



## Women's Legal Service

3 October 2013

Access to Justice  
Productivity Commission  
GPO Box 1428  
CANBERRA CITY ACT 2601

By email: [access.justice@pc.gov.au](mailto:access.justice@pc.gov.au)

Dear Sir/Madam

### **Women's Legal Service (Brisbane) response to Access to Justice Arrangements Productivity Commission Issues Paper**

Women's Legal Service (WLS) welcomes the opportunity to provide a response to the Access to Justice Arrangements Issues paper. As a community legal centre providing free legal services to women in Queensland we have direct experience with the difficulties, costs and barriers women experience in accessing the justice system. We have also developed some important solutions to the challenges of providing legal services to marginalised women. WLS welcomes the important broader community debate that will inevitably flow from the Commission's work in this area.

WLS has been operating for nearly 30 years. WLS provides legal information, advice and representation to women predominately in the areas of family law and domestic violence. We also provide social work services, community legal education, produce publications and engage in legal reform work. WLS provides services to over 3000 women every year, and we know that there are a further 16000 requests for assistance that we are unable to meet.

The scope of the legal assistance provided includes:

- Twice weekly drop-in evening advice clinics, staffed by a rotating roster of 100 volunteer lawyers and support workers;
- Four telephone advice sessions each week that is available Statewide;
- A weekly designated phone advice service for women outside the Brisbane metropolitan area (Rural Regional Remote phone service);
- A weekly duty lawyer services provided at the Domestic Violence call over at the Holland Park Magistrates Court;
- Outreach to Family Relationship Centres at Mt Gravatt and Logan;
- Monthly outreach to the Gold Coast Centre Against Sexual Violence; and
- Day time casework and representation for women with complex matters and multiple vulnerabilities.

### **WLSA submission to the Commission**

Women's Legal Service is a member of the Women's Legal Services Australia (WLSA) network. We endorse and support the submissions of WLSA and its national perspective on the issues.

The focus of this submission is to provide the Commission with an individual service delivery level perspective in the Queensland context.



## **Legal Needs**

In WLS' experience it is difficult to estimate the extent of women's legal need in the area of family law however, we know the need is very high especially for women who experienced domestic violence.

This is due to the following issues:

- Many women are reluctant to engage in a legal process due to domestic violence in the relationship;
- Where there is domestic violence it is inappropriate and unsafe for many women to engage in alternative dispute resolution processes without legal representation and other supports (although this frequently occurs);
- Many women do not access legal remedies in family law due to the lack of availability of affordable legal representation and there is a concern that some women make a decision to resume their relationship with the perpetrator as acting unrepresented is not an option for them;
- Acting without representation in the family law system is the position of last resort and without much support and assistance it is a daunting prospect for most women that can lead to unjust outcomes;
- Family law matters are not resolved quickly, particularly children's matters that may need to return to the legal process as the child develops and their circumstances change; and
- For women experiencing domestic violence, their priority is safety for themselves and their children, so without access to safe information and service supports, legal issues grow and become more complex, which are more costly to the women and the system to resolve.

In our experience, the last 12 months has seen a doubling of the number of women trying to access our evening advice service and on average turn 5-7 women away each night as we don't have capacity to see them.

WLS makes difficult daily choices about which women to assist and prioritise our casework and representation to women who:

- are declined legal aid, (which can often be due to lack of evidence);
- experience significant safety issues due to domestic violence; and
- have urgent matters and urgent drafting of material is required; and
- are vulnerable due to their cultural background, physical or mental disability, or age.

## **The cost of accessing justice**

There are a number of barriers women experience in accessing justice that relate to the financial cost of access including:

- Court Fees

Over the last 12 months there has been an increase in court fees, particularly in the area of divorce. While it might be argued that the court fees for a divorce are substantially less than

the costs of marriage, the affordability of divorce fees relates to the early resolution of other family law matters such as property settlement and cessation of relationships involving domestic violence.

Once a person has obtained a divorce there is a time limit of 12 months to commence property settlement proceedings. While many parties commence these proceedings before divorce, the time limit compels parties to resolve issues sooner rather than later. The longer property settlement takes the more difficult it can extract evidence of the property of the marriage as parties move on to other relationships, liquidate assets and lose evidence of the property of the marriage.

A divorce is also a very important step for women who have been in violent relationships. Not only is it a symbolic end of the relationship, importantly it ends any legal reasons why a perpetrator might ostensibly contact her. Additionally, it sends him an important message that the marriage is over, he does not 'own' her or have 'power' over her anymore. In our experience, the exemptions for divorce court fees for health care card holders and for reduced income women do not address the lack of affordability for many other women.

- Legal Fees

The cost of private lawyer legal fees for a family law matter is prohibitive to all but the wealthy. It is not uncommon for women to be required to provide between \$5,000 - \$10,000 in trust prior to a private lawyer commencing proceedings in court.

Due to the high costs of legal fees, WLS work frequently involves assisting women to initiate proceedings and drafting supporting documentation.

Higher legal fees are experienced by women who have experienced domestic violence and/or have concerns that their child is being sexually abused. In order for court proceedings to both deal with those matters in specialised ways and to conduct evidence on these specific matters, extra document preparation is required and hence more legal costs involved. The Magellan special case management program for child abuse matters was initially established in the Family Court and all parties were legally represented. This is not the case anymore and we also assist women who are representing themselves in these highly complex matters. Often their evidence is crucial as they may have been the only person the child has disclosed to or the only witness to the child's concerning behaviours.

- Self – representative litigants and legal aid

WLS experiences great difficulty in obtaining grants of legal aid for family law and domestic violence matters. When aid is not available and private solicitor fees are prohibitive, WLS struggles to meet the demand from women who need legal assistance to navigate complex legal systems. WLS also spends a considerable amount of time assisting women to also appeal their legal aid decisions, with regular success.

In determining whether the client has merit, Legal Aid grants officers, who are not lawyers, conduct a "mini determination" of the merits of the case. For example, a client of WLS had an adverse family report, on which Legal Aid determined her ineligible for aid, where she met

the means test. WLS assisted the client to get to trial, where, with the assistance of pro bono counsel, cross-examined the report writer who resiled from their views written in the report and was much more favourable to our client. Had it not been for this report, the client would have received aid.

The means test is also strictly applied in a manner that does not reflect genuine living expenses of women. For example, a client of WLS was eligible for aid in every respect, but for equity in a car. The car was critical to this client in transporting her children, including facilitating contact of the children with their father.

There is also delay of up to 6-8 weeks for a grant of aid to be provided to a woman. This delay invariably means that women require assistance to draft initiating material, in the hope that legal aid will be provided.

- Unrepresented litigants

WLS's view is that the complexity of the legal system makes it very difficult for under-resourced unrepresented litigants to access justice. While the use of technology, such as the Commonwealth Law Portal can streamline people's experience of the justice system, there are many clients who don't use technology for literacy and cost reasons.

An example of the complexity of the system is that there are different court rules for the Federal Circuit Court and the Family Court of Australia. For a client who is unrepresented issuing subpoenas and viewing material can be confusing and costly. Terms like "conduct" money are not defined under the rules, and is not a concept a lay person would ordinarily come across.

- Lack of pro bono

The recent study by the National Pro Bono Resource Centre indicated there is a paucity of pro bono assistance in the area of family law and to some extent in family violence when it is intersected with family law issues. Due to complexity of the area of law, the nature of the client, the lack of discrete task work, and the perception that legal services in this area of law should be government funded, it is unlikely that there would be increased pro bono services in the future<sup>1</sup>. In WLS' experience, the best way we have been able to harness pro bono services in family law is to:

- Use volunteer family lawyers to provide advice at an evening drop-in advice clinic. We have approximately 100 volunteers on a rotating roster basis;
- Prevail upon sympathetic members of the bar to provide pro bono court representation for vulnerable clients in the limited circumstances where WLS can act as instructing solicitor.

Both the lack of legal aid availability for counsel fees and the inconsistency in pro bono Counsel, it is difficult for WLS to run matters to trial, despite merit and complexity of client need.

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<sup>1</sup> National Pro Bono Resource Centre, October 2013, *Pro bono legal services in family law and family violence*

## **Legal Assistance Services**

WLS operates a “duty lawyer” service one day every week at the Holland Park Magistrates Court when the court conducts its call over. While there are Statewide services like this in other Australian states, the WLS outreach is the only one of its kind in Queensland. The service works with other stakeholders at the court (including domestic violence court assistance workers who work to support the victims of violence and work alongside the men and a law firm that provides pro bono legal representation for the men) to ensure that clients receive not only legal assistance, but other support and assistance. This model of service delivery has been highly successful as it:

- Is accessible at the court, capturing clients that might not have otherwise had contact with the service;
- Provides opportunities for early dispute resolution, not only in domestic violence matters, but also in family law. Early access to family law legal advice and assistance is very important to support safety because the ongoing family law issues provide a multitude of opportunities for ongoing violence; and
- Supports women who would otherwise be facing the perpetrator alone at court.

The service delivery model could be enhanced if properly funded as it would also allow for the development of a service delivery framework and also the development of service and communication protocols.

The duty lawyer service also provides an illustration of how difficult it would be for a community legal centre such as WLS to operate under a funding model that was purely based upon State and Commonwealth matters. While domestic violence is a state-based matter, family law matters are those which are in contention in many relationships. A less flexible funding model would not allow WLS to address the holistic legal needs of the client.

Generally WLS is highly supportive of legal work conducted on an outreach basis. We conduct outreaches to the Women’s Correction Centre, the Gold Coast Centre Against Sexual Assault, and Family Relationship Centres. Outreach models allow for specific vulnerable groups in the community to be appropriately assisted and to increase access to groups that would not otherwise seek assistance. We also have a designated rural, regional and remote telephone service that excludes callers from Brisbane and allows greater access to women who from more isolated areas of Queensland. Unfortunately, we only have funding to operate this service once per week.

## **Mediation and Family Law**

The family law system encourages early resolution of disputes through the compulsory streaming of people through alternative dispute resolution processes, (called family dispute resolution) except in cases where it is inappropriate including matters involving violence. In WLS experience many women who experience violence are invariably and unsafely involved in FDR, due to a number of complex reasons including the inherent power and control dynamics in a violent relationship, not fully understanding their legal right not to be involved, having no other alternative, they are attracted to FDR as it is cheap and relatively easy to

access and many want to at least try FDR and some FDRPs believe their processes are safe because they have the skills to 'level the playing field'.

WLS was commissioned by the Commonwealth Department of Justice and Attorney-General to develop a model of safe mediation when there is violence present in the relationship. This model was called Coordinated Family Dispute Resolution and was trialled in a number of sites and evaluated to be a successful model. Unfortunately, this model was not funded beyond the trial, despite an evaluation recommending its continuance and expansion. Central to the model was the legal representation of legal parties to counterbalance the power and control of the violent partner. Should this model receive funding in the future, many family law disputes could be resolved early, despite the presence of violence.

In the alternative the government should at least consider the funding and expansion of the CLC partnerships with FDR providers to enable legally assisted FDR, especially for particularly vulnerable clients.

WLS looks forward to the draft report of the Commission of Inquiry and assisting the Inquiry in its future work.

Yours faithfully

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