Family Property Disputes involving Family Violence:
A Pilot Research Project

December 2018

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Acknowledgments

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We would also like to acknowledge and thank all the participants in this project, including representatives from the following:

Family Court of Western Australia, Aboriginal Legal Service, Aboriginal Family Law Services, Citizens Advice Bureau, Consumer Credit Legal Services, Domestic Violence Legal Clinic, Fremantle Community Legal Centre, Law Access, Legal Aid WA (Infoline, Client Services, Dispute Resolution Unit, Family Violence Unit), Northern Suburbs CLC (WREN), Peel CLS, SCALES, South West CLC, Sussex Street CLS, Tenancy WA, Women’s Law Centre, Women’s Legal Referral Service, Relationships WA, Family Law Practitioners of WA, John Toohey Chambers, Curtin University, and Edith Cowan University.

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1. EXECUTIVE SUMMARY

1.1 BACKGROUND

The legal assistance sector has recognised that a significant unmet need exists for families affected by family and domestic violence (‘FDV’) who cannot access legal assistance to resolve their property disputes. The research suggests that the lack of access to appropriate and safe methods to resolve their property disputes can lead to further adverse dynamics for the families involved. Additionally, larger downstream costs for individuals and communities, and by extension state and federal governments, will flow if the disputes remain unresolved.¹

People experiencing FDV in property disputes do not encounter legal issues in isolation. There are usually many co-occurring issues for these people to grapple with, including, but not limited to, housing, social security, and mental health issues. Again, a significant unmet need here can result in significant downstream effects in the future.

The purpose of this collaborative research project was to investigate the scope of the unmet need for people in this situation in Western Australia. The Research Team premised the project on two propositions. First, that separated parties with FDV issues require legal assistance to facilitate a fair resolution of their family property disputes. Second, that there is a dearth of appropriate low-cost legal assistance available in Western Australia, increasing the probability of unfair outcomes for victims of FDV.

The specific aims of the project were to:

1. investigate the scope of the need of people with FDV issues to have appropriate low-cost assistance in resolving their property disputes;
2. identify the type and extent of local services and their FDV data collection practices and identify any gaps in current services;
3. explore ways of increasing access to legal assistance, both pro bono and through legal assistance providers; and
4. identify ‘best practice’ design and delivery of appropriate services for people caught in the family violence and property dispute dynamic.

1.2 METHOD

The Research Team designed the project as an exploratory ‘constructive inquiry’ where the researchers and the service providers actively participated in the research. All participants actively shared information and data, and contributed to issue identification and problem solving.

1.3 KEY FINDINGS

The key findings from the project include:

- In Western Australia, access to low-cost ongoing legal assistance for people having both FDV issues and property disputes is limited;

- The reasons for the inability of the service providers to meet the need for clients with FDV and property disputes is a lack of funding, time and resources, and a lack of family property lawyers with adequate FDV and dispute resolution training. Reasons also include a lack of consistent and collaborative approaches and a lack of data (and hence data sharing);

- Service providers do not have access to a cohesive, collaborative, or comprehensive means to collect data on FDV and property disputes;

- There is a lack of information sharing amongst service providers such that it is not clear to the public and other services which service providers have capacity to assist clients with FDV and property disputes;

- There is a lack of free information available to the public about the intersection between the law of property division and FDV;

- Service providers have difficulty in identifying FDV, possibly due to a divergence in the way that professionals asked questions of the potential victims of FDV and/or a reluctance of victims and perpetrators to report;

- Stakeholder organisations identified ‘best’ service design as one which provided ongoing wrap-around legal and non-legal advice, support, and legal representation for both parties and potentially encompassing the full range of services (including mediation) with practitioners and professionals who had FDV training; and

- There is a ‘patchiness’ and complexity to service delivery to people in need in this area. The issues require greater funding, further research, and collaborative efforts to integrate the existing knowledge and practices which are emerging.

### 1.4 Recommendations

<table>
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<tr>
<th>Recommendations</th>
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<tr>
<td>1. Stable and adequate funding</td>
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<td>2. Government Leadership to provide administrative architecture</td>
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<tr>
<td>3. Collaborative approaches to funding, service provision, training and research</td>
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- Providing integrated and wrap-around services for vulnerable clients caught in the FDV/property dispute dynamic;

- Exploring collaborative funding models;

- Conducting comprehensive and consistent FDV training to all practitioners working in this field;

- Coordinating data collection and the creation of current and visible information regarding the FDV/property dispute dynamic; and
4. **Wrap around service provision – best service design**

- Researching and developing an evidence base to develop a common understanding of the needs of these clients and the best methods of service delivery.

Participants identified ‘best’ service design for people caught in the FDV and property dispute dynamic as being services that combine legal assistance with non-legal support. To enable this:

- Commonwealth and state governments should resource legal assistance services and other service providers to provide ongoing, wrap-around legal and related support to people caught in the FDV and family property dispute dynamic;
- Wrap-around services should employ family property lawyers and dispute resolution practitioners who have FDV training and expertise; and
- Wrap-around services should include appropriately structured mediation with legal representation for both parties.

5. **Identification of FDV**

Service providers and funders should develop a common approach to identifying FDV issues in property matters, including a common approach to encouraging clients to report FDV, asking the ‘right’ questions and defining FDV.

6. **Comprehensive, consistent, collaborative training**

Comprehensive, consistent and collaborative training for all practitioners working in the area is needed. This includes:

- Organisations raising awareness of the importance of FDV training for all practitioners working in this field, including, family law practitioners and mediators;
- Developing a common approach and curriculum to the training to ensure that specialised transdisciplinary competencies are developed, and that information and expertise is shared; and
- Evaluating the effectiveness of the developed training programs.

7. **Information provision and sharing**

There is a need for up to date, visible information sharing. This includes:

- Creating an up to date, accessible list of the extent of services and centres available which have capacity for legal assistance in property matters, including the type and extent of assistance. This list should be made available to legal practitioners, dispute resolution service providers, and the public;
- Creating an up to date, accessible list of family law practitioners who have FDV training and expertise. This list should be made available to legal practitioners, dispute resolution service providers and the public.
- Legal service providers and dispute resolution service providers should provide online information on the intersection between FDV and property disputes, with a focus on safety issues.

8. **Data collection**

Stakeholder organisations need to comprehensively capture and assess data. To enable this:

- Federal and state governments should fund coordinated efforts to improve the functionality of the stakeholder organisations’ current data collection systems; and
9. **Research: Developing an evidence base**

A more comprehensive evidence-base needs to be developed. Stakeholder organisations should:

- develop a collaborative and evidence-based approach to research and practice to develop a common understanding of the needs of clients and the best methods of service delivery;
- consider the resources needed to ensure access to a cohesive, collaborative, and comprehensive means to collect data on FDV and property disputes; and
- adopt the collaborative and information sharing constructive inquiry as a research method, where appropriate.
## Common Acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>ALS</td>
<td>Aboriginal Legal Service</td>
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<tr>
<td>AFLS</td>
<td>Aboriginal Family Law Services</td>
<td></td>
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<tr>
<td>CLC</td>
<td>Community legal centre</td>
<td></td>
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<tr>
<td>CLS</td>
<td>Community legal service</td>
<td></td>
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<tr>
<td>CSPG</td>
<td>Collaborative Services Planning Group</td>
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<tr>
<td>FCWA</td>
<td>Family Court of Western Australia</td>
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<tr>
<td>FDV</td>
<td>Family and domestic violence</td>
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<tr>
<td>FLA</td>
<td>Family Law Act 1975 (Cth)</td>
<td></td>
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<tr>
<td>FLPA</td>
<td>Family Law Practitioners Association</td>
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<tr>
<td>FRC</td>
<td>Family Relationship Centre</td>
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<td>LAW</td>
<td>Legal Aid WA</td>
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<tr>
<td>RA</td>
<td>Relationships Australia</td>
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<tr>
<td>UWA</td>
<td>The University of Western Australia</td>
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2. INTRODUCTION

2.1 BACKGROUND

Family and domestic violence (‘FDV’) is one of the most significant social and legal issues facing Western Australia today. Research has shown that one in four Australian women has experienced physical or sexual violence by an intimate partner and that this experience cuts across all socio-economic groups. A report on family, domestic, and sexual violence in Australia — released on 28 February 2018 by the Australian Institute of Health and Welfare — shows that Western Australia has the highest proportion of assaults related to family violence in Australia. For example, in 2016, almost 64% of assaults were committed by a perpetrator who was the partner or relative of the victim. The report found that the victims of these assaults are ‘overwhelmingly female’. The meaning of family violence in the context of family law is broader than physical violence. The definition of FDV provided by s 4AB of the Family Law Act 1975 (Cth) (‘FLA’) defines ‘family violence’ expansively to incorporate coercive and controlling behaviour which may or may not include physical violence or threats. The FLA definition includes examples of economic abuse, such as situations where the perpetrator denies a family member the financial autonomy that he or she would otherwise have had or where a person has unreasonably withheld the financial support needed by a family member.

2.2 BRIEF LITERATURE REVIEW

There has been some relevant research and empirical studies into FDV in Australia, including a recent (2016) Victorian Royal Commission into Family Violence. Although there are no discrete Western Australian statistics on the financial consequences for victims of FDV of divorce or separation, the studies and statistics from around Australia and internationally paint the following general picture:

- The financial consequences of divorce or separation can create an economic crisis for both parties, since the money that supported one household is usually not enough to meet the costs of two households. However, typically, women suffer greater financial disadvantage than men;

- There are particularly difficult dynamics surrounding separation and property for women who leave relationships and family homes against a background of family violence. Parents who experienced violence and/or abuse before and/or during separation were still more likely than parents without such experience to have financial hardship four to five years later after separation;

- An Australia-wide survey showed that seven out of 10 women who had experienced violence in a previous relationship — that is, over half a million

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women — had also abandoned property or assets when they left the relationship;⁶

- Victims of FDV are at a disadvantage when dividing matrimonial property;⁷

- People who have experienced violence may accept a less satisfactory settlement due to fear of reprisal or simply because they want to get out of the negotiation process as quickly as possible due to their experiences;⁸

- A reported history of emotional abuse or physical hurt (men and women) is associated with a lower share of property division and a greater likelihood of experiencing a sense of unfairness after separation;⁹

- It is a very common tactic for perpetrators to delay property settlements to financially exhaust victims and to force victims to agree to an outcome that is not in their best interests;¹⁰

- Victims face enormous difficulties in reaching fair informal property settlements where there is ongoing violence. And relatedly, the high cost of legal representation is a barrier to pursuing the matter formally in the family courts;¹¹

- ‘Women leaving violent partners/ex partners (or other family members) often have complex legal needs, including negotiating time with children, responsibility for debt, division of property, tenancy and immigration status and obtaining court orders. Some women also require legal advice in relation to criminal matters. Our DVAs [Domestic Violence Advocates] spend a considerable amount of time arranging and attending legal appointments with their clients. It is not unusual after waiting for and attending such appointments that the organisation approached refuses or is unable to assist.’¹²

- Women who have experienced FDV and who have only a small amount of property to divide after separation may be most in need of access to a fair property settlement. Further, without legal assistance their limited finances and other vulnerabilities make a settlement difficult to obtain;¹³

- Victims of FDV are frequently subjected to further economic abuse through the family law court system, with perpetrators intentionally causing delay in

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⁷ Easteal, Young and Carline, above n 4, 208.
¹² Ibid vol 3, 151.
negotiations, failing to disclose assets, signing forms incorrectly, and vexatiously appealing decisions;\(^{14}\)

- Women victims of FDV often decide to settle out of court, or for less than their entitlement, because of their desire to reduce conflict, accelerate the separation, and prioritise their safety;\(^{15}\)

- It is more likely that vulnerable women, particularly victims of FDV, will require a formal court process to achieve a fair property settlement;\(^{16}\)

- ‘The position of most parents in our [the authors Belinda Fehlberg and Christine Millward] study would have been improved by the availability of free or inexpensive ongoing personalised support and advice in relation to their financial issues, especially property division...’\(^{17}\)

- ‘Often survivors were unaware of the available legal channels, and women and workers [at the Centre for Rural Regional Law and Justice] alike emphasised the need for greater access to affordable legal advocacy, not only preceding and on the court appearance date, but also to address women’s unmet legal needs surrounding family violence and family law matters more generally, as well as property issues.’\(^{18}\)

- FDV is ‘core business’ in the federal family courts and research suggests that ‘people affected by family violence and/or child abuse are the core client base of the formal parts of the federal family law system: family dispute resolution services, lawyers and courts.’\(^{19}\)

- ‘There is a gap in the present legal and financial systems in providing options for regaining economic security to people fleeing violence.’\(^{20}\)

This brief literature review indicates that the dynamic for property disputes with FDV issues will generally involve the perpetrator of the violence (typically a man) being in a position of economic and psychological power and advantage, and the victim of the violence (typically a woman) needing access to legal processes to resolve the dispute. In many cases, the victim may be too intimidated to assert her legal rights to the family asset pool, be unable to afford legal representation, and will be likely to accept an unfair settlement for reasons of personal safety.

Even simple property disputes can be technical. They often require those resolving them to possess a high degree of financial literacy and understanding of the law. Consequently, the costs of private legal representation can be high. Further, due to some uncertainty in relation to the relevance of family violence factors in property actions and the highly discretionary nature of property decision-making, it can be difficult — even for legal practitioners — to predict what a court would consider a fair

\(^{14}\) Easteal, Young and Carline, above n 4, 208.


\(^{16}\) See preceding discussion.


\(^{19}\) Ibid 182.

\(^{20}\) See generally Jessica Vu, ‘Overcoming the Consumer Credit Implications of Domestic and Family Violence’ (CEED Project paper, The University of Western Australia, 2017).
division of property. As a result, being a self-represented litigant for property matters can be challenging. In general, parties who do not have legal assistance and who become litigants in person face many barriers, including:

- unrealistic expectations;
- protracted negotiations;
- vexatious proceedings;
- avoidable adjournments; and
- unnecessary hearings.\(^{21}\)

These barriers can lead to extensive delay and may affect litigation outcomes. Self-representing victims of FDV who opt out of the litigation process due to these barriers may further entrench existing economic abuse.

A further complicating factor is that there are no legal means to compel disclosure of assets for mediation purposes. This can put victims of FDV at another serious disadvantage — without accurate information about the income, assets, and liabilities of the other party, they cannot be certain that a mediated property settlement will be fair and they may have to initiate court proceedings to obtain proper financial disclosure.\(^{22}\)

The lack of access to appropriate and safe methods to resolve their property disputes can lead to further adverse dynamics in the family environment. It may result in compounded trauma and injustice for all involved — especially for children who can easily become distressed by the acrimonious protraction of legal proceedings. The flow on effect from any, or all, of these issues can be a compounded and complex set of problems. Individuals affected often face housing, employment, and health-related impacts.\(^{23}\) The social cost of this issue is unknown but the existing data from legal assistance service providers indicate that the problem is deep.\(^{24}\)

### 2.3 The Legal Relevance of Family Violence in Property Matters

The recognition of the relevance of family violence to family law matters has taken some time. This is true even in respect of parenting proceedings where arguably the relevance of family violence is more obvious.\(^{25}\) The 2012 reforms to Part VII of the FLA (which deals with parenting proceedings),\(^{26}\) went some way to improving matters in respect of parenting disputes, including specific provisions addressing the relevance of family violence. However, the same did not occur in respect of family law property

\(^{21}\) Evidence from the constructive inquiry undertaken as part of this Report.

\(^{22}\) Women’s Legal Service Victoria, above n 13, 2, 24.

\(^{23}\) See particularly Coumarelos, et al, above n 1, xii-xvi.


\(^{25}\) For an outline of the history of the recognition of the relevance of family violence to family law proceedings see, eg, Lisa Young, Adiva Sifris, Robyn Carroll and Geoff Monahan, *Family Law in Australia* (LexisNexis Butterworths, 9th ed, 2016) [98-104] [3.1]-[3.3], [578-588][9.28]-[9.39], [878-885] [14.37]-[14.44].

\(^{26}\) See *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* (Cth).
proceedings. Despite growing evidence that legal property proceedings might unfairly disadvantage victims of family violence, there appears to have been no legislative appetite to amend Part VIII of the FLA (which deals with property, to take account of family violence).

Appendix A sets out in more detail some of the legal and procedural aspects surrounding the intersections of family violence and family property law. This research project was instrumental in raising awareness to these and makes some recommendations to this effect. In summary, the legal and procedural discussion in Appendix A provides the following information for the purposes of this project:

- There is scope for consideration of family violence in property disputes through the factors provided in s 75(2) of the FLA and the 1997 decision of the Full Family Court in Kennon v Kennon;27

- However, there is evidence that family lawyers are not attuned to these opportunities, and hence, the likelihood of family violence being factored into negotiations seems remote (and even more remote if the victim is not legally represented);

- Further, there is some judicial uncertainty as to precisely how to factor in Kennon claims in terms of the overall outcome. Relatedly, the adjustments made are generally small. Again, without legal representation for victims the likelihood of a court giving real and proper weight to violence seems small.; and

- Finally, establishing a course of violent conduct may be extremely difficult for many victims without the assistance of legal representation.

2.4 The Research Project

By 2016, the legal assistance sector had recognised that a significant unmet need existed for families affected by domestic violence who could not access legal representation to resolve their property disputes. Further, while the evidence suggested that the lack of access to appropriate and safe methods to resolve their property disputes led to further adverse dynamics for the families involved, there was unclear evidence as to the exact nature and scope of the unmet need.28

A research collaboration between the legal assistance sector and university academics identified that the intersection of family violence and property settlement disputes was a priority research area.29 The collaboration designed a research project as a pilot study premised on two propositions:

1. That separated parties with FDV issues require legal assistance to facilitate a fair resolution of their family property disputes; and

2. There is a dearth of appropriate low-cost legal assistance available in Western Australia, increasing the probability of unfair outcomes for victims of FDV.

27 [1997] FamCAFC 27. Essentially, the Full Court held that a victim may be found to have made a greater contribution than would otherwise be recognised, where their contributions have been made more difficult by having been the victim of a course of violent conduct by their spouse.

28 Kallco Consulting for the WA Collaborative Services Planning Group, Legal Need in Western Australia (2017) 30, 73; Women’s Legal Services Australia, Submission No 29 to Productivity Commission, Access to Justice Arrangements, 4 November 2013, 8.

In 2017, the Law Society of Western Australia granted funding for the pilot project through its Public Purposes Trust. The **main aims of the project** were to:

1. Investigate the scope of the need for people with FDV issues to have appropriate low-cost assistance in resolving their property disputes;
2. Identify the type and extent of local services and their FDV data collection practices and identify any gaps in current services;
3. Explore ways of increasing access to legal assistance, both pro bono and through legal assistance providers; and
4. Identify ‘best practice’ design and delivery of appropriate services for people caught in the family violence and property dispute dynamic.

The project was a **research collaboration** involving the following:

- the **Research Team** consisting of leading academics from the five (5) Western Australian universities, including Associate Professor Jill Howieson (Chief Investigator, UWA), Professor Robyn Carroll (UWA), Associate Professor Sarah Murray (UWA), Dr Ian Murray (UWA), Professor Lisa Young (Murdoch), Lisa Jarvis (Notre Dame), Dominique Hansen (Law Access), and Fiona Lester (Project Manager/Researcher);
- The **stakeholder organisations** including legal and non-legal organisations with ‘on the ground’ knowledge of the demand for services. This comprised representatives from 14 legal assistance providers, representatives from dispute resolution and mediation service providers;³⁰
- Representatives from the professional association for family lawyers, the **Family Law Practitioners of Western Australia (FLPA)** took part in this project recognising it as an important issue; and
- The Chief Judge of the **Family Court of Western Australia (FCWA)** nominated judicial officers as representatives of the Court.

### 3. METHODOLOGY

#### 3.1 CONSTRUCTIVE INQUIRY

The Research Team designed the exploratory pilot research project as a ‘constructive inquiry’.³¹ A constructive inquiry is a collaborative approach to research and involves stakeholders and researchers participating in driving and shaping the research which evolves as data is provided and shared between participants.³² It is a blend of the ‘appreciative inquiry’ evaluation method, where organisations actively engage in evaluation of programs and the creation of change, and the more traditional qualitative

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³⁰ This included representative from Legal Service, Aboriginal Family Law Services, Citizens Advice Bureau, Consumer Credit Legal Services, Domestic Violence Legal Clinic, Fremantle Community Legal Centre, Legal Aid WA (Infoline, Client Services, Dispute Resolution Unit, Family Violence Unit), Northern Suburbs CLC (WREN), Peel CLS, SCALES, South West CLC, Sussex Street CLS, Tenancy WA, Women’s Law Centre, Women’s Legal Referral Service, and Relationships WA.

³¹ The constructive inquiry model was first developed and used by Associate Professor Jill Howieson in the evaluation of a multidisciplinary pilot dispute resolution program in the area of child protection.

and quantitative research methods of gathering information. It is action-based and there is a clear feedback loop between participants.\textsuperscript{33}

The constructive inquiry method enabled the researchers and the stakeholders in this project to collaborate and actively participate in the project. The Inquiry used a variety of strategies to access data and information in order to identify issues and problems and to generate solutions to the identified problems.

3.2 \textbf{The Constructive Inquiry Strategies}

The Research Team originally envisaged that it would meet with an advisory group monthly for the initial phase of the project and then quarterly for the remainder of the project, and that it would invite all stakeholders and researchers to participate in a ‘focusing meeting’ and two ‘constructive inquiry workshops’. However, after the focusing meeting it became apparent that the team would need to adjust this research strategy. The reasons for this included the recognition that the issues to examine were disparate and complex and that it was necessary for this project to stay within the boundaries of a ‘pilot’ and ‘exploratory’ research project. Further, several issues emerged during the focusing meeting that related to the number and variety of data collection systems used by service providers and the apparent difficulty most service providers had in providing hard data about the nature and demand for the perceived but acknowledged ‘unmet need’.

The Research Team decided that it would hold regular progress meetings throughout the life of the project and that it would also gather more comprehensive and detailed information about data systems and the current provision of pro bono legal services. The Research Team considered that the most effective process would be to conduct one-on-one interviews with representatives of selected legal service and dispute resolution service providers and members of the Family Court of Western Australia.

3.3 \textbf{The Focusing Meeting}

\textbf{Method and Process}

On 16 August 2017, the Research Team conducted a focusing meeting with 23 participants from the stakeholder organisations consisting of private practitioners, representatives from legal assistance providers, and a judicial officer from the Family Court of Western Australia. The purpose of the focusing meeting was to focus the research according to the needs of the participants.

At the meeting, the participants took part in paired interviews, grouped theme and information capture sessions, and whole group discussions. The research questions included:

- What did they understand the scope and depth of the problem (family violence and property disputes) to be?
- How did they collect data, strategies, services, and resources issues?
- What did they perceive as working well and what did the perceive as not working well in their context?
- What ideas did they have about addressing those concerns?

\textsuperscript{33} Ibid 16-17.
Observations and Impact

All participants were of the view that legal representation in family property dispute resolution was ‘best practice’ for both victims and perpetrators of family and domestic violence. They identified a need for the provision of pro bono and low-cost legal services for parties with both property settlement disputes and disclosed family violence issues and identified a lack of available data to reflect the extent of any gaps in services.

The participants also raised issues in relation to the difficulties that unrepresented victims of FDV had in relation to disclosure of assets by the other party. A common view was that perpetrators continued property dispute as a form of abuse. Other issues of importance to the participants related to the wide definition of FDV, the lack of training of practitioners regarding the identification of FDV, and how to deal with client disclosure of FDV.

Colleen Brown from Legal Aid WA (‘LAWA’) spoke about the Legal Aid Family Violence and Property Pilot. One immediate impact of the focusing meeting was that Legal Aid changed its collection of information line data to capture unmet need in this area.

<table>
<thead>
<tr>
<th>Key findings and outcomes from the Focusing Meeting</th>
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<tr>
<td><strong>Legal Representation</strong></td>
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<tr>
<td><strong>Clear need</strong></td>
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<tr>
<td><strong>Data</strong></td>
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<td><strong>Disclosure</strong></td>
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<td><strong>Legal Aid telephone line</strong></td>
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Discussion

The findings from the focusing meeting led the research team to recognise that a key research question was: ‘what is the nature of the unmet need?’ The team recognised that it may be difficult to assess the current unmet need if stakeholder organisations could not produce easily comparable, clear data that reflected the need. In addition, the team needed more information about the types of assistance that the service providers already provided to people with family property disputes who also had FDV issues, and whether it would be possible to identify gaps in services.

The Research Team decided that they needed to further and independently investigate the data collection issues, issues around the identification and perception of the unmet need, and information about the types of services that the agencies already delivered. The Research Team decided that they would investigate this further through interviews with selected stakeholder organisations and members of the Family Court of Western Australia.
3.4 THE INTERVIEWS

Method and Process

The Research Team’s Research Assistant, Fiona Lester, conducted the interviews between 10 January and 7 March 2018 with representatives from 14 legal assistance providers, two private practitioners, and representatives from four dispute resolution/mediation service providers. Fiona Lester and Lisa Jarvis also interviewed two judicial officers from the Family Court of Western Australia.

The structure of the interview questions for the service providers were:

1. Short answer questions relating to data collection and current provision of services; and

2. Semi-structured questions relating more broadly to the identification and perception of the un-met need.

The interview questions for judicial officers from the Family Court of Western Australia were similar, although more focused on forms and process and the identification and treatment of family violence issues in property matters. Appendix B contains the interview questions.

Findings

The key findings of the interviews were that many service providers were operating in ‘silos’ and were not always aware of what assistance other service providers provide. Further and significantly, although all participants ‘captured’ information about FDV on client files and notes, the methods of identifying FDV on data systems was highly variable.

The main issue was that more than half of the legal service providers were working with new data collections systems. Most data systems did not identify clients with both FDV and a property dispute nor the numbers of people with both issues who had contacted their service in the last 12 months. Most of the stakeholder organisations would have had to go through client files manually to identify the number of clients with both issues whom they had assisted in the past 12-month period.

As an indication of demand for services, only two participants could provide data on the number of these people who ‘missed out; on assistance and, of these, only one participant could provide data covering a 12-month period.

<table>
<thead>
<tr>
<th>Key findings from the Interviews</th>
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<tbody>
<tr>
<td><strong>Silo approach</strong></td>
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<tr>
<td>Most service providers are operating in ‘silos’ and not always aware of what assistance other service providers provide.</td>
</tr>
<tr>
<td><strong>Lack of data to identify gaps</strong></td>
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</tbody>
</table>

Discussion

The Research Team decided to provide the results of the interviews to all participants at the first constructive inquiry workshop, and to focus that workshop on creating a collaborative map or matrix of the types of assistance provided by participants, rather than focusing on the issues around functionality of data collection systems.
3.5 The First Constructive Inquiry Workshop

Method and Process

On 28 March 2018, the Research Team conducted the first constructive inquiry workshop with 25 participants from the stakeholder organisations, consisting of private practitioners, representatives from legal assistance providers, and dispute resolution service providers, and a judicial officer from the Family Court of Western Australia.

The purpose of the workshop was to:

1. Present findings from the interviews, and
2. To create a collaborative map or matrix of the assistance that the stakeholder organisations currently provide to people with FDV issues and property settlement disputes.

The Research Team provided the participants with hard copies of an executive summary and the results of the interviews, and there was a short presentation on the results. The Research Team then asked participants to consider the services they provided and to share their observations on what they knew worked well, or was the most effective kinds of assistance, and what they knew didn’t work so well. The Research Team also asked the participants to think of simple ways that they could collect data that could demonstrate the effectiveness of their services. The Research Team entered these observations directly into tables to create a matrix of current services.

Observations

The key observations about the provision of free information were that:

- Most of the service providers had free information about the law of property division and about FDV on their websites;
- No organisation specifically provided any information about the intersection between the two issues; and
- Many organisations had capacity to provide free information and referrals over the phone and a few provided face-to-face information and referrals, either by appointment or to ‘walk-ins’.

In relation to the provision of legal advice and assistance, the key observations were that:

- Ten community legal centres (‘CLCs’) provided free one-off legal advice. Most one-off sessions were provided by volunteer solicitors at evening clinics;
- One-off legal advice without other support, such as financial counselling, was not likely to result in resolution of a matter;
- There was a key need for legal practitioners to have training on FDV and trauma in order to ensure victim safety;
- Six community law services provided free ongoing legal assistance for property matters and low-cost ongoing legal assistance was available to a limited number of clients at four community legal services, including through the Legal Aid Property Pilot. At these services all clients were ‘priority clients’ and many were a priority because they were victims of FDV. All such assistance was means tested. Some service providers limited the assistance to negotiation and document drafting, while other services provided the full range of services;
- Barristers provided pro bono assistance through Law Access or solicitor referrals and frequently provided pro bono advice to solicitors who were aware that a client could not afford a barrister;

- Participants who provided a full range of legal services observed that matters often ended up resolving through informal processes — such as drafting correspondence — or in dispute resolution. These participants observed that this was perhaps due to the perpetrator having knowledge that the victim had ongoing legal assistance; and

- Participants observed that integrated advice from legal and non-legal services — for example, a financial counsellor or a paralegal — worked well.

The key observations in relation to **free and low-cost mediation services** were that:

- Participants recognised that lawyer-assisted mediation had a very high success rate but it was not always possible for both parties to have legal representation;

- Participants recognised that appropriately structured mediation could provide benefits to parties. Research also supports this view;\(^{34}\)

- One service provider said that they mediated property disputes with unrepresented FDV parties without the need to always separate the parties (‘shuttle’ mediation); and

- Participants commented that private practitioners could be very reluctant to be involved in mediation unless both parties had legal representation because of the perceived power imbalance.

**Other observations** about issues that were not directly related to the type and extent of services provided were:

- **Increased safety:** in the experience of one participant, when financial matters were in dispute, FDV victims were at a greater risk of losing their lives and having a ‘lawyer as a buffer; meant increased safety for the victim. Other participants agreed with this observation;

- **Different questions, different characterisations:** there was a divergence in the way that service providers ask questions of potential victims of FDV rather than differences in the definition of FDV; and

- **Law Reform issues:** the FLA does not easily identify FDV in property decisions. In the view of some participants, the FLA should explicitly make FDV a consideration/recognition for the ‘just and equitable’ requirement in property settlement rather than just relying on Kennon factors (see the legal analysis at Appendix A).

<table>
<thead>
<tr>
<th>Key findings from the 1st Constructive Inquiry Workshop</th>
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<tbody>
<tr>
<td><strong>No specific information</strong></td>
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</table>

Integrated advice from legal and non-legal services — for example, a financial counsellor or a paralegal — works well. However, only four community legal services were currently providing ongoing legal assistance for property disputes.

Provision of a full range of legal services is most effective as the matters often end up resolving through informal processes — such as drafting correspondence — or in dispute resolution.

Participants identified a key need for legal practitioners to have training on FDV and trauma to ensure victim safety.

Lawyer-assisted mediation can be an effective way to resolve these disputes.

Discussion

After the workshop, the Research Team updated and amended the table of current services to reflect the information that the participants shared at the workshop and which the participants reviewed following the workshop (see Appendix C). The sections below contain a more detailed examination of the services that currently exist and an assessment of the current services and intervention strategies provided.

3.6 The Final Constructive Inquiry Workshop

Method and Process

On 19 September 2018, the Research Team conducted a final constructive inquiry workshop. The purpose of the workshop was to:

- Present the Draft Final Report and workshop its findings; and
- To evaluate the Recommendations and ask participants for their views and ideas on the Recommendations.

The Research Team provided the participants with soft copies of the Draft Final Report before this workshop. The Research Team worked with the participants to review the Final Report and to draft the Executive Summary, including the key findings and Recommendations. The key observations, questions, and comments which emerged from this final workshop are set out below.

Observations, questions and comments

FDV Training

Participants observed that they knew little about the types of FDV training on offer and the effectiveness of the training. They made the following observations and recommendations:

- There is gap in the provision of training on FDV and a general fragmentation and patchiness to the training approaches;
- There are currently no specialist FDV training providers in Western Australia;
- There is a need for a collaborative method into training and researching its effectiveness;
- Such training needs to build a common curriculum and move beyond an introductory program. It needs to develop competencies in the field and be transdisciplinary, for example, include the social sciences and law;
- Participants noted anecdotally that the effect of effective training created an open mind in the person — this included different approaches to client engagement and a stronger focus on safety;

- Participants favoured an inter-disciplinary training. That is, training comprising lawyers, mediators, case workers, the judiciary so that there is commonality in language and people can see the process from all perspectives; and

- The Financial Counselling Training is a recent training program that takes a holistic approach.

**Identifying FDV**

Participants emphasised the challenges involved in being able to identify FDV and/or ask the right questions to elicit information about FDV that was occurring. Participants noted that training in this was imperative.

**Mediation, Research and FDV**

Participants noted the general lack of research around the effectiveness and impact of various programs, including the use of mediation in FDV cases. Participants reported that the following programs were in progress:

- The UWA Mediation Clinic had received internal funding to develop a mentalising-based approach to mediation cases involving FDV and would be researching the effectiveness of this mediation approach over the next three years.;

- Relationships Australia (RA) had received funding from the Commonwealth Attorney General to conduct Legally Assisted Culturally Appropriate Family Dispute Resolution (‘LACAFDR’) at eight sites across Australia. LACAFDR involves providing the clients (Aboriginal, Torres Strait Islander and CaLD clients) with caseworkers who will ‘walk along side’ the clients and provide essential social support to them while helping them to develop strong and ongoing links with other community service providers, such as financial, housing, and counselling services; and

- Other programs were also under evaluation including an integrated wrap-around service offered by Northern Suburbs CLC and Women’s Resource and Engagement Network (‘WREN’), the Women’s Safety Package Pilot Program, and the ‘Stepping Stones’ project by Women’s Legal Service Victoria. Reports on these programs were due out shortly.

**Government Leadership**

The participants agreed that the federal and state governments needed to take leadership on FDV. They discussed the need for governments to:

- Fund the creation of appropriate and coordinated architecture for systems and processes to support victims of FDV involved in family property disputes;

- Develop a well-funded, systematic, government-led, holistic, and collaborative approach; and

- Develop systems to align government agencies to prevent the spread of downstream effects.
The imperative for a specialist, inter-disciplinary, and comprehensive curriculum for FDV training. The need to take a collaborative approach to the training and evaluation.

The need for training and methods to identify FDV and to explore the nature and effects of the FDV in safe and constructive ways is imperative.

The participants agreed that the federal and state governments needed to take leadership on FDV and fund the creation of appropriate and coordinated architecture for systems and processes to support victims of FDV involved in family property disputes and in FDV generally.

The need to develop effective mediation and family dispute resolution programs to include FDV, and to disseminate the associated research and evaluation data widely.

4. OVERALL RESULTS

4.1 IS THERE AN UNMET NEED? DATA COLLECTION SYSTEMS

The Research Team envisaged this project as a scoping exercise investigating the nature and scope of a perceived problem of demand, or ‘unmet need’, for services provided to those with FDV issues and family property disputes. The overarching, larger questions were ‘is there an unmet need?’, and if so, ‘how do we measure an unmet need?’

One method of measuring the unmet need was to assess service providers’ data collection systems and to investigate whether the systems could easily produce comparable, clear data that reflected the need.

Systems in Use

The participants who were service providers reported using a variety of different data collection methods and systems. These included:

- Six legal assistance providers used data collection systems and databases adapted or created specifically for their organisations: Legal Aid Infoline, Legal Aid Duty Lawyer Service, Legal Aid FDV Property Pilot, Aboriginal Legal Service, Citizens Advice Bureau (CAB), and Law Access;

- All 10 CLCs used the same online database system — the Community Legal Assistance Services System (CLASS). These centres were: Aboriginal Family Law Services, Northern Suburbs CLC, WREN, South West CLC, Women’s Law Centre of WA (‘WLC’), Tenancy WA, Consumer Credit Legal Services, Fremantle CLC, Sussex Street CLS, Southern Communities Advocacy Legal Education Service (‘SCALES’), and Peel CLS;

- Private practitioners saved and collected data using customised client file-based systems;

- The three dispute resolution service providers reported manually inputting data into their customised databases: the Citizens Advice Bureau (‘CAB’) Mediation Unit, Legal Aid DR Unit, and Relationships Australia West Leederville; and

- The Family Court of Western Australia used Casetrack and Casetrack 2 as case management systems. These systems were under review at the time of interview.
Current System Limitations

All the CLCs and the Aboriginal Legal Service (‘ALS’) were working with systems that they recently implemented. As a result, more than half of the legal services interviewed (10 out of 16) had systems that could not provide data for a 12-month period.

At the time of the Interviews, the CLASS system used by the CLCs had limited reporting functionality. However, the CLCs anticipated that they would implement broader reporting functionality in the near future.

For the 2017-18 financial year, only three participants had requirements to report on the number of clients they assisted who had both FDV issues and family property or financial matters. These were Fremantle CLC, Law Access, and the LAWA Property Pilot.

The remainder of the participants (legal assistance providers, dispute resolution service providers, private practitioners, and the Family Court of Western Australia) did not have requirements to report on these matters.

When asked about methods of identifying people with FDV issues, all participants manually recorded information about FDV in client files and notes. The method of identifying FDV on data systems was highly variable.

At the time of the Interviews:

- One participant could generate a report on the number of people with FDV issues and property disputes who *sought assistance* from their service in a 12-month period;
- Three participants indicated that they would be able to generate reports on the numbers of people with FDV issues and property disputes who their service *had assisted* in a 12-month period;
- A great majority of the participants said that they would have to do a retrospective manual count of client files to provide a report of the numbers of clients with FDV issues and property disputes; and
- Two participants could provide data on the number of people who ‘missed out’ on assistance. Of these, one participant could provide data covering a 12-month period.

When asked what they would need to make it possible to produce a report on data relating to both family violence and property disputes, but for three participants indicated that they would need an upgrade to their data collection systems. The three exceptions were the Fremantle CLC (who reported separately to their funding body), Aboriginal Legal Service, and Law Access.

Identified Problems

The identified problems with current data collection methods were:

- Most services identified FDV manually on client files and not on their data systems;
- Most legal services were working with new systems with limited reporting functionality and most systems could not provide reports on the number of clients with FDV and property disputes;
- Most service providers were not funded to provide legal assistance for property matters; and
- Most participants were not required to report on FDV and property matters. Therefore, there was no real need to incorporate the function of reporting of FDV and property matters into their data collection systems.

<table>
<thead>
<tr>
<th>Summary : Data collection</th>
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<tbody>
<tr>
<td><strong>Data collection</strong></td>
</tr>
<tr>
<td>The stakeholder organisations do not have a cohesive, collaborative, or comprehensive means to collect data on those people presenting with family property disputes and who are experiencing FDV. This was either because the stakeholder organisations were working with new data collection systems or their systems were inadequate to supply such data.</td>
</tr>
<tr>
<td><strong>No requirement</strong></td>
</tr>
<tr>
<td>Although most stakeholder organisations reported FDV manually on their client files, there was no integrated system for data collection on FDV. This was possibly because the agency did not have a reporting requirement for it and had not received funding for such data collection.</td>
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### 4.2 The Nature and Scope of the Unmet Need

Because of the complexity of factors surrounding the data collection systems, the Research Team determined that it was not viable to develop or propose a common data collection methodology as part of this Report. However, due to the flexibility of the constructive inquiry methodology, all participants were able to provide rich qualitative data in relation to the scope of the problem and the type and extent of services that were currently available.

In addition, the constructive inquiry did provide some high-level principles of relevance to developing a common data collection methodology. In particular, that:

- There needs to be a consistent definition of FDV;
- There needs to be a clear and consistent approach to identifying FDV by way of that definition through encouraging clients to report by asking appropriate questions; and
- Data-collection systems need to be able to collect information on each stage of unmet need discussed above in Part 4.3 of this Report. This includes numbers turned away from that stage, numbers assisted at that stage, the type of assistance provided and, ideally, what happens next to the service recipient.

It was a clear finding from the constructive inquiry that participants all agreed that there was an unmet need despite not having hard evidence to support this. Therefore, exploration turned to what was the nature, and perceived scope of, the problem.

There were several aspects that the Research Team considered when investigating the scope and depth of the perceived problem of unmet need to services. Participants who were service providers identified areas where they could not meet demand for services and considered the reasons for this.

**The Nature of the Problem**

*A high demand for legal assistance and a corresponding lack of services*

Participants who were legal service providers identified general areas where they could not meet demand for services. All participants identified a high demand for legal assistance for parties with property/financial disputes and disclosed FDV with a corresponding lack of services for these parties.
**Need for legal assistance**

Specific issues related to the need for more free and low-cost legal services were:

- There were large numbers of victims of family violence not seeking and not obtaining property settlements because they could not afford legal representation;
- Family violence added a layer of complexity to property disputes, making these matters time-consuming and expensive;
- There was very limited funding for property disputes and there was a lack of resources and capacity to provide legal assistance for property matters;
- There were high numbers of applications for pro bono assistance;
- Victims had limited access to information and were often not aware of their legal rights;
- Perpetrators often use continuation of property disputes as a form of abuse. This includes delay and/or lack of disclosure and non-compliance with orders and rules; and
- Victims were withdrawing from the process and walking away from their legal entitlements to protect themselves and their children.

**Comments from Participants in Relation to the Unmet Need**

*This is a hidden problem and a very important issue. The victims are invisible and are provided with no assistance whatsoever:* Aboriginal Family Law Service

*The hardest thing for victims of family violence who need legal advice about a property dispute is that there are not many legal services that are affordable. We know there are several community legal centres that provide property advice but the number and location of these service providers is constantly evolving and fluid. Victims are so disempowered. It is very difficult to go from one place to the next, and it’s another blow each time they cannot get assistance. Also, they often cannot afford to go from one place to another. It is very important that when we do make a referral for anyone who is impacted by family violence, it’s to a service that provides property advice whilst taking into account the client and family situation that’s a result of the violence:* Dispute Resolution Services, Relationships WA

*Preserving assets takes a huge amount of time; many of our clients are in the family home, the perpetrator is out, and the client cannot pay the mortgage, so at any moment the perpetrator could sell the house without the client’s knowledge. Many clients self-represent, and property matters can be very complex. Feedback from clients, particularly competent self-representing litigants, is the lack of disclosure. The Court has power to order disclosure but many women cannot prove that assets exist and don’t have the funds to pay a lawyer to do it:* Women’s Law Centre

*At the moment, we cannot extend assistance to people outside the area because we know we would be inundated, and we have many referrals we cannot assist. Many of our clients for these matters come to us when they are at the end of their finances and have already spent a significant amount on legal fees. We wish we could do more to assist these clients:* Fremantle Community Legal Centre
In private practice, the existence of FV is not a factor which drives whether someone becomes a client, but it may drive who is the best fit in the office for the client: private practitioner

The number of people who call with queries about family violence and property disputes is enormous. “Textbook” DV victims won’t initially tell the whole story as they are ashamed, and they usually make very bad witnesses. It is common for a matter to be very meritorious, once we’ve got to the bottom of the story. One major area of need is in relation to document gathering. Disclosure requirements are very, very onerous for financial matters as clients have to produce every document that is relevant to a case. My view is that clients could be assisted in this regard by having access to a good paralegal, not necessarily a lawyer: private practitioner

The Scope of the Unmet Need: Measuring the Demand for Services

After the focusing meeting, the Research Team noticed that although all the service providers identified that the nature of the unmet need as a need for legal services, there was still a lack of data to reflect the extent of that unmet need.

As described above, a primary purpose of the interviews with service providers was to determine the capacity of the participants’ data collection systems to track and report on property matters where there were also FDV issues. The findings were that more than half of the legal service providers interviewed could not provide data for a 12-month period because they were either working with data collection systems that they had implemented in 2017 or the systems used did not have reporting functionality for providing reports on the numbers of clients with both FDV and property matters.

Further, there were very limited reporting requirements on service providers to report on the number of clients they assisted who had both FDV issues and family property or financial matters. However, despite the formal method of identifying FDV on data systems being highly variable, all participants captured information about FDV in client files and notes.

Although all participants assessed the demand for services as being very high, the data that was available in relation to the numbers of people with both issues who ‘missed out’ on assistance was extremely limited. Notwithstanding, two service providers were able to provide indicative data that is illuminating for the purposes of this Report.

1. For a period of four weeks in 2017, the Fremantle Community Legal Centre manually recorded turning away 84 people with these specific issues; and

2. In the 2016-17 financial year, Law Access received 16 FDV property settlement applications and assessed seven of those applications as being meritorious and meeting referral guidelines. Law Access was unable to place three of those matters.

Reasons for Not Being Able to Meet Demand

All participants identified the primary reason for not being able to meet demand was lack of funding. Other identified reasons were:

- Lack of time and resources;
- Pro Bono lawyers were willing to provide one-off advice but were not willing to take on casework as the cases could potentially take up to two years to resolve and trials could last four to five days. The work is resource intensive;
- There were not enough private family property lawyers with FDV and dispute resolution training; and
- There was not enough wrap-around\(^{35}\) non-legal assistance for clients.

<table>
<thead>
<tr>
<th>Summary: Nature and scope</th>
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<tbody>
<tr>
<td><strong>Nature</strong></td>
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<tr>
<td>The participants were clear that there is an unmet need for people who had FDV issues and family property/financial matters to acquire <strong>adequate legal assistance</strong>.</td>
</tr>
<tr>
<td><strong>Scope</strong></td>
</tr>
<tr>
<td>Participants assessed the demand for services by people who had FDV issues and family property/financial matters as <strong>high</strong>. While there was no comprehensive data available on the numbers of people with both issues who ‘missed out’ on assistance from legal service providers, some indicative data from the Fremantle Community Legal Centre suggests that perhaps service providers could be turning away hundreds of people with these issues monthly.</td>
</tr>
<tr>
<td><strong>Reasons</strong></td>
</tr>
<tr>
<td>The reasons for the inability of the service providers to meet the need for these clients were <strong>a lack of funding</strong>, time and resources, and a lack of family property lawyers with adequate FDV and dispute resolution training. There is also a lack of pro-bono lawyers with capacity to take on lengthy and complex litigation matters on a pro-bono basis.</td>
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### 4.3 Assessment of Current Services and Strategies

At the focusing meeting, during interviews, and at the first constructive inquiry workshop, participants identified how clients access their services, their current resources and services, and assessed their current services and strategies by identifying ‘what works well’ and ‘what doesn’t work so well’. The findings are set out below.

**Accessing Services**

At the focusing meeting, service providers described their services in these matters as ‘ad hoc’ rather than well-resourced and pro-active. The consensus was that the most disadvantaged clients were either referred to private solicitors who volunteered to give property settlement advice or to community legal services providers who would essentially be providing services outside their scope of work.

When examining the interview results, it was apparent that there were many service providers who were providing services to victims of FDV with property and financial disputes but that service providers were not always aware of the type and extent of assistance that other service providers provided. Additionally, there was no reference point or access to an up to date list of the community legal centres that provided legal advice and assistance for property matters. There was also no means of identifying private legal practitioners who had FDV training.

As a result, accessing the services that were available was extremely difficult, both for the people who needed assistance and for the services that were referring people for assistance.

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\(^{35}\) ‘Wrap around’ means providing non-legal support services such as counselling, financial counselling, addiction support, housing assistance, financial support (for example, for food and clothing), and medical assistance.
Current Resources

The participants who were legal service providers identified their current resources as including passion, experience, and knowledge and expertise in FDV issues. Other valued resources were volunteers — being students, graduates, and private practitioners.

Participants were dealing with the problem of high demand for limited services by:

- Taking only the most disadvantaged applicants;
- Taking a multi-faceted and integrated ‘wrap-around’ approach;
- Using pro bono legal services;
- Making warm referrals where possible; and
- Going outside the scope of work.

What’s Working Well?

An initial observation about the process of assessing services and ‘effectiveness’ of services was that it was difficult to measure these kinds of services based on ‘success’. For example, the service providers could not measure effectiveness of ongoing legal assistance by looking at the percentage of matters that settled without going to trial. The participants acknowledged that measuring effectiveness was a challenge. One service with a stated aim of ‘empowering’ clients — particularly women — would tend to assess a service as working well if clients did not require ongoing legal assistance to achieve fair outcomes.

In any event, the participants identified the following strategies and services that they thought worked well:

- Legal advice and representation for both parties;
- Service providers with FDV training who were trauma-informed;
- Ongoing legal assistance providing a full range of services;
- Legally assisted, case managed, and coordinated dispute resolution/mediation; and
- Integrated service delivery of holistic advice and support.

What Was Not Working So Well?

An initial observation from the participants was the issue of identification of a client with FDV issues. Many participants observed that clients were unlikely to disclose FDV at an initial appointment and it was extremely unlikely that a perpetrator would disclose FDV. Another observation was that it was difficult to substantiate allegations of FDV, particularly if there were no restraining orders in place. All the services providers reported that when the client identified and substantiated FDV then they made these clients ‘priority clients’.

Another widely held perception was that there was not enough training on identifying FDV, or enough legal practitioners with FDV training. Further, that there was a divergence in the way that different service providers ‘asked questions’ of potential FDV

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36 A ‘warm referral’ is contacting someone who works at a support agency/organisation directly and making an appointment for a presenting client, rather than making a ‘cold’ referral by simply recommending another agency/organisation to a client.
victims rather than divergence in the definition of FDV. Participants assessed legal assistance with inadequately FDV trained or trauma-informed practitioners as ‘not working well’.

In summary, the strategies and services that the participants identified as not working well were:

- Identification and substantiation of FDV;
- One-off legal advice without other support;
- Self-representation in court;
- Family dispute resolution (mediation) without legal advice and/or representation; and
- Legal assistance where the practitioners were untrained in FDV.

<table>
<thead>
<tr>
<th>Summary: Current services</th>
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<tbody>
<tr>
<td><strong>Ad hoc</strong></td>
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<tr>
<td>Services are ‘ad hoc’ rather than well-resourced and pro-active.</td>
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<tr>
<td><strong>Access</strong></td>
</tr>
<tr>
<td>There are limited services available and they are difficult to access, both for people who need assistance and for the services that are referring people for assistance.</td>
</tr>
<tr>
<td><strong>Awareness</strong></td>
</tr>
<tr>
<td>Service providers, and therefore clients, are not always aware of the type and extent of assistance available from other service providers.</td>
</tr>
<tr>
<td><strong>Working well</strong></td>
</tr>
<tr>
<td>Integrated services — including mediation — where both parties, or at least the victim of FDV, had ongoing legal assistance and support, and the practitioners had FDV training, worked well.</td>
</tr>
<tr>
<td><strong>Not working well</strong></td>
</tr>
<tr>
<td>Strategies and services that did not work so well included:</td>
</tr>
<tr>
<td>- One-off legal advice without other support;</td>
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<tr>
<td>- Self-representation in court or mediation; and</td>
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<tr>
<td>- Practitioners without FDV training.</td>
</tr>
<tr>
<td><strong>Issues</strong></td>
</tr>
<tr>
<td>There were substantial difficulties in identifying and substantiating FDV.</td>
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### 4.4 Identifying Best Practice Design and Delivery

Participants who were service providers identified best practice service delivery of family property legal assistance and assessed their current available services against ‘ideal’ service delivery. Additionally, all participants shared information in relation to wider FDV issues with a focus on identifying FDV victims and what constituted best practice provision of services to FDV victims.

**Philosophy**

Participants shared ideas for recommended changes and solutions during the focusing meeting and in response to Interview questions. Central to the philosophy of many recommendations for best practice was the aim of providing services that empowered parties, particularly victims of FDV. These services needed to be flexible to take account of individual needs and levels of vulnerability.

**Integrated Models**

All participants endorsed the model of legal services combining with wrap-around, holistic, non-legal services. Participants considered that integrated services that were
quick and simple were best practice. Examples of integrated services that the participants identified as working well were the ‘Safe as Houses’ program, warm referrals to financial counsellors at the WLC, and the mandatory workshops on family property settlements prior to legal advice sessions at Peel CLS.

**Legal Practitioners**

All participants preferred having legal practitioners with family property expertise employed at CLS, although this was often a question of accessing funding. Examples of service delivery that worked well were the family property legal services provided by Fremantle CLC and Peel CLS.

Participants endorsed and supported lawyer-assisted mediation for FDV/property matters as being best practice for dispute resolution. Similarly, the Legal Aid Family Violence and Property Pilot as being the best model of delivering ongoing assistance with the full range of legal services.

**FDV Training**

Participants all held the view that they could improve practice and delivery of services by having more FDV training for family lawyers and mediators, and more family property law training for CLC family lawyers. A discussion on FDV training is provided in the summary of final workshop at 4.6 above.

**Resources**

The resources identified as being necessary for improving access to the best types of services were:

- Increased funding. This includes government and philanthropic sources;
- Time;
- More lawyers willing to take on casework, not just one-off advice;
- Non-legal assistance — this includes paralegals, counselling services, administrative staff, and non-legal services;
- Better FDV training for legal practitioners and mediators, the judiciary, and other such stakeholders; and
- More information and education in relation to services and the family law system

**Law Reform**

Ideas for law reform included the proposal that there should be default ‘starting points’ for each party so that the law automatically entitles FDV victims to something in the event of property division.

<table>
<thead>
<tr>
<th>Philosophy</th>
<th>Central to the philosophy of many recommendations for best practice was the aim of providing services that empowered parties, particularly victims of FDV.</th>
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<tbody>
<tr>
<td>Individualised</td>
<td>Services need to be flexible to take account of individual needs and levels of vulnerability. They also need to be tailored to individual cases and circumstances.</td>
</tr>
<tr>
<td>Integrated models</td>
<td>Integrated models of combining legal services with wrap-around, holistic, non-legal services that were quick and simple were best practice.</td>
</tr>
</tbody>
</table>
Examples of integrated services that worked well were the ‘Safe As Houses’ program, warm referrals to financial counsellors at the Women’s Law Centre, and the mandatory workshops on family property settlements prior to legal advice sessions at Peel CLS.

Legal practitioners with FDV training at CLCs and representing parties in legally assisted mediations would form part of best practice.

Resources required to build best practice service delivery included:
- increased funding and time;
- A pool of adequately FDV trained legal practitioners willing to take on ongoing advice, representation, and assist in mediations; and
- Greater non-legal assistance.

4.5 OTHER IMPORTANT FINDINGS

Safety for FDV Victims in Property Matters

Many participants considered that in their experience, when financial matters were in dispute, FDV victims were at a greater risk of physical injury and even of losing their lives. The participants considered that legal representation provided increased safety for victims of FDV because the lawyer provided a ‘buffer’ between the victim and the perpetrator. It seemed clear that victims needed to be more aware of safety issues when pursuing a property settlement.

Identifying FDV

All participants agreed that FDV is difficult to identify at initial access points and is probably under-reported. All participants thought that the potential difficulties in identification of FDV might be due to a divergence in the way that they ask potential victims questions rather than differences in the definition of FDV.

Family Court Processes

The Family Court of Western Australia (‘FCWA’) uses FDV indicators on court documents that are filed and then lodged into the court’s case management systems. In children and parenting matters, there are two methods for identifying FDV. In property only matters, these identifiers are not applicable. Therefore, the Court will not pick up FDV parties with a property only dispute.

However, the Court is very focused on safety for FDV victims and parties can make written requests for personal security when attending the Court. These requests are not court documents that clients lodge and, therefore, the Court does not track them through the case management systems.

5. DISCUSSION

5.1 LIMITED LEGAL ASSISTANCE FOR FDV AND PROPERTY DISPUTES

Perhaps the most crucial finding from the constructive inquiry is that in Western Australia access to free and low-cost legal assistance for people having both FDV issues and property disputes appears limited. Property settlement matters are generally outside the funding guidelines test for Legal Aid and community legal centres often have little or no funding for property matters.
Most of the stakeholder organisations participating in this project were representatives from legal assistance providers. These providers receive funding to provide free and low-cost legal services to low income and disadvantaged people. Strategies used by these service providers involved balancing demand against capacity. All the community legal centres relied heavily on partnerships with private legal practitioners to provide one-off, pro bono family law property advice during legal clinics held in the evenings.

Although many private legal practitioners provide pro bono advice to particularly vulnerable people, the most common practice for private practitioners is to provide ongoing legal assistance for property matters on a deferred fee basis. These are not necessarily low-cost services, but legal practitioners can provide these services to clients who have no access to the asset pool and a limited income stream. In many cases, private practitioners required at least a nominal asset pool.

5.2 The Gap in Services

All participants identified ongoing legal advice as a gap in services. All participants identified the best service model as one which provided ongoing legal advice and representation for both parties, encompassing the full range of services, including mediation, with service providers who had FDV training.

Having access to a full range of legal services — advice, negotiation, document drafting, assistance in mediation, representation in court — meant that clients can access any type of assistance at any stage of their matters. This effectively ‘levels the playing field.’ Participants believed that this led to fairer outcomes for both parties and increased safety for victims of FDV.

However, due to funding constraints, most participants were unable to provide the full range of services to victims of FDV. Only two stakeholders provided these ‘ideal’ types of services for free or at low cost (subject to means testing). These stakeholders were Fremantle CLC and Legal Aid WA’s Family Violence Property Pilot. The services offered by Fremantle CLC were limited to people living in the Centre’s catchment area.

Other service providers provide a more limited range of free and low-cost ongoing legal assistance. These service providers either assisted as the need arose, subject to internal approval, or clearly stated the limits of their service. For example, drafting initiating court documents only. All these services had means testing and capacity limits.

Participants noticed that the identified gap in relation to the provision of free and low-cost ongoing legal assistance for property settlement matters impacted predominantly on victims of FDV — typically women in positions of economic disadvantage. Many participants expressed their concerns that, due to lack of funding, they were unable to assist this particularly disadvantaged group in the community.

5.3 ‘Silo’ Approach

Another key finding was that the service providers often worked with a lack of awareness about what other service providers were providing — in effect, working in silos. The participants in the project noticed that many service providers were not always aware of the type or extent of the assistance that other service providers provided. This leads to a doubling up of some services and gaps in others.

One of the benefits of the constructive inquiry approach to the project was improved collaboration between the stakeholder organisations. For example, Law Access has
referred 13 matters to the Legal Aid Family Violence and Property Pilot in the last year due to improved collaboration directly linked to this research project.

5.4 Identification of ‘best’ service

The participants in the project assessed services that are currently available as generally working very well. All participants identified the essential components of the services that worked well as having practitioners with FDV training, ongoing legal assistance combined with non-legal support, legally-assisted dispute resolution/mediation, and an integrated service delivery of holistic advice and support.

For all participants who were service providers, provision of these services that worked well was always a question of balancing the demand for services against limited capacity and limited funding. In this regard, service providers reported that they tended to make policy decisions about service delivery based on the different aims of their services — for example, services that focused on supporting identified victims of FDV tended to provide ongoing legal assistance as the need arose, and services that aimed at assisting as many people who accessed their service as possible, tended to provide more general and limited services. The findings are outlined below, including a discussion of what was specifically working well and what was not.

Information and Referrals

Most service providers have free information about the law of property division and about FDV on their websites. No organisation provided any information about the intersection between the two issues, for example in a single booklet or information sheet. All organisations had systems of referring clients to other services, often providing ‘warm’ referrals when they identified FDV.

The following were indicated as working well:
- Following up referrals;
- The Financial Ombudsman website, which has guidelines on FDV and consumer credit;
- The CAB website has an updated list of the services that community legal centres provide;
- Warm and matching referrals for vulnerable clients to legal service providers and financial counsellors along with information collected from the client handed over to the lawyers. This facilitates the clients’ first meeting with the lawyer;
- The ‘When Separating’ video on the LAWA website. It is linked to by many agencies and used highly; and
- Sample letters — for example, on the CCLS website, sample letters have the most ‘clicks’ but note that this service does not aid with family property/FDV issues.

The following were indicated as not working so well:
- Adequately assessing FDV issues when a person is asking for information and/or a referral;
- Working with inadequate or outdated resources — for example, old computer systems;
- Community education in regional areas;
- There is no information provided by any organisation about strategies needed to remain safe while pursuing a property dispute — for example, there is no free information on the intersection of FDV and property disputes; and

- Tracking ultimate outcomes — although most service providers record who refers a client to them, there is no way of tracking through to an ultimate outcome even where both the referrer and referee are government-funded. For example and particularly, no unique identifier number for a particular client.

**One-off Legal Advice**

Most CLCs provide one-off legal property advice sessions conducted by both pro bono lawyers at evening clinics and, if a CLC is funded to provide property advice, by employed lawyers. The consensus from participants was that one-off legal advice *without other support* does not work well and is not likely to result in resolution.

Due to limited resources and funding for property matters, most of the community legal services focused on minor legal assistance rather than intensive service delivery. This was in order to assist more people.

The following were indicated as working well:

- Non-legal support, including trauma counselling, financial counselling, and providing information. Non-legal support works particularly well with an integrated service delivery. For example:
  - The WLC has had good outcomes from partnerships with women’s refuges where financial counsellors can provide financial support and advice to a client in the refuge while the WLC provides the client with a one-off legal advice appointment; and
  - The Peel Legal assistance service runs free property information seminars for prospective clients. Prospective clients must attend a seminar before they have a legal advice appointment. The seminars provide practical advice and information about general legal principles and processes. The seminars raise FDV issues broadly and provide clients with opportunities to discuss their FDV issues if they wish. The aim is to enable clients to determine whether they can act for themselves or if they need assistance and to prepare for the one-off legal advice appointment.

- FDV Training for legal practitioners and paralegals. For example, WLC runs one week of training for volunteers and shadowing for six weeks to ensure that paralegals have competence to speak with clients. And, the AFLS provides FDV training for all staff as part of induction. Finally, LAWA provides training on some topics and assistance with training facilities.

The following were indicated as not working so well:

- One-off legal advice without other support — anecdotally for example, clients will tend to drop away without integrated delivery of non-legal support; and

- Legal practitioners without adequate training working with traumatised clients.

**Ongoing Legal Advice**

As discussed above, all participants identified ongoing legal advice as a gap in services.

The following were indicated as working well:
- Providing a full range of services. When full services are available, matters often ended up resolving through informal processes or in dispute resolution. For example:
  o Participants who were aware of the LAWA FDV Pilot Program agreed that this was an effective program. Data presented at the constructive inquiry identified that two out of 66 matters had gone to trial, all other matters had settled through informal processes and a handful went through the LAWA Dispute Resolution Unit.

- Structuring assistance so that the provider with the most expertise provides that part of the assistance;
- Integrated advice from legal and non-legal services particularly through financial counselling; and
- Formal letters from legal practitioners to the other party seemed to be effective in encouraging settlement rather than litigation.

The following were indicated as not working so well:
- Lawyers who have not had FDV training or experience in property matters. There needs to be more training for solicitors so that they can effectively ask questions and deal with victims in a trauma informed practice; and
- Training is essential to ensuring that property claims proceed safely for the parties.

**Dispute Resolution and Mediation**

Participants assessed dispute resolution, particularly mediation, services that providers offered as part of a range of assistance as being particularly effective.

The following were indicated as working well:
- Lawyer-assisted mediation has a very high success rate. For example, note that LAWA funding for lawyer-assisted mediation provides one hour of advice, representation during mediation, and drafting of final documents;
- Follow up from Family Relationship Centres regarding legal advice;
- Lawyers who have had FDV training;
- Postponing dispute resolution if a client has not had time to get a referral for advice; and
- Relationships Australia will mediate property with FDV in some circumstances.

The following were indicated as not working so well:
- Mediation where only one party has legal representation. Private practitioners observed that they would be very reluctant to be involved in mediation unless both parties had legal representation.

**5.5 Lack of Data, Lack of Identification**

A clear result from the project was that the service providers do not have a cohesive, collaborative, or comprehensive means to collect data on FDV and property disputes. Although all participants ‘captured’ information about FDV on client files and notes, the methods of identifying FDV on data systems was highly variable.
The difficulty in identifying and substantiating FDV compounded the problem with collecting data. All participants agreed that FDV is difficult to identify at initial access points and is probably under-reported again leading to challenges in collecting comprehensive data about the problem.

6. RECOMMENDATIONS

Some of the recommendations that we make in this Report are not new. What this Report adds is confirmation of the gaps in services and the need for changes from a Western Australian perspective.

The 2016, Victorian Royal Commission into Family Violence has already stated:

*It is unsatisfactory that victims of family violence often have to negotiate parenting or property matters or appear in court without legal representation. ... We consider that legal assistance regarding family law advice, whether provided by Victoria Legal Aid, a community legal centre, or a private practitioner, should be connected to the FVIO process and should be available to parties to FVIO proceedings throughout the process. Ideally, this advice would occur off site and outside the court setting, which is focused more on the crisis response to family violence than on the additional ‘wrap-around’ services that a family also needs... It should be established practice for duty lawyers at the Magistrates’ Court in FVIO proceedings to screen for family law needs and to refer parties to Victoria Legal Aid, community legal centres, private practitioners, dispute resolution services and other relevant services, so that parties can get advice on family law issues. The provision of adequate legal services is crucial, and Victoria Legal Aid and community legal centres must be resourced...*

37

Our recommendations follow many of these general themes but perhaps with the overriding recommendation that there needs to be better collaboration and coordination amongst existing services providers and funding bodies.

6.1 STABLE AND ADEQUATE FUNDING

Perhaps former Chief Justice of the High Court of Australia, the Honourable Robert French AC in his team’s Justice Project, has already articulated this simple recommendation:

*Commonwealth, state and territory governments should ensure stable and adequate funding of legal assistance services for victims and perpetrators of family violence in order to meet rising demand.*

38

For the purposes of this project, we have reframed this to the following:

<table>
<thead>
<tr>
<th>Recommendation 1</th>
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<tr>
<td>Commonwealth and state governments should ensure stable and adequate funding for the development and implementation of ongoing and wrap-around legal assistance services to people caught in the FDV and family property dispute dynamic.</td>
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</table>


38 Law Council of Australia, above n 1, 24.
6.2 Government Leadership

Added to stable and adequate funding is the need for the federal and state governments to take leadership on these issues and provide administrative architecture for systems and processes to ensure coordinated and appropriate support for people caught in the FDV and family disputes dynamic. This requires a well-funded, systematic, government-led, and collaborative approach to develop systems to align government agencies and other service providers to prevent the spread of the downstream effects that flow from FDV and property disputes.

Recommendation 2

The federal and state governments need to take leadership on FDV and fund the creation of coordinated and appropriate administrative architecture for systems and processes to support victims of FDV caught in family property disputes. What is necessitated is a well-funded, systematic, government-led and collaborative approach.

6.3 Integrated and Collaborative Approaches to Funding and Service Delivery

Given limited resources, collaboration supports best service delivery by permitting service providers to share what they do best. We consider that collaborative funding models, where services work as collaborators in approaching funders and in providing complementary and coordinated services, would provide the best service for clients.

A collaborative approach to service delivery would include stakeholder providers and organisations debriefing, discussing ongoing work, sharing ideas and data — including things that don’t work well — and, adjusting plans as new developments emerge. The CLCs are already doing this to some extent with their Family Violence Network which meets quarterly.

A collaborative approach to funding would include streamlining application and approval processes which could result in more time for service provision, as well as to consider and implement best practice. ‘Best practice’ in the FDV and property dispute area necessarily involves integrated and collaborative services. The collaborative approach to funding and service delivery naturally follows.

Recommendation 3:

Stakeholders organisations need to take a collaborative approach to service provision and explore collaborative funding models to reduce the ‘silo’ effect. Stakeholders need to adopt and/or enhance collaborative approaches to:

- providing integrated and wrap-around services for vulnerable clients caught in the FDV/property dispute dynamic;
- exploring collaborative funding models;
- conducting comprehensive and consistent FDV training to all practitioners working in this field; and

39 Consider generally WA Collaborative Services Planning Group, above n 29.
- coordinating data collection and the creation of current and visible information regarding the FDV/property dispute dynamic; and
- researching and developing an evidence base to develop a common understanding of the needs of these clients and the best methods of service delivery.

6.4 ‘BEST’ SERVICE DESIGN

The participants in the project identified the essential components of ‘best’ service design for people caught in the FDV and property dispute dynamic as being services that combine legal assistance with non-legal support — such as trauma and financial counselling — and provide legally-assisted dispute resolution/mediation with FDV trained practitioners in an integrated service delivery of holistic advice and support.

A recommendation from the Justice Project includes:

Commonwealth, state and territory governments should continue to work toward ... creating single, visible gateways into the system that combine multiple services and can provide referrals to specialised services.40

Recommendations 4

Commonwealth and state governments should resource legal assistance services and other service providers to provide ongoing, wrap-around legal and related support to people caught in the FDV and family property dispute dynamic;

Wrap-around services should employ family property lawyers and dispute resolution practitioners who have FDV training and expertise; and

Wrap-around services should include appropriately structured mediation with legal representation for both parties.

6.5 IDENTIFYING FDV

All participants agreed that FDV is difficult to identify and is under-reported. All participants thought that the potential difficulties in identification of FDV might be due to a divergence in the way that they ask potential victims questions rather than differences in the definition of FDV.

Recommendation 5

Service providers and funders should develop a common approach to identifying FDV issues in property matters, including a common approach to encouraging clients to report FDV, asking the ‘right’ questions and defining FDV.

6.6 TRAINING

Two recommendations from the Justice Project that were echoed in this project, include:

Mandatory family violence education should be provided to all legal practitioners as part of their continuing legal education requirements, if not on an annual basis

40 Law Council of Australia, above n 1, 25.
then at least on the basis of one hour/unit every two years. Core competencies should be developed for legal practitioners, in consultation with key stakeholders. Additionally, ongoing education and training should be provided to staff in broader support services, such as health and welfare, to help them identify and respond to family violence.  

Recommendations 6

Comprehensive, consistent and collaborative training for all practitioners working in the area is needed. This includes:

- Organisations raising awareness of the importance of FDV training for all practitioners working in this field, including, family law practitioners and mediators;
- Developing a common approach and curriculum to the training to ensure that specialised transdisciplinary competencies are developed, and that information and expertise is shared; and
- Evaluating the effectiveness of the developed training programs.

6.7 Information to the Public and Other Service Providers

A key finding from this project was that, while most of the service providers provided free information about the law of property division and about FDV on their websites, no organisation specifically provided any information about the intersection between the two issues.

Further, there was a lack of information sharing amongst service providers so that it was clear which service providers provided which services and/or had capacity to assist clients with property disputes and FDV.

Recommendations 7

There is a need for up to date, visible information sharing. This includes:

- Creating an up to date, accessible list of the extent of services and centres available which have capacity for legal assistance in property matters, including the type and extent of assistance. This list should be made available to legal practitioners, dispute resolution service providers, and the public;
- Creating an up to date, accessible list of family law practitioners who have FDV training and expertise. This list should be made available to legal practitioners, dispute resolution service providers and the public.
- Legal service providers and dispute resolution service providers should provide online information on the intersection between FDV and property disputes, with a focus on safety issues.

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41 Ibid.
6.8 DATA COLLECTION

The Victorian Royal Commission has identified the gaps in FDV data and made the call for systems which comprehensively capture and assess data.\(^{42}\) The Western Australian experience seems to echo the Victorian one.

**Recommendations 8**

Federal and state governments should fund coordinated efforts to improve the functionality of the stakeholder organisations’ current data collection systems; and Stakeholder organisations should take a collaborative approach to ascertain the best methods for collecting data with a focus on FDV and property disputes.

6.9 FUTURE RESEARCH: DEVELOPING AN EVIDENCE BASE

Many of findings in this project were based on participants’ perceptions rather than hard evidence. To improve services in this area, the Commonwealth, state and territory governments should fund the stakeholder organisations to develop an evidence-based approach to research.

For instance, while many service providers mentioned that having legal practitioners with FDV training worked well, there was no clear evidence of what this exactly meant. It also was not clear what type of training these practitioners had had and whether outcomes for clients were different with trained legal practitioners when compared to untrained.

The 2017 Legal Need in Western Australia: Overview Report\(^ {43}\) written by the Collaborative Services Planning Group (‘CSPG’)\(^ {44}\) is a good example of this type of evidence-based research. The Overview Report states that:

*The primary purpose of this overview is to aid collaborative service planning between legal assistance services in Western Australia. The information provided [in the Report] can assist:*

- *Initiatives of the CSPG, its working groups and other statewide networks/forums.*
- *Collaborative initiatives between legal assistance providers within a common region, area of law and/or target group.*
- *Planning within a legal assistance agency, such as identifying the demographic spread of priority groups for new initiatives, linking practice experience with research evidence or developing new business cases.*
- *Identifying what further research and consultation is required.*\(^ {45}\)


\(^{43}\) WA Collaborative Services Planning Group, above n 29.

\(^{44}\) As part of the National Partnership Agreement on Legal Assistance Services (‘NPA’) between the Commonwealth of Australia and the states and territories, a Collaborative Services Planning Group (‘CSPG’) was established in Western Australia in 2015 to facilitate and promote collaborative planning across legal assistance agencies (including, Legal Aid WA, Community Legal Centres, Aboriginal Legal Service WA and Family Violence Prevention Services).

\(^{45}\) Ibid
Recommendations 9

Stakeholder organisations should develop a collaborative and evidence-based approach to research and practice to develop a common understanding of the needs of clients and the best methods of service delivery;

Consider the resources needed to ensure access to a cohesive, collaborative and comprehensive means to collect data on FDV and property disputes; and

Adopt the collaborative and information sharing constructive inquiry as a research method, where appropriate.
A  Articles/Books/Reports


Centre for Innovative Justice, *Opportunities for Early Intervention: Bringing Perpetrators of Family Violence Into View* (RMIT University, 2015)


Department of the Attorney-General of Western Australia, ‘Evaluation of the Metropolitan Family Violence Court and Evaluation of the Barndimalgu Court’ (Evaluation Report, December 2014)


Kallco Consulting for the WA Collaborative Services Planning Group, *Legal Need in Western Australia* (2017)
Kaspiew, Rae, and Lixia Qu ‘Property Division after Separation: Recent Research Evidence’ (2016) 30 *Australian Journal of Family Law* 1
Mirrless-Black, Catriona, and Sarah Randell, ‘Need for Legal Assistance Services: Developing a Measure For Australia’ (Issues Paper No 26, Law and Justice Foundation, 2017)
Qu, Lixia, Ruth Weston, Lawrie Moloney, Rae Kaspiew and Jessie Dunstan, ‘Post-separation Parenting, Property and Relationship Dynamics After Five Years’ (Australian Institute of Family Studies, 2014)
Sheehan, Grania, and Jody Hughes, ‘Division of Matrimonial Property in Australia’ (Research Paper No 25, Australian Institute of Family Studies, March 2001)
Vu, Jessica, ‘Overcoming the Consumer Credit Implications of Domestic and Family Violence’ (CEED Project paper, The University of Western Australia, 2017)
Women’s Legal Services Australia, Submission No 29 to Productivity Commission, *Access to Justice Arrangements*, 4 November 2013
Young, Lisa, Adiva Sifris, Robyn Carroll and Geoff Monahan, *Family Law in Australia* (LexisNexis Butterworths, 9th ed, 2016)

B Cases

*Baranski v Baranski* [2012] FamCAFC 18 (10 February 2012)
*Browne and Green, In the Marriage of* (1999) 25 Fam LR 482
*Kennon v Kennon* [1997] FamCAFC 27
*Marriage of Antmann* (1980) 6 Fam LR; FLC 90-908
C  Legislation

*Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011 (Cth)*

D  Other

**APPENDIX A**

**THE RELEVANCE OF FAMILY VIOLENCE IN PROPERTY MATTERS**

The recognition of the relevance of family violence to family law matters has been slow, particularly in the area of property proceedings. Part VII of the FLA (which deals with parenting proceedings) was amended in 2012 to increase the likelihood of family violence being more appropriately accounted for, however there has been no legislative amendment to Pt VIII, dealing with property, directly addressing family violence. Having said this, the broad way in which family law provisions are drawn does leave some scope for consideration of family violence in property disputes.

The key provisions governing family law property settlements are ss 79 and 75(2) of the FLA. The court is permitted, in property proceedings, to make ‘such order as it considers appropriate’ to alter the parties’ interests in their property: s 79(1). However, the court shall not make an order unless it considers it ‘just and equitable’ to do so: s 79(2). In deciding what order, if any, to make, the court must consider the factors set out in s 79(4). That includes, broadly speaking, all contributions of a direct or indirect financial nature made by, or on behalf, of a party to the parties’ property, as well as all contributions made by parties to the welfare of the family (ss 79(4)(a)-(c)). As all those sub-sections refer to contributions, and as the Family Court has eschewed the notion of ‘negative contributions’, on the face of it, those provisions leave no room to consider family violence. However, s 79(4)(e) also requires the court to take account of the matters set out in s 75(2) ‘so far as they are relevant’. Section 75(2) is the list of factors relevant to the court making a spousal maintenance order and includes (relevantly):

- The parties’ state of health: s 75(2)(a)
- Each parties’ income, as well as their physical and mental capacity for work: s 75(2)(b)
- The extent to which the duration of the marriage has affected a parties’ earning capacity: s 75(2)(k)
- ‘any fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account’: s 75(2)(o).

Family property law operates such that a judicial officer will consider first what relative weight should be given to each party’s various contributions (usually referred to in percentage terms). Then, the court will consider whether there should be an adjustment to that contribution-based weighting arising out of the s 75(2) factors. So, to take an obvious example, spousal contributions may be equal (50% each) but when relative incomes and earning capacities are taken into account, it may be considered just and equitable to give one spouse a greater percentage of the assets than would be the case were the assessment based solely on their contributions. Notably, this allows the court to account for the fact that taking on the role of parenting at the expense of building earning capacity, can leave one parent (typically the mother) at a severe financial disadvantage, which should be adjusted for in the division of assets.

It is not difficult to see how these s 75(2) factors open the door for consideration of, at the very least, the consequences of family violence. For example, if a victim of violence

46 The traditional position is set out in *Marriage of Antmann* (1980) 6 Fam LR; FLC 90-908, however later cases have found ways of overcoming this view in relation to a particular situation (see for example *Browne and Green, In the Marriage of* (1999) 25 Fam LR 482 in relation to wasting of assets).
has either a physical or mental impairment that reduces their capacity to work, then the fact of their reduced earning capacity can be factored in. So too could any direct costs associated with any injuries resulting from the violence (such as high medical bills or treatment costs). Few victims of violence would have funds to bring a private suit for damages, aside perhaps from seeking criminal injuries compensation, so s 75(2) (in addition to supporting any application for spousal maintenance) permits an argument to be made for a greater share of assets as part of a property settlement based on these direct consequences of family violence on a victim.

Absent such factors (i.e. diminished earning capacity and/or medical bills) it is difficult to see how an argument can be made under s 79 that family violence might otherwise be relevant to a property settlement. For many years this was in fact the case, that is, it was not possible to argue family violence in such a way as to influence the outcome of a property settlement.

In addition to the lack of direct legislative provisions, this also resulted in part from a concern about the re-introduction of notions of marital fault post the introduction of ‘no-fault’ divorce with the passage of the FLA. However, Australian judges were eventually influenced by the growing debate around family violence in family law. In the 1997 decision of *Kennon & Kennon* the Full Family Court took the very novel, and somewhat creative, approach of recognising circumstances in which family violence can be relevant to property settlements. Essentially, the Full Court held that a victim may be held to have made a greater contribution than would otherwise be recognised, where their contributions have been made more difficult by having been the victim of a course of violent conduct by their spouse.

However, there has been some confusion, and concern, about how *Kennon* should be interpreted and applied. Indeed, it is clear some judicial officers are not attracted to this way of taking account of family violence, though the Full Family Court has not resiled from its approach in *Kennon*.

Flowing from the Full Court’s decision in *Kennon*, and subsequent case law, the following can be said about the operation of what is now routinely referred to as the *Kennon* principle:

1. *Kennon* permits, but does not require, the consideration of family violence when weighing the parties’ contributions under s 79; that is, the judicial officer has a discretion as to whether to recognise a Kennon contribution
2. Recognition of a *Kennon* contribution should not overlap with any adjustment made based on the s 75(2) factors; that is, there should be no ‘double-dipping’
3. If the circumstances of a case do not fall within the confines of *Kennon*, then family violence is not relevant to the question of contributions

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50 The following reflects findings from the study of *Kennon* undertaken in Easteal, Warden and Young, above n 48.
- Where Kennon does apply, while there is little to justify this practice, the most common response is to give a small percentage uplift to the victim. Though not always articulated, an uplift of around 5-7.5% is common

- To establish a Kennon claim, the victim must prove, on a balance of probabilities:
  - They were the victim of a ‘course of violent conduct’ [Thus, the frequency and nature of the alleged violence is central to establishing the claim].
  - During the marriage [which has been held to include post-separation, pre-trial violence]
  - Which can be demonstrated to have had a significant adverse impact on their contributions to the marriage, meaning their contributions were made significantly more arduous than they ought to have been. [The Full Court has held that an inference can be drawn in appropriate circumstances about the effect of the established violence on the victim’s ability to make contributions].

While the ability to seek a Kennon adjustment is certainly to be welcomed – particularly in the absence of legislative amendment - there are number of key issues arising from Kennon which are particularly germane to the topic under consideration in this Report.

First, there is evidence that even lawyers are not sufficiently attuned to the opportunity to make a Kennon claim. This may be one reason why despite high levels of claimed violence in family law matters, very few Kennon claims are raised in court. Thus, the likelihood of family violence being factored into negotiations without the victim being legally represented seems extremely remote. Second, there is some judicial uncertainty as to precisely how to factor in Kennon claims in terms of the overall outcome and adjustments are small; again, without legal representation for victims, the likelihood of real and proper weight being given to violence seems small. Third, unlike other financial matters, which might be proven with documentation, establishing a course of violent conduct without the assistance of legal representation may be extremely difficult for many victims.
Appendix B

Interview Questions

1. At what stage or stages do clients approach your agency for assistance –
   a. Requesting information about the law;
   b. Seeking legal advice and/or assistance;
   c. Seeking assistance with preparation for a dispute resolution process (eg. negotiation, mediation or court)?

2. What data collection system do you use?

3. How does your data system identify people with a family violence issue?

4. How does your data system identify people who have both a property dispute and family violence issues?

5. Does your data system identify the number of these people (having both a property dispute and family violence issues) who contacted your service? If yes, how many were there in the last 12 months?

6. Does your data system record how these clients learnt about your service (eg who referred them to your service)? If yes, in what ways did these clients learnt about your service?

7. Do you provide assistance in relation to the property dispute?

8. What criteria do you use to determine whether you provide assistance and the type of assistance?

9. Do you collect information about the size of the asset pool (eg small, large or negative)?

10. Does the size of the asset pool make any difference to whether you offer assistance?

11. Does your system record how many of these people (having both a property dispute and family violence issues) you assist? If yes, how many did you assist in the last 12 months?

12. If your agency provides assistance, how does your system record what type of assistance is provided? We are asking because we would like to understand the extent and type of the assistance provided eg legal advice, preparation of documents, evidence gathering, negotiation with the other party, assistance at mediation, court appearances.

13. Does your system identify people who miss out on assistance and why? If yes, how do you identify this?

14. Does your system record where people who miss out on assistance go next? If yes, please identify how your system records this and the places to which people are referred.
15. Does your system record contact details of these people?
16. What demographic information does your system record?
17. If your data system is not able to capture data in relation to family violence and property disputes, what would be needed for your agency to be able to capture this data?
18. If your system can’t produce a report on data relating to family violence and property disputes, what would be needed to make it possible?
19. Can we have access to your data? If not, why not?
20. Is there anything else you want to add, which we have not already covered?
## APPENDIX C

### Table of current free and low-cost services

**Free Information and Referral**

<table>
<thead>
<tr>
<th>How provided</th>
<th>Service Provider</th>
<th>Type and Extent of Information/Referral</th>
</tr>
</thead>
<tbody>
<tr>
<td>Internet</td>
<td>Legal Aid (WA)</td>
<td>The LAWA website has downloadable information sheets on family violence and on parenting/children’s matters. General legal information about family violence, family dispute resolution and dividing property is available. The website also has a video series called “When Separating” which includes two videos on FDV and a video on property and money.</td>
</tr>
<tr>
<td></td>
<td>Citizens Advice Bureau (CAB)</td>
<td>Answers to “Frequently Asked Questions” and a video presentation on property settlement are on the CAB website, which also provides a list of CLCs in Western Australia including current services and fees.</td>
</tr>
<tr>
<td></td>
<td>Women’s Law Centre</td>
<td>The WLC website provides general legal information about family law property settlement procedures and violence restraining orders.</td>
</tr>
<tr>
<td></td>
<td>Family Law Practitioner’s Association (FLPA)</td>
<td>FLPA lists names and contact details of deferred fee and legally aided family lawyers on its website.</td>
</tr>
<tr>
<td></td>
<td>Family Court of Western Australia</td>
<td>An overview of the general legal principles and legal processes relating to property and financial matters is on the FCWA website. Information about personal safety at the court is also available. People can download information kits, brochures and legal resources, including a guide for self-representing litigants from the court website.</td>
</tr>
<tr>
<td></td>
<td>Family Relationship Centres</td>
<td>The Relationships Australia (Western Australia) website has a free downloadable booklet called “Fair Share: Negotiating your property settlement” and a separate booklet, specifically for women, called “Safe from Violence”.</td>
</tr>
<tr>
<td>Telephone</td>
<td>Legal Aid Infoline</td>
<td>Information Officers provide information about the law, not legal advice. If the caller has a legal issue about property settlement and identified FDV, the client becomes a “priority client” and referral is either to Triage, LAWA Property Pilot, LAWA advice appointment or outside assistance.</td>
</tr>
<tr>
<td></td>
<td>Citizens Advice Bureau</td>
<td>Can provides general information over the phone if no available legal appointments.</td>
</tr>
<tr>
<td>Organisation</td>
<td>Description</td>
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<tr>
<td>Law Access</td>
<td>Sends callers an application form or refers them to the website. Refers callers with significant assets to deferred fee private practitioners and firms or Legal Aid if they have not already sought assistance. Refers callers needing “one-off” advice to a CLC (e.g. CAB, NSCLC or WLC).</td>
<td></td>
</tr>
<tr>
<td>Northern Suburbs CLC (Mirrabooka and Joondalup)</td>
<td>Clients make the first contact with NSCLC over the phone. Client Service officer provide general information about the law and procedural matters, and book clients in for legal advice appointments if they require legal advice on a property matter.</td>
<td></td>
</tr>
<tr>
<td>Women’s Resource and Engagement Network (WREN) (the Specialist Domestic Violence Unit/ Health Justice Partnership in Wanneroo)</td>
<td>WREN provides a referral only service for women experiencing FDV. It is a specialist domestic violence unit and health justice partnership, providing a wrap-around service of legal and non-legal assistance to vulnerable women. Clients are booked into appointments with the WREN lawyer and client advocate, and an assessment made whether property advice is required.</td>
<td></td>
</tr>
<tr>
<td>Women’s Law Centre</td>
<td>Provides general legal information and referrals to all callers. A legal information line, staffed by paralegal client service officers and supervised by a solicitor, provides basic legal advice, four mornings a week.</td>
<td></td>
</tr>
<tr>
<td>Consumer Credit</td>
<td>Provides referrals to callers with family law property matters. Also provides legal advice on credit law issues (e.g. client debts or disputes loans).</td>
<td></td>
</tr>
<tr>
<td>Fremantle CLC</td>
<td>Information and referral are available to clients outside of the Fremantle catchment area. Eligible clients who access our service make first contact via the telephone and where mobility is an issue, telephone appointments are available.</td>
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</tr>
<tr>
<td>Southwest CLC</td>
<td>Telephone information and advice services are available if clients are unable to access the Bunbury office or any of the outreach locations.</td>
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<tr>
<td><strong>Face to Face</strong></td>
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<tr>
<td>Family Court of Western Australia</td>
<td>The front counter of the Registry is often a first point of contact for people with property disputes. Client service officers refer people with FDV issues to the Legal Aid Family Advocacy and Support Service (FASS) – an integrated duty lawyer and social worker service for people affected by FDV, however, this service does not provide property advice.</td>
<td></td>
</tr>
<tr>
<td>Legal Aid (WA) Reception (Head Office)</td>
<td>Paralegal Admin provide people with information about the law. If the in-person client has a legal issue about property settlement and identified FDV, the client becomes a “priority client” and referral is either to Triage, LAWA Property Pilot, LAWA advice appointment or outside assistance.</td>
<td></td>
</tr>
<tr>
<td>Aboriginal Legal Service</td>
<td>Conducts community education campaigns in relation to FDV and property disputes.</td>
<td></td>
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</tbody>
</table>
Women’s Law Centre Provides community legal education programs. Distributes legal information sheets at education classes and the evening clinics.

Peel Community Legal Services Provides regular free Family Law Property Information Sessions to clients before their legal advice appointments. The seminars provide general information about the law and procedure and practical information e.g. which financial documents are required for legal appointments and how to proceed with matter as a self-representing litigant. FDV issues are raised broadly and clients have opportunities to discuss FDV issues if they want to.

Family Relationship Centres Provide information and referral in relation to property settlement matters. Follows up clients to check whether they have had legal advice. During appointments, provides clients with booklets about FDV and/or booklets about property settlement. Refers FDV issues to DV counselling services and DVAS, for advocacy and legal advice.

Citizens Advice Bureau Provide over the counter information and referrals to clients who attend our Perth office and the branches. If a client presents with FDV issue in the Perth office, will provide the client with legal advice if there is a lawyer available. Sometimes CAB waives the appointment booking fee. CAB accepts warm referrals as well. Also delivers free community legal education seminars/workshops to not for profit organisations. Has the capability to deliver Family Law workshops on children and property and addresses the issue of dealing with FDV when negotiating children and property matters.

Free Legal Assistance

<table>
<thead>
<tr>
<th>Type of Assistance</th>
<th>Service Provider</th>
<th>Extent of Assistance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial or “one-off” Legal Advice</td>
<td>Aboriginal Family Law Services</td>
<td>A senior solicitor may give some one-off advice, if there are parenting issues as well.</td>
</tr>
<tr>
<td></td>
<td>Aboriginal Legal Service</td>
<td>Free, unlimited one-off advice is available for property matters. Provides legal advice over the phone.</td>
</tr>
<tr>
<td></td>
<td>Northern Suburbs CLC</td>
<td>Pro bono solicitors from private law firm pro bono partnerships provide advice at Joondalup and Mirrabooka offices, which run an appointment schedule of five 30-minute appointments twice a week. Limits appointments to advice only (no practical assistance e.g. filing in forms) and to one per client.</td>
</tr>
<tr>
<td></td>
<td>WREN</td>
<td>Pro bono solicitors from private firms provide fortnightly advice at the Wanneroo office for FDV clients. Appointments are 45 minutes. Clients may receive more than one property appointment if their circumstances</td>
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<tr>
<td><strong>Service Provider</strong></td>
<td><strong>Description</strong></td>
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<tr>
<td>South West CLC</td>
<td>Provides preliminary advice only for property settlement matters, subject to client eligibility criteria. Legal services are free, but the website states that “we welcome donations”. Provides services in Bunbury and at eight (8) other locations. Telephone advice services are also available.</td>
<td></td>
</tr>
<tr>
<td>Fremantle CLC</td>
<td>Provides one-off appointments to eligible clients by private pro bono lawyers every second Wednesday evening at the Evening Legal Service. The service does not include review or drafting of documents. Offers initial and one-off advice by family lawyers at FCLC day service.</td>
<td></td>
</tr>
<tr>
<td>Sussex Street Community Legal Service</td>
<td>Eligible clients with property settlement matters can make appointments for one free half-hour consultation with volunteer family lawyers at the Night Legal Service. Advertises this service as a strictly a one-off service, but can be discretionary in certain circumstances. FDV is not a criterion for priority assistance.</td>
<td></td>
</tr>
<tr>
<td>SCALES</td>
<td>Provides a wrap-around service for victims of DV, with needs met as they arise. Safety issues are a priority. Provides a client who presents with a property settlement matter and FDV with a preliminary risk-assessment over the phone, prior to the initial appointment. SCALES services are area specific.</td>
<td></td>
</tr>
<tr>
<td>Peel CLS</td>
<td>Legal advice appointments are available every Friday during the day and every second Tuesday at the evening legal clinic. Pro bono private legal practitioners conduct legal clinics.</td>
<td></td>
</tr>
<tr>
<td>Women’s Law Centre</td>
<td>Provides one-off legal advice through volunteer solicitors at twice monthly evening clinics. Legal Clinic appointments may be in person or over the phone. Might provide clients with a second appointment in some circumstances, or follow up appointments by a pro bono lawyer outside clinic hours to help meet need.</td>
<td></td>
</tr>
<tr>
<td>Law Access</td>
<td>Family Lawyers assessing written applications will provide basic written legal and procedural advice if the matter cannot be referred to a pro bono or deferred fee lawyer or to a legal assistance provider.</td>
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</tr>
<tr>
<td>Consumer Credit</td>
<td>Provides one-off telephone advice in relation to credit industry policies and obligations in situations of family violence.</td>
<td></td>
</tr>
<tr>
<td><strong>Ongoing Legal Advice and Assistance</strong></td>
<td><strong>Northern Suburbs CLC and WREN</strong> Two solicitors in the agency provide advice and on-going assistance at times to select clients where their legal need and vulnerability require it. The service is extremely limited and funding is not provided for one of the lawyers who provides this service. Clients who cannot be assisted are referred to private practitioners or Law Access applications are sometimes made.</td>
<td></td>
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<tr>
<td>Organization</td>
<td>Description</td>
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<td></td>
</tr>
<tr>
<td>Women’s Law Centre</td>
<td>WLC has an informal policy to try to assist vulnerable women in need by offering one-off advice coupled with self-contained court representation and/or other legal assistance, without going on the record.</td>
<td></td>
</tr>
<tr>
<td>SCALES</td>
<td>Provides ongoing legal advice and assistance to clients as the need arises. After the one-off advice session, it may be apparent that the property settlement issues are not a priority and that there are other legal issues needing attention first. Clients can return later for advice and assistance in relation to property matters. Solicitors will draft initiating court documents for particularly vulnerable clients, but will refer clients to family lawyers who operate on a deferred fee basis for further assistance.</td>
<td></td>
</tr>
<tr>
<td>Peel CLS</td>
<td>Peel is a generalist service and funded for both parenting and property matters. There are two dedicated family lawyers who provide property advice as well as parenting/children's matters. Clients may have 2-3 property appointments. Clients identified as having FDV issues are fast-tracked and may receive ongoing assistance, which can include court representation, subject to internal approval and limited by capacity.</td>
<td></td>
</tr>
<tr>
<td>Tenancy WA and Women's Law Centre</td>
<td>Ongoing free advice and assistance is provided through a partnership with the Street Law Centre, called the ‘Safe as Houses’ program. This provides a wrap-around service for women experiencing FDV and at risk of homelessness. The program includes a family lawyer, funded for 3 days a week, to provide more that initial advice. Might help with the following: preparation of documents, evidence gathering, negotiation with the other party, assistance at mediation and/or representation at court. NB: there is a case limit.</td>
<td></td>
</tr>
<tr>
<td>Fremantle Community Legal Centre</td>
<td>A family lawyer is available 3 days a week to assist family law clients who are financially disadvantaged or are the victims of family violence. Provides advice with respect to family law property disputes and upon assessment may include negotiation and assistance with drafting court documents. Where FCLC makes an assessment on the merit of a matter, a family lawyer offers limited court representation.</td>
<td></td>
</tr>
<tr>
<td>Consumer Credit</td>
<td>May provide legal advice and representation to clients in some circumstances e.g. where a client has a violent ex-partner who coerced the client into taking out loans for the ex-partner’s benefit and lender is in taking legal action against the client.</td>
<td></td>
</tr>
<tr>
<td>Law Access/Private Legal Practitioners (Barristers and Solicitors)</td>
<td>Law Access will refer matters to pro bono legal practitioners if the client satisfies a prospects test. Referral may be difficult if there is a small asset pool.</td>
<td></td>
</tr>
<tr>
<td>Private Legal Practitioners (Barristers)</td>
<td>Barristers frequently provide pro bono advice to solicitors who are aware that their clients cannot afford to brief a barrister.</td>
<td></td>
</tr>
</tbody>
</table>
### Low-cost Legal Assistance

<table>
<thead>
<tr>
<th>Type of Assistance</th>
<th>Service Provider</th>
<th>Extent of Assistance</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Ongoing Legal Advice and Assistance</strong></td>
<td>Fremantle CLC</td>
<td>Provides free legal advice and assistance with negotiations for clients assessed as financially disadvantaged (see the above table) and a means tested, low cost document drafting service – limited to court application and response documents. FCLC also provides a low fixed fees service or a deferred fee arrangement in limited matters as assessed upon merit by the principal solicitor.</td>
</tr>
<tr>
<td></td>
<td>Legal Aid FDV Property Pilot</td>
<td>Provides legal advice, negotiation advice, dispute resolution and representation in court. This service is low cost and means tested, and in some circumstances the client will not be required to contribute.</td>
</tr>
<tr>
<td></td>
<td>Aboriginal Legal Service</td>
<td>Provides ongoing assistance at low cost and is means tested. Capacity is the main criterion, so ALS only acts for a small number of clients and in many cases for perpetrators. Note that ALS will provide representation in court if the matter is complex, as part of a legal practitioner’s duty to the court.</td>
</tr>
<tr>
<td></td>
<td>Citizens Advice Bureau</td>
<td>Family Lawyers provide low cost legal advice and assistance, including document drafting, not including representation in court. Limits document drafting assistance to consent orders, application for final orders and response to final orders. If a matter proceeds to court because the parties have been unable to come to a negotiated or mediated agreement, and the client is unable to self-represent, then CAB will refer the matter to a CLC or Law Access.</td>
</tr>
<tr>
<td></td>
<td>Private Legal Practitioners (Barristers and solicitors)</td>
<td>The Family Law Practitioner’s Association (FLPA) website lists practitioners who provide a deferred fee service. NB: these are not necessarily low-cost services, but clients who have no access to their asset pool and a limited income stream can access the service. Some deferred fee practitioners require a nominal asset pool.</td>
</tr>
</tbody>
</table>

### Free and Low-cost Mediation Services

<table>
<thead>
<tr>
<th>Type of Assistance</th>
<th>Service Provider</th>
<th>Extent of Assistance</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Legal Aid FDV Property Pilot</td>
<td>Provides dispute resolution as part of a full range of services to FDV victims who have property settlement disputes (see the table above). Often refers clients through to the LAWA DR Unit.</td>
</tr>
<tr>
<td><strong>Dispute Resolution/Mediation Services</strong></td>
<td><strong>Legal Aid DR Unit</strong></td>
<td>Provides legally-assisted mediation for clients who have a grant of legal aid. A grant of aid for mediation is for a “bundle” of assistance and usually includes an hour of legal advice, representation during mediation and drafting of final documents after mediation. Grants of aid for legally-assisted DR are likely to be FDV matters.</td>
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</tr>
<tr>
<td><strong>South West CLC</strong></td>
<td>The mediation service ceased operating on 1 March 2018.</td>
<td></td>
</tr>
<tr>
<td><strong>Citizens Advice Bureau (CAB)</strong></td>
<td>Low-cost mediation services are provided for children and property disputes. If the client has attended mediation at CAB, the client cannot then return to receive legal advice from the legal unit as the client is conflicted out. The Mediation Unit identifies FDV in a risk assessment session with clients, which may take up to 2.5 hours. An FDV risk might make the matter unsuitable for mediation. If children are protected parties in the FVRO we do not do mediation on children’s issue. Based on the risk management assessment, CAB may or may not do property mediation if there is family violence involved.</td>
<td></td>
</tr>
<tr>
<td><strong>Fremantle CLC</strong></td>
<td>Provides low-cost mediation services for property disputes, unless the client has had legal advice about the matter from FCLC (conflicted out). The Mediator identifies FDV in a risk assessment session with clients, which may take up to 2.5 hours. An FDV risk might make the matter unsuitable for mediation.</td>
<td></td>
</tr>
<tr>
<td><strong>Relationships Australia (RA) West Leederville and Kwinana</strong></td>
<td>Provides family dispute resolution services (mediation) for property settlement disputes. All clients go through a pre-FDR session to identify FDV and to assess FDV risk. RA will rule people ruled out of mediation if it appears that FDR will put a victim in more danger. The fee structure is not available on the website.</td>
<td></td>
</tr>
<tr>
<td><strong>Perth Family Relationship Centre (Perth FRC)</strong></td>
<td>Provides information, referral and individual sessions free of charge. It provides one (1) hour of a FDR session and up to four (4) hours if an interpreter is needed for free, and may charge fees thereafter, depending on the client’s circumstances. Perth FRC is also providing a pilot program of legally-assisted DR for parenting matters for eligible clients and will provide advocacy support to link clients to appropriate services for property and financial matters.</td>
<td></td>
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</tbody>
</table>