

Your Ref:
Our Ref: 833, 348

26 September 2019

Secretary
Department of Justice
Email: legislation.development@justice.tas.gov.au

Dear Secretary

**Council of Attorneys-General Family Violence Working Group (FVWG) – Consultation Paper:
Options for improving the family violence competency of legal practitioners, August 2019**

Thank you for the opportunity to consider and respond to the Council of Attorneys-General FVWG's Consultation Paper (Consultation Paper) on options for improving the family violence competency of legal practitioners in Australia.

The Commissioner for Children and Young People is an independent statutory office established under the *Commissioner for Children and Young People Act 2016*. My functions and powers, and the principles to which I must have regard in carrying out these functions and exercising these powers, are set out in that Act. Consistent with my functions and powers, my comments below focus on matters relevant to the promotion of the rights and wellbeing of children and young people in Tasmania.

Comment

While its prevalence is difficult to ascertain (largely due to under-reporting), there is no doubt that family violence is a significant health and welfare issue in Tasmania, as it is for other Australian states and territories.

It is also well established that family violence can have profound and long-lasting effects on the health and wellbeing of those who are affected by it, including for children and young people.¹ In the latter regard, you may be interested in the work of former Commissioner Morrissey on children's unique experiences of family violence which is available on my website:

https://www.childcomm.tas.gov.au/wp-content/uploads/2016/09/CCYP_FVR_21Sept2016_web.pdf

The Australian Bureau of Statistics' 2016 Personal Safety Survey found that 17 per cent of all women and 6 per cent of men had experienced violence by a current or previous partner since the age of 15, and that one in four women and one in six men reported experiencing emotional abuse by a current and/or previous partner since the age of 15. Further, of those who had experienced violence from a previous partner and had children in their care when the violence occurred, 68 per cent of

¹ Australian Institute of Health and Welfare 2019. *Family, domestic and sexual violence in Australia: continuing the national story 2019*— Cat. no. FDV 3. Canberra: AIHW.



women and 60 per cent of men reported that the children had seen or heard the violence.² In Tasmania in 2018-19 there were 3,573 reported family violence incidents and children were present at more than half of the family violence incidents attended by Tasmania Police.³

Experience of family violence often goes hand in hand with significant family law, child protection and criminal law (including youth justice) problems. Further, recent analysis of the results of the Legal Australia-Wide (LAW) Survey highlights that people who experience family violence are also disproportionately burdened by civil law problems (including employment, financial, government payments, health, housing, personal injury and rights issues) and that these legal problems can have significant adverse impacts on all aspects of their lives.⁴ These findings are consistent with those of the Law Council of Australia in the final report of the Justice Project.

As is noted in Appendix B to the Consultation Paper, a range of reports and inquiries have identified the need to improve the performance of professionals working in legal and other professions which intersect with family violence and to improve the consistency of approach to training especially across the family law system.

Given the breadth of legal problems that may be experienced by people affected by family violence, it is my view that *all* legal practitioners should have the necessary foundational knowledge, skills and expertise to provide effective legal services and supports to those affected by family violence, including an understanding of the impact of family violence on children and young people. This is especially the case for legal practitioners in generalist practice or in regional, rural and remote communities and for those who practice in the areas of family law, family violence, child protection and criminal law.

Furthermore, it is the case that:

- many victims and perpetrators of family violence may lack awareness about what family violence is and/or do not understand or appreciate the legal and other options available;
- many victims and perpetrators of family violence may not appreciate the affect of family violence on their children, especially where family violence does not involve physical abuse;
- there may be a reluctance to report family violence to the appropriate authorities or disclose it to a legal practitioner notwithstanding its relevance to the legal problem in question (for example, tenancy, employment or Centrelink related issues).⁵

In recognition of the fact that family violence intersects with a wide range of legal areas, I would strongly support:

- A requirement for all undergraduate law students to undertake mandatory training in family violence.

I do not express a final view on how this would be best achieved, although my preliminary view is that the three options proposed at page 6 of the Consultation Paper are not necessarily exclusive (ie each of the options could potentially be adopted). These options are:

² Australian Bureau of Statistics, *Personal Safety Survey 2016*, www.abs.gov.au/ausstats/abs@.nsf/mf/4906.0.

³ Tasmanian Police, *Annual 2018-19 (June 2019) Corporate Performance Report*, 12 August 2019, <https://www.police.tas.gov.au/uploads/CPR-June2019.pdf>

⁴ Christine Coumarelos, Quantifying the legal and broader life impacts of domestic and family violence, *Justice Issues*, Paper 32, June 2019, Law and Justice Foundation of New South Wales, Sydney, [http://www.lawfoundation.net.au/ljf/site/articleIDs/61BD5751775FA93B852584090007B5B9/\\$file/JI_32_DfV_legal_needs.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/61BD5751775FA93B852584090007B5B9/$file/JI_32_DfV_legal_needs.pdf)

⁵ Law Council of Australia – *The Justice Project Final Report – Part 1 – People who Experience Family Violence*, August 2018, <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/People%20who%20Experience%20Family%20Violence%20%28Part%201%29.pdf>



- a. Making family law a compulsory subject and including family violence as a mandatory topic within that subject.
 - b. Amending an existing prescribed subject, such as criminal law and procedure, to include family violence as a mandatory topic within that subject.
 - c. Encouraging universities to review their curricula to ensure legal issues concerning family violence are appropriately addressed.
- The addition of family violence as a competency standard for all entry-level lawyers seeking admission to practice.
 - The introduction of family violence as a mandatory/core continuing professional development unit for all post-admission legal practitioners.

Furthermore, any such training or professional development should include as an outcome an understanding and appreciation of the effects of family violence on children and young people.

I appreciate the opportunity to provide my views on this important area of policy and law. I would be very pleased to discuss my comments in more detail if this would be of assistance.

Yours sincerely

Leanne McLean
Commissioner for Children and Young People

cc *The Hon Will Hodgman MP, Premier*
The Hon Elise Archer MP, Attorney General, Minister for Justice
The Hon Roger Jaensch MP, Minister for Human Services