtain family court orders restricting the perpetrator's contact with the children.

The child protection agency then withdraws their involvement from the family, because the mother is assessed to be acting protectively. There is no support or assistance by the agency to obtain the recommended orders. The woman then acts on this advice and pursues the domestic violence and family law orders and is confronted and shocked at how difficult this is to achieve. She is unable to include her children on her domestic violence order and she is negatively viewed by a family law system which favours a cooperative and shared parenting arrangement.

The advice of the child protection agency is often 'unofficial' and not recorded so the women cannot rely upon it later in relation to the perpetrator's potential risk to the children. It also presents difficulties for women seeking legal aid in satisfying the legal aid merit test.

These kinds of cases highlight the great reluctance of the child protection agency to become 'involved' and arguably with case load pressures and a protective mother a tertiary intervention is not the best mechanism for the woman and her children. However it does raise the lack of resources available to women and her children to use available legal mechanisms to ensure the ongoing safety of her children. While a legal support strategy may seem a tertiary intervention, it has the potential to remove children from harm

For example, in NSW domestic violence is the highest primary risk factor identified. *Department of Community Services Discussion paper for Review, Statutory Child Protection in NSW: Issues and Option for Reform*, p. 7. See also www.childsafety.qld/practice-manual/documentns/prac-paper-domestic-violence.pdf

once and for all, therefore being an effective primary intervention and future prevention strategy.

Availability of Legal Aid

Grants of legal aid are available to women for child protection and domestic violence matters, only on the basis that satisfy the merits and means test. This results in many women not being eligible for legal aid assistance and are therefore faced with self-representation at both the state magistrates court for child protection matters, domestic violence orders and at the family court. Women have difficulties obtaining legal aid for family law matters because of their difficulty in presenting evidence about the family violence as the only evidence is her own account, despite the possible involvement of the child protection agency.

While WLSQ and community legal centres would support many of these women, the paucity of resources in the sector results in many women self-representing, some with assistance, but no ongoing legal representation.

Child protection matters are distinct from family law and domestic violence, as these proceedings are personal matters. It is essential that legal aid is always granted to clients in child protection proceedings as they are "defending" themselves against the State. The State has funds and resources at its disposal to put forth the best case against the client. Women who do not qualify for legal aid or who cannot afford private representation are left to defend themselves and prepare their own case. Even if women are legally represented, legal costs cannot be recovered for against the State for unsuccessful applications.

In our experience, legal aid is more readily granted in criminal law proceedings. While it can be argued that criminal matters have the potential to impact on the civil liberties of the offender, women and children involved in the child protection system risk losing their familial relationships. The Convention of the Rights of Children stipulates that children have a right to live with their parents, unless it is not in the child's best interests (Article 9) and that parents have the responsibilities for the upbringing and development of their children (Article 18). WLS submits that it is essential that legal aid be granted in child protection proceedings so that fundamental rights of children can be protected and appropriately litigated.

Women in Prison

In our fortnightly legal visits to women held in the Brisbane Women's Correctional Centre it is clear that women have difficulties engaging with the child protection agency when their children are in care of the Department of Child Safety.

WLSQ endorses our colleagues, Sister Inside, submissions to the Commission of Inquiry, particularly in relation to whether Department case plans fully engage women in prison in accordance with the principles in the *Child Protection Act (Qld)* 1999.

It is our experience that women in prison do not have access to legal advice and assistance on child protection matters, have very little communication with the child protection agency about their children, and have very little ability to engage in parenting program that will better enable them to be reunited with their children upon their release.

Expertise and Specialisation

It is our experience that there are significant workforce issues at the Department of Child Safety, with front line workers who are inexperienced, overwhelmed by the enormity of the workload and emotional impact. These circumstances lead to Departmental Officers not fully investigating and engaging with children and parents in the case management process.

Currently there is no requirement under the Child Protection Act for the Child Protection agency to provide full disclosure of its material to a party other than a separate representative. The lack of full disclosure of material not only deprives parties of their right to natural justice it also impedes a party from securing ongoing legal aid funding.

It is also important that there is increased specialisation in the Magistrates court system to deal with child protection matters. Queensland has only one specialist Childrens Court Magistrates based in Brisbane.

Specialisation requires Magistrates to be trained (on an on-going basis) so that they have the requisite knowledge to understand the particular needs and rights of women experiencing violence.

We submit that there needs to be a greater understanding and training amongst all court personnel about how they interact with vulnerable women (and young people) coming to the court, as well as working with Indigenous and CALD clients.

Court structure

In Queensland, there is only one Children's Court. Child protection matters are otherwise dealt with by Magistrates sitting in local Magistrates Courts exercising Children's Court jurisdiction.

In our experience, due to a lack of safe rooms available, women are required to wait outside the courtroom and risk exposure to the perpetrator of violence. Both clients and young people are also required to sit in common waiting

areas that are shared with other court rooms. Clients, and particularly young people, are then exposed to surrounding and 'adult' matters in the court, as well as potential perpetrators, in criminal and domestic violence matters.

To enhance client's experiences in the system, Courts must be re-structured so that clients and young people are kept safe and separate from perpetrators and other persons attending court. Courts also must be re-structured to ensure that there are child friendly rooms where young people feel comfortable waiting.

Court practice

In our experience, there is limited access to trained and skilled interpreters where English is the client's second language. The lack of skilled interpreters affects the client's ability to understand the process and be given a meaningful opportunity to participate in the proceedings.

Even if English is the client's first language, court processes and language used in the court needs to be simplified, as formal processes and legal language are likely to be unfamiliar to both clients and particularly young people.

Clients who do not qualify for legal aid are given limited or no access to a legal representative. This limited access, coupled with the above factors, is insufficient to facilitate an informed and meaningful participation in the decision affecting the client and her children.

Court practice also needs to be improved to ensure that there are standard and consistent directions for the conduct of the child protection matters. The absence of standard directions and differing practices of Magistrates means that clients (nor advisors) can predict what will happen at the mention or what decisions may be made. Clients are provided with limited opportunity during the mention to consider what is happening or being proposed.

In our experiences, the court is an intimidating and formal atmosphere for vulnerable clients. The Child Safety Officer (CSO) is not required to attend each mention. The CSO is often the main (or only) person by which the client or young person often finds out about things that are happening to them and their families. Court practices could be improved by the Magistrate requesting the CSO to attend each mention so that there is a familiar person present.

We thank the Commission of Inquiry for the opportunity to put WLSQ's view and look forward to the recommendations of the Inquiry.