

# **COMMUNITY DEVELOPMENT AND JUSTICE STANDING COMMITTEE**

**INQUIRY INTO THE MAGISTRATES COURT OF WESTERN AUSTRALIA'S  
MANAGEMENT OF MATTERS INVOLVING FAMILY AND DOMESTIC VIOLENCE**



**TRANSCRIPT OF EVIDENCE  
TAKEN AT PERTH  
WEDNESDAY, 11 MARCH 2019**

**SESSION TWO**

## **Members**

**Mr P.A. Katsambanis (Chairman)**  
**Mr M.J. Folkard (Deputy Chairman)**  
**Mr A. Krsticevic**  
**Mr S.K. L'Estrange**  
**Mr D.T. Punch**

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**Hearing commenced at 10.44 am**

**Ms SHARRYN MAREE JACKSON**

**Executive Director, Community Legal Centres Association (WA) Inc, examined:**

**Ms CAROLINE FIONA HANNINGTON**

**Policy and Projects Officer, Community Legal Centres Association (WA) Inc, examined:**

**The CHAIR:** On behalf of the committee, I would like to thank you for agreeing to appear today to provide evidence in relation to our inquiry into how the Magistrates Court of Western Australia manages matters involving family and domestic violence. The purpose of today's hearing is to discuss your submission to the inquiry, and we may also ask you to comment on other matters that have been raised with us throughout the course of the evidence we have heard. I am Peter Katsambanis and I am the Chair of the committee. The other members here today are the Deputy Chair, Mark Folkard; the member for Churchlands, Sean L'Estrange; the member for Bunbury, Don Punch; and the member for Vasse, Libby Mettam. It is important that you understand that any deliberate misleading of the committee may be regarded as a contempt of Parliament. Your evidence is protected by parliamentary privilege; however, that privilege does not extend to anything you say outside of today's hearing. Before we begin with our questions, do you have any questions about your attendance today?

**Ms JACKSON:** The only issue I raise is to indicate that Carrie is a lawyer. Of course, she is not here in her capacity as representing me, but I did notice in the information to witnesses that there was a "please identify if you are a lawyer or if you are intending to bring a lawyer" but I thought that was for the purposes of representation.

**The CHAIR:** Yes, that is right.

**Ms JACKSON:** And I think we have a lawyer or two present on the committee in any event.

**The CHAIR:** That is all right. Thank you for that. Do you have a brief opening statement you want to make, or shall we go straight to questions?

**Ms JACKSON:** In addition to the information we have provided in the submission, there have been a couple of changes, which I think you need to be updated on. In particular, we made a number of comments in the submission regarding the fact that there had been an outstanding Law Reform Commission report from 2014 that had a number of recommendations that had not been implemented or addressed. I am pleased to say, and I want to acknowledge the government, that last November the government introduced some amending legislation that has covered a number of the recommendations in the Law Reform Commission report, which is very pleasing; however, we are concerned that the one area that does not appear to be addressed by the legislation is the issue of training for court personnel—court staff, magistrates—as well as police in the area of family and domestic violence—related matters. We have to say that it was identified in 2014 as a significant issue. We believe it is perhaps one of the ways you can address the lack of consistency that we are seeing in decisions of magistrates in the courts. I would draw that to the committee's attention.

Other than that, I think there are probably anecdotal things that we would like to add. I had indicated that in our experience, FDV is not the only issue that people generally come to see us about. An FDV client often has multiple legal issues. Just recently, Mission Australia stated that 80 000 people nationally indicated domestic violence as the main reason for their homelessness. I think that we really need to start making those connections between FDV and other social issues.

Of course, we have seen the recent release of the government's homelessness strategy, which I also congratulate it for, but I note that it included no additional funding or resources for legal assistance services, and that is something that we think should have been dealt with.

I note that we have two members from the regions, which is always lovely. With the issue we have raised about court facilities, it would not surprise you to learn that it is often regional courts that are in even worse states of disrepair or appropriateness than metropolitan courts, with the possible exception of Armadale and Midland. We wanted to indicate that we have had more and more issues raised by our lawyers who are sitting in waiting rooms with FDV clients, FDV perpetrators, and everybody else, with no break-out rooms for them to be able to consult their clients.

I would like to add that we continue to lobby for additional resources for our own work. I guess you expect that from most people who come and appear before you who are community-based organisations. We rely on both commonwealth and state funding. It is approximately a split of 45–55, with the commonwealth providing 55 per cent and the state 45 per cent. That translates to \$5 million per year from the state and \$6.5 million a year from the commonwealth. I suspect that members who are much more used to dealing with government programs and figures know that that is a relatively small amount of money for such an important service. I can speak on behalf of all the legal assistance services—ALS, Legal Aid and ourselves are all struggling for appropriate resources.

You might also like to know that we understand that 37 women were killed in Western Australia by an intimate partner in domestic violence last year. Annabel Crabb, a journalist, wrote an article some time ago stating that if the number of people being bitten by sharks in Australia equated to the number of women who were killed by their intimate partner, or in a domestic violence situation, then we would probably drain the oceans. Just out of interest today, I pulled out the statistics on shark attacks and deaths in Western Australia. I can tell you that there have been four deaths since 2016 and 12 in total since 2010. Just this year alone, I think the state government is investing somewhere around \$28 million in shark hazard-mitigation strategies. I find that comparison breathtaking. They are our opening comments. We are happy to answer any questions. Of course, if it comes to specifics of handling legal matters, Carrie is the one with the greater professional experience.

[10.50 am]

**The CHAIR:** Thank you. I think some of the comments you made, particularly in relation to training and court facilities and the like, have come out strongly through the course of our inquiry. In your experience, apart from the funding issues and the facility issues, what are the impediments to victims accessing appropriate support in family and domestic violence matters in our courts? That probably goes just beyond the legal services, but all of the other services they require. How can that be rectified?

**Ms JACKSON:** First of all, we believe in client-centric services—a holistic approach. We try to encourage community sector organisations to use a device called the legal health check. It was created by the legal assistance sector. It is a very simple survey. We believe that if people, when they present at any community service, were asked the questions on that survey, the first thing that would happen would be an early identification of legal problems. As anybody knows, the earlier you can deal with legal problems, the better. We are also operating on the assumption that if you give a reasonable person information about their rights and responsibilities, they will make reasonable and informed decisions. The provision of duty solicitors for both applicants and respondents, as well as support staff, should be available at every court that is dealing with FDV-related matters. There is no question about that.

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**The CHAIR:** Yes, that is where some of the other states, perhaps Victoria, have gone down that model of trying to ensure that that is the case. Queensland is moving quickly towards that.

**Ms JACKSON:** Yes, and the commonwealth has provided some assistance through its family support service funding, but it falls far short of what is required for coverage, particularly in a state like Western Australia where 80 per cent of our population lives in the metropolitan area and 20 per cent in the regions.

**The CHAIR:** Do you have any comment to make on using the current family violence lists that are utilised in our court system as opposed to specialised family violence courts that used to exist in the past and exist in other jurisdictions?

**Ms HANNINGTON:** My understanding is that those family violence courts were quite a long time ago here, and they were very much based on the criminal charges. They were not really victim oriented. They were oriented towards a solicitor performing a legal health check and identified the needs of the victim, both legal and non-legal. There is an Aboriginal court in Geraldton that I understand has been operating along those lines, and there is some success there. I am not aware of any evaluation of that. Also, some of the other Magistrates Courts have been operating family violence services, if not courts themselves. There seems to have been some success with those two, provided they operate in the manner I have described. I would love to see a proper evaluation of family violence courts and lists in other states and previously here, with a view to seeing how that would work here and how that could conserve resources for the government, because if you have duty lawyers attached to those courts and they operated in a holistic fashion, and certainly in community legal centres most of the lawyers do try to operate in a holistic fashion in conjunction with other service providers, you can identify the needs of those victims there and provide for them in legal ways and otherwise, and the court can be aware of that too.

**Ms JACKSON:** Can I add to that that amongst our 28 community legal centres in Western Australia, we have three community-controlled Aboriginal community legal centres. They operate specifically in the family violence prevention legal services space. They have from time to time been involved in various initiatives of the Family Court to try to look to a more appropriate system, because you are aware that the statistics of FDV amongst First Nations people is significantly higher than the rest of the population. Our community legal centres say to us that they believe that for those courts to be successful, Aboriginal people need to be involved from the very beginning and build the process from the ground up. To do anything other—their past experiments they would frankly describe as paternalistic.

**Ms HANNINGTON:** That is a really important point.

**The CHAIR:** Yes.

**Mr M.J. FOLKARD:** So what you are saying is that the distance between the court and its community is one of the key influences in that space.

**Ms JACKSON:** Absolutely. It is interesting to me that the government and most people now support holistic service provision, and yet the one place that is so incredibly siloed and full of little boxes is the court system.

**Mr M.J. FOLKARD:** We have had a significant amount of witnesses present to this committee, and every time we ask about consistency of magistrate decisions, there is almost a unanimous response of eyes rolling up about this consistency. I note that you put in that space and you touched a little earlier on about training for magistrates. I would like to unpack that a little bit more. In Victoria, they have a judicial college, where the magistrates and the whole of the legal fraternity—anyone

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who interfaces particularly in domestic violence in this space—goes through training. What are your thoughts on something similar here?

**Ms JACKSON:** I would really like to see some training initiatives introduced, particularly for magistrates and court staff in the FDV space. As to how that might be done, I am honest enough to say that in my experience, magistrates and judges have incredible workloads. We need to be a bit creative about how we find the time and the space for those magistrates to participate in that training, but it is critical for us to have a consistent—not exactly the same—but consistent understanding of domestic violence to make our courts work better.

**Ms L. METTAM:** You touched on the gap in the quality of service, if you like, or resourcing in the regions and the need for, as an example, break-out rooms. You also touched on paternalism as well. Do you mind just spelling out, I guess, a few of those issues and what the disadvantage is, and also how that is illustrating itself or manifesting in outcomes, and what the impact of that level of service is on the ground in regional WA?

[11.00 am]

**Ms JACKSON:** I think the most classic example I heard when I was compiling the submission involved our South West Community Legal Centre in the member for Bunbury's electorate. The facilities there are very poor. There is only one waiting area and there is only one room that is available for consultations with clients. That is both for respondents as well as applicants. As you understand, lawyers take very seriously privacy and the privilege of the exchange of information, and you like to do that not in the waiting room with 30 other people who are waiting for the court list to be called that morning. On one occasion, the solicitor eventually found someone who would open the locked room so that she could have that consultation with her client. The sad thing was that they then missed the call in the waiting room for the matter that was being listed, and so an order did not issue and the process had to commence all over again. That is the kind of worst example. The other thing I think is that in more modern courts, there are break-out rooms—opportunities for not only the parties to get reliable advice and information, but also to allow parties to confer and maybe look at alternate outcomes to, you know, the full-on hearing in the Magistrates Court.

**Ms L. METTAM:** Just touching on the first example that you gave, and I guess the fact that time was held up and they did miss the opportunity to present to court, what impact can that have on a vulnerable victim?

**Ms JACKSON:** There is anecdotal evidence—I am sorry that I do not have the reference—that of the murders committed in Australia of women by intimate partners, nearly 60-odd per cent—67 per cent—have got in the history of their matter a breach of their VRO. It seems to us that one of the critical times, dangerous times, for victims of FDV is around the application for and the granting of a VRO. There is a whole range of things. If the respondent is not aware of what their legal rights and responsibilities are under that VRO, they might just respond in anger. You know, people do not understand how they can still have the opportunity to visit their children, for example, where a VRO may or may not be in place. So you just compound all of those problems, all of those vulnerabilities, that may well be there. I do not know if Carrie wants to speak.

**Ms HANNINGTON:** Yes; I was just going to say that I have had experience in working in one of two regional courts that are brand-new—in Carnarvon, and there is another one in Kununurra too. They are very super-duper. It was regarded as a bit of an overkill by the community when they were first put up. I think they cost to the tune of \$70 million each under royalties for regions. But certainly now when you are in Carnarvon, where I was recently, it is appreciated by the community, because they do have break-out rooms and they do have seats in the waiting room with very high backs, so you can actually sit there and the perpetrator and the victim do not have to see each other. If that

can be done there, then surely it can be done in some of these particularly metropolitan areas, where the demand is a great deal higher. I think that victim–perpetrator contact issue is very important. There is a reason why in the Family Court, lawyers lobbied very hard and eventually got a bar on cross-examination of perpetrators by victims. That is working a lot better.

**The CHAIR:** Of victims by perpetrators, I hope you mean.

**Ms HANNINGTON:** Sorry; I am getting my words mixed up!

**The CHAIR:** I am paying attention!

**Ms HANNINGTON:** My understanding is that that is working well and that that would be welcomed wherever, along with any measures that can give victims and perpetrators separation. It is very important.

**The CHAIR:** That would also point us to the obvious observation—I think it is obvious to me, but I do not want to put words in anyone’s mouth. Obviously, if you are going to have a bar to cross-examination by perpetrators, you are going to have to resource representation for perpetrators. We have received other evidence that just simply by providing representation of some sort or even access to advice, it tends to actually assist the process of resolution and takes a lot of angst out of the process. Would you like to comment around that?

**Ms JACKSON:** There is absolutely no question about that. I suspect you have heard direct evidence from Northern Suburbs of their duty lawyer service. We are saying that that duty lawyer service should be available to both respondents and perpetrators. Our community legal service in Rockingham, SCALES, also provides duty lawyers and other services for perpetrators. Many of our centres do, because it depends who comes to the centre first for assistance. That is our absolute experience. It is interesting—you might be sympathetic to this—that there is a view that lawyers involved in the process slow it down. It is our experience that the earlier the lawyers are involved in the process and explain to people their rights and responsibilities, it actually makes the whole process much quicker and easier. You can actually say to an applicant or a respondent, “That is a ridiculous argument that will be rejected by the court”, or, “You don’t have enough information.” It is basic to me.

**The CHAIR:** As a lawyer, I am going to frame that quote of yours!

**Mr D.T. PUNCH:** My question is a very quick follow-on question from the Chair’s, because I totally agree with that view you have expressed. We have also received evidence in relation to the conflict of interest issue—when it is the case that the first person who comes in gets a service—that some providers have been able to resolve that conflict through internal protocols in terms of how information is managed within the agency. Do you see an opportunity to try to resolve that, particularly in regional areas where resources are always going to be thin, to try to make sure that if it is the victim who has come in first, that there is some process of getting the information to the perpetrator and explaining to them exactly what the obligations are for them, because, ultimately, that leads to more efficient court outcomes and better outcomes for the person who needs protection?

**Ms JACKSON:** Before the lawyers start in on the conflict of interest issue, of the legal assistance providers in Western Australia, Legal Aid would have the best conflict of interest policy, which allows for them to provide basic information via the internet, their virtual offices or whatever the case may be, and we all try to do that on our websites or through other services, informing people about basic information. I have experience of one of our Aboriginal-controlled community organisations that runs a family violence prevention service as well as a number of other community services, and we have created within that organisation an information barrier to manage this issue. We also have had

to go to the extent of requiring them to have separate entrances for their community housing and other services versus their FDV services, so that we can try to protect some of the anonymity of clients attending. But it is truly one of the advantages of having more than one legal assistance service in a regional area, and also outer-metropolitan areas, so that the Aboriginal Legal Service, our family violence prevention services, Legal Aid offices as well as CLCs can often manage those things in a smaller community. It is a very difficult process to introduce information as other barriers within an organisation to deal with conflict.

Some CLCs will tell you that a “smart” perpetrator might well visit three or four community centres and make sure they get some sort of basic information or a referral so they are on the list of clients of that community legal centre’s practice, which then prevents the community legal service from providing assistance —

**Mr M.J. FOLKARD:** Yes, conflict of interest protocols would help to address that problem as well I would have thought.

**Ms HANNINGTON:** That is very common. For people in regional areas it is a real problem, because there is only a limited number of lawyers. A wise perpetrator will lawyer-shop and will make sure they go to everybody who is able to give them advice and the victim has nowhere to go, except maybe get telephone advice from somewhere. Some mechanism to look at that would be very welcome.

[11.10 am]

**Ms JACKSON:** I can reassure you a little to say that the most recent Australian Institute of Health report indicated that only three per cent of separating couples with children in Australia finish up in litigation in our courts. Despite the fact that I feel completely overwhelmed by the increase in demand in FDV for our community legal centre services, I am reassured that 97 per cent of separating couples with children manage to do it without any of these complications.

**The CHAIR:** I do not necessarily think that the three per cent reflects the lack of complication in getting to the resolution. I think that is where the angst and the cost always comes.

**Ms JACKSON:** Absolutely.

**The CHAIR** We will have to conclude today because unfortunately we cannot sit when Parliament is sitting; we have to be in Parliament. I am going to thank you for your evidence before the committee and also thank you for the work you do in the community, because it is really appreciated by everyone, especially by people like us because we often work together with services like the ones you represent.

We will send you a transcript of the hearing for correction of transcribing errors. You need to make your corrections and send the transcript back within 10 working days. If you do not send it back, we will assume that you deem it to be correct. You cannot use that process to change the nature of your evidence, but if you want to make a supplementary submission or if you think there is anything we need to know, we are very willing to hear it, so please feel free to do that. I will conclude the hearing today and wish you well in your endeavours.

**Ms JACKSON:** Thank you very much, and apologies for our lateness.

**Hearing concluded at 11.11 am**

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