

**Community Development and Justice Standing
Committee: Report 8**

***Opening Doors to Justice: Supporting victims
by improving the management of family and
domestic violence matters in the Magistrates
Court of Western Australia***

Government Response – November 2020

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1 Introduction

The Government of Western Australia (the Government) welcomes the Final Report of the Community Development and Justice Standing Committee (the Committee) *Opening Doors to Justice: Supporting victims by improving the management of family and domestic violence matters in the Magistrates Court of Western Australia*, tabled in the Legislative Assembly on 13 August 2020.

The Government is committed to removing barriers to access to justice for victims of family and domestic violence and ensuring that perpetrators are held to account. The 72 recommendations outlined in the report align with work which is currently underway or have previously been considered.

2 Background

The Committee considered three main topics:

1. The challenges experienced by the Magistrates Court of Western Australia and court users in matters involving family and domestic violence, including:
 - a. Ease of access;
 - b. Cost of access; and
 - c. Access to advice, support and programs.
2. How do other jurisdictions manage matters involving family and domestic violence including examination of non-adversarial models.
3. Ways to improve the efficiency and effectiveness of the Magistrates Court of Western Australia's management of matters involving family and domestic violence.

The key findings of the inquiry were:

- Increased judicial resourcing is the key to improving timeliness;
- Trained magistrates and staff are integral to court accessibility;

- Access to legal services and support services will benefit both the court and its users;
- Alternative dispute resolution can be done safely and offers many benefits;
- The Family Violence Restraining Order process can be further improved to promote accessibility and efficiency;
- Specialist family and domestic violence courts need defined objectives to be truly effective;
- Management of family and domestic violence matters can be improved;
- Integrating related matters in different jurisdictions will improve consistency and minimise duplication;
- Improving court infrastructure will promote efficiency; and
- An integrated government response is required.

3 Government response

The Government has implemented wide ranging reforms to address family and domestic violence. These reforms have focused on prevention, providing services to survivors and holding perpetrators to account, including through criminal justice reforms. The Government will consider the findings and recommendations from the report as it continues to implement these reforms have addressed the findings of the enquiry. A number of these measures, outlined in the Government's *Stopping Family and Domestic Violence Policy*, have been delivered with additional investment of over \$53 million from the State Government to support:

- The introduction of paid family and domestic violence leave and other workplace measures for affected public sector employees.
- The addition of two new women's refuges to the existing network, one in metropolitan Perth and the other in regional Western Australia with the latter being a therapeutically focused service, representing a first for WA refuge delivery.
- Piloting two 'one stop hubs' for family and domestic violence survivors to seek coordinated help, information and support.

- Establishing a second Breathing Space program in metropolitan Perth to increase capacity for male perpetrators to access intensive behaviour change support in a residential setting.
- Increasing financial counselling and supporting services to deliver culturally appropriate support to Aboriginal women and women from culturally and linguistically diverse backgrounds experiencing family and domestic violence.
- Improving screening rates for family and domestic violence during pregnancy.
- Delivering training to frontline police officers and developing a family violence code of practice.
- Establishing the Pets in Crisis program with RSPCA WA.
- Introducing Respectful Relationships Teaching Support Program into primary and secondary schools to support better awareness and understanding of family and domestic violence and its drivers.

Law Reform

Significant justice and law reform have also been a focus of the Government's term with the introduction and passage through the 40th Parliament of Western Australia of three specific Government bills dealing directly with the impacts of family and domestic violence:

- *Residential Tenancies Legislation Amendment (Family Violence) Act 2019*;
- *Family Violence Legislation Reform (COVID-19 Response) Act 2020*; and
- *Family Violence Legislation Reform Act 2020*.

Residential Tenancies Legislation Amendment (Family Violence) Act 2019

The *Residential Tenancies Legislation Amendment (Family Violence) Act 2019* amends the *Residential Tenancies Act 1987* and the *Residential Park (Long-stay Tenants) Act 2006* to provide tenants with mechanisms to terminate their lease interests on the grounds of family violence. As a result of this Act, renters affected by family and domestic violence have new options to:

- Provide at least seven days' notice to exit a tenancy and leave right away for safety;

- Apply to court to have a perpetrator's name removed from a lease;
- Make a rental home safer through lock changes or security upgrades; and
- Sort out disputes about property damage, unpaid rent or bonds.

The Act provides a safety net for victims of family violence so that they are not required to remain with perpetrators or take responsibility for the financial burden of unpaid rent.

Family Violence Legislation Reform (COVID-19 Response) Act

During the COVID-19 crisis it became clear that periods of isolation from the wider community presented an increased risk to victims of family violence. In response, the *Family Violence Legislation Reform (COVID-19 Response) Act* implemented a number of important changes.

The changes include:

- Allowing a court to impose a requirement that an offender, who presents a high risk to a person or community, be subject to electronic monitoring under Conditional Suspended Imprisonment Orders and Intensive Supervision Orders;
- Permitting a judicial officer to include, as a home detention bail condition, a direction that an accused be subject to electronic monitoring;
- Improving access to restraining orders, including enabling restraining order applications to be lodged online;
- Creating a separate offence for breach of a Family Violence Restraining Order, increasing the penalty to \$10,000 from \$6,000 and extending the limitation period for prosecuting breach of restraining order offences to 2 years; and
- Allowing the Family Court and Children's Court to issue interim restraining orders on an ex-parte basis, in the same way as the Magistrates Court.

Family Violence Legislation Reform Act 2020

The Government also introduced the *Family Violence Legislation Reform Act 2020* (the 'FVLR Act') which is the most comprehensive family violence law reform package ever seen in Western Australia, aimed at improving the safety of victims of family violence, holding perpetrators of family violence to account and increasing responsiveness of the justice system by making it easier and less traumatic for victims to obtain protection from violence. The FVLR Act was passed by State Parliament in June 2020 and amended nine separate pieces of legislation across six ministerial portfolios. The Government has also made a \$6.45 million investment to implement these comprehensive reforms, which include:

- Creation of a new criminal offence of non-fatal strangulation, recognising strangulation as one of the most dangerous forms of family and domestic violence. The offence commenced operation on 1 October 2020. The Department of Justice is currently working with the Sexual Assault Resource Centre to develop an eLearning program in relation to the new offence, as well as a suite of videos which will provide both general (public) and specific (health and support sector) information.
- Creation of a new criminal offence of persistent family violence, which recognises that physical and psychological abuse against a partner often forms a pattern of offending. The specific family violence offence applies when an offender commits three or more acts of family violence against a person with whom they are in a designated family relationship over a period not exceeding 10 years.
- Amending the *Sentencing Act 1995* and the *Sentence Administration Act 2003* to enable a court to declare a person who commits a second prescribed criminal offence against the same or subsequent victims as a 'serial family violence offender'. This declaration is the first of its kind in Australia and will identify high risk repeat family violence offenders and place a number of restraints on such a person. It imposes a presumption against bail should a serial family violence offender be charged with a subsequent family violence offence, and, if bail is granted, requires the court to consider imposing a home detention condition with electronic monitoring.
- An electronic monitoring trial focussing on those offenders who have breached a Family Violence Restraining Order and are considered "high risk" in terms of risk of causing death or serious physical harm. The Government has invested \$15.5 million to run a 2 year FDV Global Positioning System (GPS) tracking trial. These funds have been applied to expanding electronic monitoring capabilities and enable additional risk assessment and response planning. In addition, the Office of the Commissioner for Victims of Crime has developed a victim support package.
- In relation to the restraining orders system, registrar facilitated shuttle conferencing to replace appropriate mention and final order hearings before a magistrate, in circumstances where a respondent to a Family Violence Restraining Order objects to the interim order becoming final. This process is designed to make it easier and less traumatic for victims to obtain Family Violence Restraining Orders, ensuring that victim safety is of paramount importance throughout. The introduction of this model will streamline contested family violence order applications. \$4.7 million has been allocated over 4 years to the Department of Justice (and through the Department to Community Legal Centres and the Aboriginal Legal Service) and \$2.6 million to Legal Aid to establish and support the mediation process.
- Behaviour management orders will also be a feature of the shuttle conferencing process. Behaviour change programs will be able to be prescribed by consent for the purpose of the shuttle conference, enabling perpetrators of family violence to engage

in programs as part of an agreed order. This provides an opportunity for the impact of behaviour change programs to be evaluated.

- Police recording of reported family violence incidences. WA Police Force are now required to record all incidents of reported family violence and provide a victim, where present, a reference number of that report at the time of making of it, to assist in identification of the perpetrator in the event the victim decides to make a subsequent family violence order application.
- Implementing significant changes to the *Restraining Orders Act 1997* to improve service arrangements for restraining orders, enable the court to prohibit a person from possessing explosives, make the court process less traumatic for victims, increase the monetary penalty for breach of restraining orders, recognise dowry abuse as a discrete example of family violence and ensure children are not subject to lifetime restraining orders. This includes implementing several of the outstanding recommendations of the Law Reform Commission of Western Australia's 2014 Report.
- Ensuring applicants are able to have a support person nearby during any restraining order proceedings and also to enable use of closed circuit television and other screening arrangements during the giving of evidence in restraining order proceedings. The court was also provided with greater discretion to conduct Family Violence Restraining Order proceedings in a manner which ensures that a person who has or may have experienced family violence feels safe during proceedings, including by actively directing, controlling and managing the conduct of the proceedings, and by limiting cross-examination where appropriate.
- Amendments which enabled the conversion of an existing Violence Restraining Order to a Family Violence Restraining Order during the course of criminal proceedings, thus reducing the need for victims to have to return to court. The court is also now able to convert an application for a Family Violence Restraining Order to an application for a Violence Restraining Order, and vice versa.
- As it is known that family and domestic violence matters often cross both state courts and the Family Court, it is now mandatory for the court to consider any inconsistencies between Family Court orders and restraining orders at the final order stage.
- In addition, amendments have been introduced to the *Road Traffic Act 1974* in circumstances where a family violence perpetrator commits a road traffic offence or incurs an infringement while driving a car registered in the victim's name, the victim is now not liable to a presumption that they incurred the infringement. These amendments ensure that victims are protected from the risk of harm that may be caused by an obligation to identify the perpetrator of violence against them.

- Amendments to the *Evidence Act 1906* were also introduced to make it easier for evidence of family violence, including expert evidence, to be introduced in a criminal proceeding when relevant to issues before the court, including, but not limited to where self-defence is at issue. Importantly, this evidence can now be given by those with expertise in the area, for example, researchers or family violence sector workers.

Additional Justice Initiatives

- The selection criteria for Magistrates has been adjusted to include a requirement to demonstrate a knowledge of the dynamics of family and domestic violence.
- Since the adoption of the new selection criteria, two additional Magistrates have been appointed to the court and new magistrates attend the National Magistrates' Orientation Programme which incorporates restraining order and family violence training.
- Cultural awareness training is incorporated in initial and ongoing professional development training undertaken by magistrates and Aboriginal cultural competency is a selection criterion for Magistrates.
- The Department of Justice has funded the National Judicial College of Australia to provide family violence training for all existing magistrates, and any who are newly appointed.
- The Department of Justice has funded the Australian Institute of Judicial Administration to develop and maintain the Family Violence Bench Book.
- The Court has established a judicial wellness programme incorporating four proactive, client based sessions per annum with a professional counsellor, with an option for a further two if required. Individual plans are formulated by each magistrate with the counsellor, and may address a range of matters which may include vicarious trauma.
- Video materials will be developed in the current financial year to assist litigants and respondents navigating the restraining order application process.
- The Office of the Commissioner for Victims of Crime is commencing work with the Mental Health Commission, Legal Aid WA, the Mental Health Law Centre and other key stakeholders to investigate the needs of individuals with mental health issues in regards to accessing, defending and complying with restraining orders.

- The Department of Justice will commence an independent external evaluation of the Barndimalgu Aboriginal Family Violence Court in the next financial year.
- The Department of Justice is due to commence a review of the Family Violence List in 2021.
- The operationalisation of the Western Australian Crime Statistics and Research unit will support the collection and publication of data relating to family violence.
- The Department of Justice is currently developing an internal family and domestic violence strategy and an Aboriginal family safety strategy.
- The Department of Justice is progressing reforms to address the systemic problems that led to the arrest and detention of a victim of family violence.

Covid-19 Response

As part of the WA Recovery Plan, the State Government has allocated another \$23 million to family and domestic violence prevention initiatives to deal with the continuing impact of COVID-19 measures on women's and family safety, including:

- \$8.6 million to employ mobile outreach workers state-wide to provide support for women and children experiencing family and domestic violence;
- \$6.7 million to Family Violence Response Teams that support victims following a police call-out;
- \$123,000 for a program to support women residing at refuges to gain employment skills, access career training or retraining and attend a range of workshops and short courses to support employment pathways;
- \$2.6 million to extend the Kimberley Family Violence Service trial by two years;
- \$1.1 million for counselling, advocacy and support services; and
- \$4 million to enable the construction of an additional six accommodation units at each of the two women's refuges currently being built in Peel and Kwinana.

Path to Safety: Western Australia's Strategy to Reduce Family and Domestic Violence 2020-2030.

The Government's long-term strategy describes four focus areas (listed below) for cross government effort with priority actions for implementation in the first two-year period set out in the [First Action Plan 2020-2022](#):

1. Work with Aboriginal people to strengthen Aboriginal family safety;
2. Act now to keep people safe and hold perpetrators to account;
3. Grow primary prevention to stop family and domestic violence; and
4. Reform systems to prioritise safety, accountability and collaboration.

The findings and recommendations of the inquiry will continue to be considered as policy, legislation and system reform, outlined in the ten-year strategy, are scoped and implemented.