



Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600
Email: familyreportwriters@ag.gov.au

Friday 17 December 2021

To Whom It May Concern

Re: Domestic Violence NSW submission to the consultation on improving the competency and accountability of family report writers

Please accept this letter as Domestic Violence NSW's submission in response to the Attorney-General's Department consultation paper - *Improving the competency and accountability of family report writers*, inviting submissions from stakeholders and interested members of the public to help the Department consider how the competency and accountability of professionals who prepare family reports could be improved.

Domestic Violence NSW is the peak body for specialist domestic and family violence services in NSW, providing a representative and advocacy function for over 125 specialist domestic and family violence services and the women, families and communities they support.

Our member services include crisis and refuge services, transitional accommodation and community housing providers, family support services, Aboriginal controlled organisations, specialist Culturally and Linguistically Diverse organisations, specialist homelessness service providers, men's behaviour change programs and networks, community organisations working with high-risk communities, specialist women's legal support services, women and children's support services and Safe at Home programs.

Domestic Violence NSW acknowledges that we work on Aboriginal land and pay respect to elders past, present and emerging. We also acknowledge the adverse impacts of colonisation on Aboriginal and Torres Strait Islander communities and the high rates of violence perpetrated against Aboriginal women and their children.

In addition to our submission, Domestic Violence NSW endorses the recommendations and submission of Women's Legal Service NSW:

In summary we recommend:

- 1.1 *The Australian Standards of Practice for Family Assessment and Reporting (The Standards)* and the *Family Violence Best Practice Principles (The Principles)* developed by the family courts be binding and enforceable.

- 1.2 *The Standards and the The Principles be reviewed and updated.*
- 1.3 *The Federal Circuit and Family Court of Australia Act 2021 be amended to include “safety” in the “overarching purpose” in section 67(1) and section 190(1) to further ensure safety is elevated in the family law system.*
- 1.4 Further consultation with Aboriginal and Torres Strait Islander people and Aboriginal and Torres Strait Islander organisations about the establishment of a Council of Elders in each family court registry.
- 1.5 Implementation of a workforce development strategy to increase diversity in the workforce within the family law system.
- 1.6 A single national regulatory body which is responsible for accreditation, monitoring, quality assurance and accepting complaints relating to all cohorts of family report writers. Robust quality assurance mechanisms must include the annual auditing of family reports prepared by both court employed and private practitioners with the results to be published in a de-identified way including the steps taken to address any issues identified.
- 1.7 The establishment of an accessible public register of family report writers.

Domestic Violence NSW recommends that the Attorney-General's Department initiate:

- 1. Accreditation for family report writers (WLS Rec 1.6).**
- 2. Training for family report writers in understanding domestic and family violence.**
- 3. Training for judicial officers in understanding the context of the family report.**

Accreditation for family report writers has been recommended in numerous reports, including the *Improving the Competency and Accountability of Family Report Writers Consultation Paper* (Attorney-General's Department¹). Accreditation is recommended by the Australian Law Reform Commission² and the Joint Select Committee on Australia's Family Law System³. The *Consultation Paper* also recognized the complex issue of 'identifying and assessing family and domestic violence, including coercive control' as one of the competencies identified by stakeholders as essential to family report writing (see also ALRC, 2019⁴). This is compounded by the short amount of time report writers have to obtain the history and context of an entire relationship⁵, meaning they need to be even more astute in identifying elements of domestic violence. As such, DVNSW reiterates the reasoning and research of the Australian Law Reform Commission and the Joint Select Committee on Australia's Family Law System as evidence for our recommendations.

We further recommend **specialist training for judicial officers** in understanding the context of family reports. There is a persistent perception among the judiciary that female reports of domestic

¹ Attorney-General's Department. (2021). *Improving the Competency and Accountability of Family Report Writers Consultation Paper*.

² ALRC, Family Law for the Future – An Inquiry into the Family Law System, Report No 135, March 2019

³ Joint Select Committee on Australia's Family Law System, Parliament of Australia, Improvements in Family Law Proceedings, Second Interim Report, March 2021

⁴ ALRC, Family Law for the Future – An Inquiry into the Family Law System, Report No 135, March 2019

⁵ Attorney-General's Department. (2021). *Improving the Competency and Accountability of Family Report Writers Consultation Paper*.

violence and child sexual abuse are ‘deliberately misleading’ or ‘genuine but mistaken’⁶. In a recent review of Family Court of Australia judgements containing allegations of child sexual abuse, judicial officers expressed belief that allegations of child sexual abuse were true in only 14% of fully contested cases⁷.

While there is limited research on the need for **judicial training specifically in the context of family reports**, research promotes the advantages of specialist DFV training for the judiciary. For example, three-quarters of judges who participated in specialist DFV training in the US reported that the training helped enhance the safety of victims⁸. Further, ANROWS⁹ found that magistrates themselves have called for improved information and training for domestic violence. As such, DVNSW suggests that specialist training should logically extend to include training for the judiciary on interpreting the family reports.

We provide the following case study, obtained by one of our member organisations, to further illustrate the need for professional training for family report writers in understanding domestic and family violence.

Case study*

(*The names and identifying details in this case study have been changed to protect the privacy of the people involved.)

Nina was born in Portugal and moved to Canada, where she spent the majority of her adult life. This is where she met and married her husband, Paul and raised her son, Ethan, who is now 11 years old and an academically gifted boy. Paul was unable to secure a permanent job in Canada and so took a permanent position at a university in Sydney, Australia. Paul moved to Sydney in October of 2018.

Nina was very reluctant to relocate herself and the child with Paul to Australia as she was well settled in Canada where she had a vast support network. Paul began pressuring Nina to move to Australia about a year before the move happened, claiming he could not find another job in his field in Canada and that therefore moving to Australia was their only option. There was a significant history of coercive control in the relationship and Nina had wanted to leave Paul for a while. However, as Paul controlled all their joint finances and Nina did not work outside the home, she felt she had no other choice but to agree.

⁶ Webb, N., Moloney, L. J., Smyth, B. M., & Murphy, R. L. (2021). Allegations of child sexual abuse: An empirical analysis of published judgements from the Family Court of Australia 2012–2019. *Australian Journal of Social Issues*, 56(3), 322-343.

⁷ Ibid

⁸ Jaffe, P. G., Crooks, C. V., Reid, M., White, J., Pugh-Markie, D., & Baker, L. (2018). Enhancing judicial skills in domestic violence cases: the development, implementation and preliminary evaluation of a model US programme. *Journal of Social Welfare and Family Law*, 40(4), 496-514.

⁹ Australian National Research Organisation on Women’s Safety (ANROWS). (2015). Judicial education for domestic and family violence: State of knowledge paper. *Landscapes*. Issue 2.

Additionally, Nina felt it was her duty to ensure her son has an 'intact family', due to her Catholic faith and having grown up with a very negative socio-cultural view of divorce. As a result, Nina and Ethan moved to Sydney in May 2019.

Shortly after Nina and Ethan arrived in Australia, the relationship between Nina and Paul deteriorated rapidly. Having lived apart for a significant part of the preceding year, Nina struggled to bow once again to Paul's coercive control. Coping with his behaviour was made even more difficult, as she suddenly found herself alone in a foreign country without the supportive presence of family and friends.

Nina and Paul were living together and sought relationship counselling. As is common in marriage counselling, the practitioner assumed equal responsibility for problems in the relationship, accepting Paul's claims that Nina had been abusive towards him rather than properly identifying these as projections of Paul's own behaviour. Despite Nina's growing unease, Paul pressured her into continuing these sessions, claiming he wanted them to repair their relationship. However, unbeknownst to Nina, Paul had retained a Family Law firm and had started working on his Family Court application. Believing they were still very much married, Nina lived with Paul as most married couples do, sharing a bed and walking into the bathroom whilst the other was bathing.

Less than two months after moving to Australia, Paul filed his application in the Family Court, including the application to prevent Ethan from being removed from the country. However, Paul did not inform Nina he had done so; Nina was served with Paul's application around 10 days after it was first filed. Despite still living as Nina's married husband, Paul stated in his application that the marriage was irrevocably over and that he and Nina had separated. This made Nina feel incredibly violated, as she had spent all her time in Australia living as a married couple, including the ten days between him filing the application stating they were separated and her receiving it.

Unbeknownst to Nina, Paul had moved most of the money in their joint accounts to accounts in his own name, changed all the passwords and left Nina with insufficient funds to support herself. Paul also removed the family car, meaning Nina was unable to accompany Ethan to school. This effectively trapped Nina and Ethan in Australia; a country neither of them knew or had any supports in. In this situation, there is a clear level of planning, deceit and coercion by Paul, which is standard coercive control in abusive relationships.

The matter is now a relocation matter, as Nina desperately needs to return home to her family and supports. Due to ongoing acrimony from Paul and the protracted nature of the Family Court proceedings, which have now been ongoing for in excess of two years, Nina's mental health became increasingly severely impacted, to the point that she was not able to eat, and her hair started to fall out.

Nina developed severe situational anxiety and depression and despite seeking medical and psychological support, her mental health did not sufficiently improve. This decline continued to the point that Nina made the decision that she needed to return home with or without Ethan. Her reasoning for this is that, if forced to remain in Australia, Nina's continuously declining mental health will mean Ethan will end up without a mother anyway.

The Family Law report writer in this matter had no understanding of Paul's manipulation, instead inferring Nina was responsible for everything. They severely admonished her for even considering going back home without her child, concluding she was prioritizing her needs ahead of Ethan's. The report did not explore the power imbalances which had plagued Nina's and Paul's relationship, and which persisted after separation. The reporter emphasised Nina's decision making rather than the impossible situation Paul had purposely put her in, failed to explore Paul's underlying motivations and controlling actions and ignored that many of Nina's choices had been made under duress.

The report writer dismissed Nina's claims that Paul was now behaving towards Ethan in ways that were similar to Paul's abusive behaviours towards her. Additionally, the report writer was not trauma-informed in their analysis, believing Nina's and Ethan's anxious presentation during the interviews signalled a dysfunctional relationship between mother and child rather than being the result of trauma caused by Paul's behaviours. The report writer also failed to safeguard Nina's sense of safety during the interviews, forcing face-to-face contact between her and Paul. Paul's behaviour fits with Evan Stark's¹⁰ definition of coercive control. However, without appropriate training on domestic and family violence, the report writer was not able to recognise this. The report has been tendered to the judge and Nina is currently awaiting the final decision from the Family Court.

In summary, it is imperative that family report writers have appropriate professional domestic and family violence training, specifically on coercive control, sexual abuse and systems abuse. In a court where more than half of the matters involve allegations of domestic and family violence, it is a grave disservice to all parties to have such a necessary and trusted part of the Family Law process be lacking in basic professional understanding of domestic and family violence. It is not enough that family report writers present with a broad background in psychology. Like police officers, family report writers need to understand the complexities of domestic and family violence and therefore require professional training.

Domestic Violence NSW agrees to our submission being made public. If you would like to discuss any aspect of this submission, please contact me on (02) 9698 9777 or at ceo@dvnsw.org.au.

Yours sincerely



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CEO, Domestic Violence NSW

¹⁰ Stark, E. (2009). *Coercive control: The entrapment of women in personal life*. Oxford University Press.