

RESEARCH PROJECT INTO FAMILY PROPERTY DISPUTES INVOLVING FAMILY VIOLENCE

LAW SOCIETY OF WESTERN AUSTRALIA

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Thanks Professor Carroll

I would also like to acknowledge the traditional owners of the land and pay my respects to their elders - past, present and emerging.

I'm very pleased to be here tonight to make some short remarks to launch the report of the Pilot Research Project into Family Property Disputes involving Family Violence.

I acknowledge all the many dignitaries here, including my former colleagues from the Family Court. Your presence demonstrates the importance to our community of addressing the insidious issue of family and domestic violence to which Robyn has referred.

I also acknowledge the representatives of the many project participants who provided much of the material that has been used in the report. And I would especially like to acknowledge the members of the team who have undertaken the research and put together the report.

The research team includes leading academics from three of our premier tertiary institutions, as well as a representative from Law Access, an organisation which is slowly but surely building a bigger profile in our legal and wider community. It's terrific to see such a collaborative approach taken in seeking to address this important issue.

Given that the work has been undertaken in such a collaborative way, it is interesting that one of the key findings of the report touches on the extent to which the organisations working in

this space continue to operate in “silos” – and are not always aware of what assistance other providers already offer to victims or survivors of family and domestic violence.

This lack of knowledge seems to exist notwithstanding what I know to be the considerable progress made by local agencies to improve information sharing in matters affecting children – and notwithstanding that there are some excellent examples of organisations clubbing together to seek funding and to deliver services in partnership with others. The report highlights that the attention given to the impact of family violence in parenting matters in the family law system often does not carry across into property disputes. The absence in the legislation of reference family violence as an express consideration in deciding property matters has shaped the way that legal services and advice are funded and provided.

While there still seems to be work to be done in breaking down silos, one thing that is apparent from the report is the extent to which agencies are themselves keen to break down these barriers and were willing to participate in the multi-agency forums that were held during the life of the research project. In doing so, they were prepared to identify not only what was working well ,but more importantly to share what was not working well in their organisations.

The constructive inquiry model that was used in the project appears to a layperson such as me to have the advantage of allowing the research to be shaped and driven not only by the researchers but by the stakeholders, who together take advantage of the provision and sharing of data between participants as the research progresses. By this means, information can be understood and critically assessed before recommendations are made.

This seems to be the polar opposite of the research work undertaken into the family law system last year by a firm of accountants. As best one can ascertain, those accountants gathered together a lot of data and then locked themselves up in a room to try to make sense of it, emerging only to speak to a very restricted range of interested stakeholders and without

adequate reference to the full range of stakeholders and practitioners with on-the-ground experience.

In the case of this report, the researchers readily acknowledged, notwithstanding their own earlier enquiries and extensive writings on the topic, that they do not have all the knowledge needed in order to master their brief – and that they required significant assistance in not only gathering the information, but more importantly in interpreting and applying it.

In the case of this project, the researchers ran into a large obstacle early on in the process when consultations with stakeholders led to the realisation that the issues involved were exceedingly complex - and if not properly managed would lead the project to stray well beyond the boundaries of the exploratory project for which they had been funded.

The researchers also ran into another familiar problem when they realised, early on, that the quantitative data they hoped to find identifying gaps in existing services was not going to be forthcoming – not because of any reluctance on the part of stakeholders, but simply because the information either didn't exist or would prove too difficult to extract in a satisfactory fashion.

This problem with data is precisely the difficulty we found at the Family Court when we engaged researchers to look at the intersection of the child protection and family law systems. In that case, the data was not spread over numerous agencies, but was held by just three – two were courts and one was a major department of government. Yet some of the most basic data about crossovers between the jurisdictions simply could not be extracted, which was problematic because we were then not able to provide a comprehensive evidence base to demonstrate the extent of the problem.

In the case of this project, the lack of data required the research process to be adjusted almost from the get-go. It having become apparent that quantitative data was not going to be forthcoming in the way originally hoped, the researchers then had to fall back on qualitative

data. Nevertheless, it is evident from the report that the qualitative data concerning services for victims of domestic violence points strongly in the same direction, with there being very little, if any, disagreement about:

- ❖ the nature of the problem;
- ❖ that the problem is a significant one, even if it not capable of accurate quantification; and
- ❖ most importantly, some of the measures that need to be taken to address the problem.

As Robyn has said, the report makes nine major recommendations, and these are directed at both the micro and macro levels.

At the macro level, picking up on the recommendation of Chief Justice French's Justice Project, it is proposed there be better and more consistent and stable funding of services – and there is a recommendation for government to take a systematic and collaborative approach in providing leadership in the creation of administrative architecture to ensure coordinated support for victims. Similarly, it is recommended that stakeholders take a collaborative approach to service provision and explore collaborative funding models to reduce the 'silo' effect.

There is also a finding that best practice in service delivery for vulnerable clients involves the provision of wrap around services. One off legal advice from a legal practitioner acting pro bono is simply not going to provide the level of support that is needed. Service delivery therefore needs to be individually targeted and must look at all the other things going on in the life of the victim, not just the legal problem that brought her to a particular service.

The report is also clear about the vital importance of ongoing legal representation in court processes, informal negotiation processes and in more formal mediation processes. This is especially important given the findings about the extent to which perpetrators fail to disclose their true financial position and try to use the various court and other processes as an ongoing method of abuse of the victim.

Unfortunately, whatever safeguards we provide, perpetrators will try to find ways to get around them. And although I don't think it is said explicitly in the report, I do think it has to be recognised that no matter what support is offered, many victims are still going to choose to walk away with nothing or less than their entitlements, because they believe that this is the only way to preserve their own safety and the safety of their families and even their pets.

At more micro levels, the report highlights the importance of proper screening for family and domestic violence, given the likelihood that it won't be disclosed without proper questioning in a safe environment. And on a clearly associated topic, the report emphasises the importance of all practitioners in this area having comprehensive and consistent training in issues of family and domestic violence, in particular the interaction between violence and property disputes.

As I have already noted, the report reveals the extent to which agencies are unaware of services already in existence and gives one example of how one key player was unaware of an existing service offered by Legal Aid. They became aware of it by means of information exchanged during the project, and, once aware of its existence, began referring to a service which fitted the needs of their clients. Importantly the report therefore recommends the creation of an up to date, accessible list of services and centres that have capacity to provide assistance in property matters, including the type and extent of assistance. This list would be made available to legal practitioners, dispute resolution service providers, and the public.

We have to sympathise though with the agencies in trying to keep up with what is being offered. Funding for services is not consistent and hence the availability of services is not static. Furthermore, the ability of services to help can vary depending on changes in staff, the level of demand from clients and – in, some instances, preparedness of staff to bend rules to provide services that are strictly not within the remit of the agency involved. That latter sort of information, by definition, can't be advertised, other than by word of mouth.

And of course, no report would be complete without a recommendation for the provision of better data collection systems and the development of an evidence-based approach. However, while such recommendations are almost compulsory, without this information we don't know the extent of the problem – and hence don't know the likely cost of any remedy – nor the real effectiveness of particular types of interventions.

The release of this report is timely. We are coming up to a federal election and the public purse strings are likely to be loosened in the time-honoured fashion. The tireless advocates who have agitated on behalf of victims for so long have finally achieved what seems to me to be some real traction. Perhaps for the first time there are votes to be had for those parties prepared to seek to address the issue.

Notwithstanding this important change in attitudes, I think our sector still needs to become even more savvy in the way we seek to pitch for the funding that is needed to ensure comprehensive wrap around services for victims or survivors of domestic violence.

I was privileged last week to attend an event organised by the Valuing Children Initiative, which is funded by Centrecare with the aim of inspiring Australians to value all children, to understand that a child's wellbeing is the shared responsibility of the entire community; and to ensure children are at the forefront of our considerations. We heard at the Valuing Children event an inspiring presentation from Professor Donna Cross from UWA and the Telethon Kids Institute. Relevantly for tonight's purposes, she spoke of the evidence base that has been gathered to help determine how funding campaigns should be formulated in order to strike the right chord with both government and the public. That evidence shows that the same message can get a much better reception, depending upon how it is framed.

So, I think we need not only to think about what it is that we want government to do – but also which method of seeking funding is going to get most traction. Is the focus to be on victims or on their kids or on the advantages to the economy of looking after victims of family and domestic violence? While we might philosophically prefer to ask for funding

simply because it's the right thing to do – if we are to be hard headed, we perhaps need to accept that the ultimate objective is to get the money with a view to improving the serious gaps in services that are identified in this report.

I know I'm standing between you and refreshments so I am going to conclude by commending the research team for their efforts, recommending the entire report to you to read, to contemplate and to consider how, pending receipt of bucket loads of money, we might change existing practices to improve the delivery of services on the ground.