



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

Mrs Giulia Jones MLA (Chair), Ms Bec Cody MLA (Deputy Chair), Ms Elizabeth Lee MLA,
Mr Chris Steel MLA

Inquiry into Domestic and Family Violence—Policy approaches and responses

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ACT Bar Association

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ACT BAR ASSOCIATION

22 September 2017

Dr Andreea Cullen
Secretary
Standing Committee on Justice and Community Safety
ACT Legislative Assembly
GPO Box 1020
Canberra ACT 2601

Dear Dr Cullen,

Inquiry into Domestic Violence – Policy approaches and responses

The ACT Bar Association welcomes the Standing Committee on Justice and Community Safety's Inquiry into Domestic and Family Violence: Policy approaches and responses, and is grateful for the opportunity to provide this brief submission.

1. The ACT Bar Association has previously had input into legislative reform in this area. Those working in the Court system as it responds to domestic and family violence are acutely aware of the importance of government and community services and responses which are not legislatively-based. Appropriate and properly resourced services and broader policy responses can reduce the need for legal responses. They can also be important adjuncts to legal responses.
2. The ACT Bar Association has welcomed the ACT Government's funding and support of the Women's Legal Centre and other community legal services and reiterates again the vital role these services play in assisting victims of domestic and family violence. The services provided do not just assist those whose matters are before the courts, but also, through advice and guidance at early stages, can assist those leaving violent and abusive relationships to do so safely, and with appropriate arrangements in place for children.
3. The ACT Bar Association notes that the Commonwealth Government is planning to introduce amendments to the *Family Law Act* which will increase the powers of the ACT Magistrates Court (along with other Courts of Summary Jurisdiction) to make parenting orders under the *Family Law Act*. It anticipates that one of the contexts in

which the Magistrates Court will be asked to exercise these powers will be on an interim basis when making Family Violence Orders.

The ACT Bar Association notes that the proposal to expand this jurisdiction is in its early stages, and that there are significant practical issues which have not, to its knowledge, been addressed. There will need to be significant consultation involving both levels of government and all relevant courts to explore the interactions between the various jurisdictions and to address the many practicalities involved, including through the development of appropriate procedures, rules, practice directions, resourcing and the like.

The ACT Bar Association notes and welcomes the Commonwealth Government's funding of family law judicial education programs for Magistrates, and looks forward to ongoing support of this and subsequent programs within the ACT Government and court system.

4. Children's Contact Services

Courts working in the family law area in a context where there are allegations of family violence and/or child abuse often look to community services for the provision of supervision of children's time with a parent, particularly while allegations are being investigated and tested. Over recent years the waiting lists for access to such services at the major supervision facility in the ACT, and the only one which provides such services at a fee which is affordable for all families – Marymead - have been up to 12 months, with waiting periods of 8-9 months common. Private services (for example, Ohana Family Services), are often not affordable. Currently fees for supervised contact with Ohana range from \$85 an hour on a weekday to \$135 an hour on Sundays.

The lack of immediate and affordable access to supervision centres can mean that children are not able to spend time with a parent at all, are only able to spend very limited time with a parent, or that supervision arrangements are made which are less protective of children and their carers than supervision at a centre would be.

While the ACT Bar Association understands that it has been the Commonwealth government which has largely been responsible for funding of Children's Contact Services, it would welcome the Committee considering what role the ACT Government might play in increasing and enhancing these important services for the children of the ACT. They are a critical part of appropriate policy responses to domestic and family violence.

5. Definitions of Domestic and Family Violence

The ACT Bar Association notes the useful outline of the issues involved in defining domestic and family violence in the Discussion Paper, and its focus on type of conduct and relationship. The Committee may be interested to note the definition of "family violence" introduced into the *Family Law Act* in 2011 (section 4AB). Key to that definition is a broad definition of behaviour "that coerces or controls a member

of the person's family, or causes the family member to be fearful." Non-exclusive examples of that type of behaviour are then listed in the section. There is also a definition of the circumstances in which a child will be taken to have been exposed to family violence in section 4AB(3) and (4).

The definition of family violence in the *Family Law Act* has been the subject of some careful judicial consideration by Federal Magistrate Hughes (as she then was) in *Carra and Schultz* [2012] FMCAfam930. There is also a useful academic discussion by Zoe Rathus in 'Shifting Language and Meanings Between Social Science and the Law: Defining Family Violence (2013) 36 UNSWLJ 359.

The definitions of family violence as between the different jurisdictions warrant careful consideration, and policy-makers will be mindful of how the different jurisdictions may interact, the different purposes of the relevant policies and laws, and issues around proof.

The Bar would welcome further opportunity to comment if needed.

Yours faithfully

Family Law Sub-Committee

