

8 October 2019

Cate Denning
Policy Manager, Domestic Violence Strategy
Justice Strategy & Programs, Department of Communities & Justice
By email: cate.denning@justice.nsw.gov.au

Dear Cate,

[CLCNSW submission to the CAG Family Violence Working Group consultation paper: Options for improving the family violence competency of legal practitioners](#)

Thank you for the opportunity to comment on this paper. Our responses to consultation questions are attached.

Community Legal Centres NSW is the peak representative body for almost 40 community legal centres in NSW. Our team supports, represents and advocates for our members, and the legal assistance sector more broadly, with the aim of increasing access to justice for people in NSW.

Community legal centres are independent non-government organisations that provide free legal help to people and communities at times when that help is needed most, particularly to people facing economic hardship, disadvantage or discrimination.

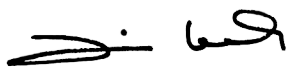
Community Legal Centres NSW is advised on domestic, family and sexual violence by our Domestic Violence and Victims Compensation Network. Many of our members, including Women's Legal Service NSW and Wirringa Baiya Aboriginal Women's Legal Centre, work daily to support people who have experienced domestic, family and sexual violence to navigate the legal process. This can include advising women about:

- reporting to police, evidence collection and legal processes
- accessing victims' support entitlements
- privacy and use of sensitive information
- making complaints about service providers like the police.

Community legal centres also help services that offer therapeutic support to women to respond to subpoenas and requests for records in court proceedings. Through this work, they witness first-hand the significant barriers to justice victim-survivors face throughout the legal process, from first reporting to prosecution.

If you would like further information about this submission, please contact Emily Hamilton, Senior Policy Officer via emily.hamilton@clcnsw.org.au or on (02) 9212 7333.

Yours sincerely,



Tim Leach
Executive Director
Community Legal Centres NSW

RESPONSES TO CONSULTATION QUESTIONS

Community Legal Centres NSW endorses the submission made by our member centre Women's Legal Service NSW. This submission provides responses to each focus question based on advice provided by our Domestic Violence and Victims Compensation Network.

Focus Question 1: Are there other key family violence capabilities for legal practitioners working in the family law, family violence and child protection systems that should be included in Table 1?

Community Legal Centres NSW endorses the detailed recommendations Women's Legal Service NSW makes in response to this question, including the need for a specific competency on sexual violence.

In addition, we note the need to address the particular needs of migrants who are dependent on a perpetrator for immigration purposes, for either a visa for themselves or another, under the 'working with diverse/vulnerable clients' theme.

Focus Question 2: Are you aware of any evidence-based family violence training models suited to legal practitioners that address all the capabilities listed in Table 1?

Community Legal Centres NSW refers the Working Group to the significant experience and expertise of Women's Legal Service NSW in developing and delivering evidence-based domestic and family violence training programs, including:

- **One-day domestic and family violence training programs** for community workers and community legal centre solicitors on topics including: sexual, domestic and family violence and the law; women and family law; and family law and family violence
- **Family violence workshops** for family law solicitors, family dispute resolution practitioners and others working in the family law system, developed in partnership with the [Institute of Specialist Dispute Resolution](#) and delivered through Family Law Pathways Networks across NSW
- **Student Connect**, a family violence component in the University of Western Sydney's undergraduate criminal law unit, developed in partnership with the university and the Western Sydney Community Legal Centre
- **Short online webinars and resources** on a range of relevant topics via [Ask Lois](#).

Community Legal Centres NSW also refers the Working Group to:

- The [Safer Families](#) program, developed and delivered by Women's Legal Service Victoria with funding from Legal Aid Victoria
- The [Avert Family Violence Training Package](#), which is also delivered through the Institute of Specialist Dispute Resolution in conjunction with training on the legal framework around family violence (see link above).

Focus Question 3: Do you have views about when in a legal practitioner's training each of the above capabilities should be addressed (e.g. at university, during practical legal training, through post-admission training courses or other mechanisms)?

We support early and continued family violence training for legal practitioners, commencing at university and continuing throughout practical legal training and post admission.

Focus Question 4: Would you support family violence training being incorporated into law students' university learning? What are your views on Options A, B and C? Are there other options that we haven't considered?

Community Legal Centres NSW supports incorporating family violence training into law students' university training.

Overall, our members expressed a preference for Option A, making family law (including a family violence component) a compulsory subject for all law students in NSW. In our view, there is a real benefit in all law students having an understanding of family violence and its impacts, regardless of the area in which they ultimately intend to practice or whether they intend to practice law at all.

Some of our members, including Women's Legal Service NSW, see some merit in option B. However, some are concerned that only incorporating a family violence component into criminal law units will result in the subject matter being treated superficially, due to the significant amount of content already included in that course. Including family violence only within the criminal practice area may also place undue emphasis on the criminal process and procedure connected with family violence. This may prevent students fully understanding the nuanced nature, forms and effects of family violence and the support and referral services available.

Some members also noted that implementing option B would result in overseas-qualified lawyers not receiving family violence training, if it was not part of the curriculum in the country or university in which they received their degree. This is because credit is often granted for criminal law subjects completed in overseas jurisdictions. In these circumstances, it would not be desirable to make overseas practitioners re-sit a criminal law subject purely to obtain the family violence knowledge component.

One option to address this issue would be to make the Family Law elective in the Diploma of Law (offered by the Legal Profession Admissions Board) compulsory for all overseas qualified lawyers or develop a Family Violence unit to ensure overseas qualified practitioners have the requisite family violence training and knowledge.

Community Legal Centres NSW believes that Option C is insufficient to ensure legal students across NSW have access to consistent family violence training while at university.

Focus Question 5: Would you support an approach to the Law Admissions Consultative Committee and Australian Professional Legal Education Council to seek the addition of family violence as a competency standard for entry-level family lawyers?

Community Legal Centres NSW supports this proposal, so long as it is appropriately phased in and implemented in conjunction with proposals to introduce compulsory family violence training into legal training, including Practical Legal Training.

Community Legal Centres NSW also notes that it is equally important for experienced family law practitioners to demonstrate that they meet any newly introduced family violence competency standard.

Focus Question 6: Would you support changing mandatory/core competency units for CPD requirements to include family violence? If yes, how could it best be regulated in practice and how often should CPD in family violence be undertaken? Do you have a

preference between Options D and E? Are there other options that we haven't considered?

Community Legal Centres NSW supports the mandatory inclusion of family violence units within lawyers' continuing professional development (CPD).

Community Legal Centres NSW recognises that it is essential for legal practitioners in family law, family violence and child protection to receive appropriate training (Option D). However, family violence cuts across many additional areas of law. As such, we believe there is merit in mandating family violence training for all lawyers in NSW (Option E). To ensure that the requirements are appropriately targeted, practitioners in family law, family violence and child protection could be subject to higher requirements in recognition of the critical importance of a comprehensive understanding of family violence to these areas of practice. Practitioners could self-regulate the completion of family violence units under the substantive law component (per the existing CPD system). Compliance could be monitored through an audit approach.

Finally, we support Women's Legal Service NSW's recommendation that the minimum number of training hours required to meet the family violence competency should be increased for both specialist and generalist practitioners. This will help to ensure that the training received is substantial and not tokenistic.

Focus Question 7: Would you support a Family Violence Accreditation system? If yes, how do you suggest it works and is regulated? Do you have a preference between Options F and G? Are there other options that we haven't considered?

In principle, Community Legal Centres NSW supports the introduction of a Family Violence Accreditation System based on the current Family Law Accreditation system.

However, there are mixed views within our sector about whether such a system should be voluntary or mandatory. Some of our members noted that mandatory accreditation would be particularly onerous for practitioners in regional, rural and remote areas and could further limit access to justice in these areas, especially if accreditation were a pre-requisite to practice.

Members also expressed some reservations about how an accreditation system would work in practice (including whether consumers would actively seek out legal practitioners accredited in family violence) and whether it would contribute to a significant increase in family violence competence across the legal profession.

In light of these views, we support Women's Legal Service NSW's recommendation that a starting point could be the inclusion of more comprehensive coverage of family violence within the Law Society of NSW Family Law Specialist Accreditation Scheme.

Focus Question 8: Would you support the participation by legal aid panel members and CLC lawyers in ongoing family violence training offered by legal aid commissions? If yes, should participation be voluntary or mandatory?

Community Legal Centres NSW supports the voluntary participation of legal aid panel members and CLC lawyers in ongoing family violence training offered by legal aid commissions.

In our view, however, choice of training provider should not be proscribed or limited, particularly if participation in ongoing training is made mandatory. Specialist community legal centres, including women's legal services and Aboriginal and Torres Strait Islander women's legal

services, have extensive experience developing and delivering holistic and culturally appropriate family violence training to a wide range of practitioners (see for example, Women's Legal Service NSW's submission). Further, providing a holistic and comprehensive understanding of family violence requires input from a range of fields beyond the legal, including from the social sciences and psychology. As such, we recommend funding a mix of training providers, including specialist community legal centres, to deliver appropriately targeted training to legal aid panel lawyers and community lawyers.

Focus Question 9: To what extent are employers of legal practitioners able to take responsibility for regulating their family violence training and professional development?

Community Legal Centres NSW believes that employers do have a role to play regulating family violence training and professional development.

However, we echo the concern expressed by Women's Legal Service NSW that employer regulation alone is insufficient to ensure the delivery of consistent and comprehensive understanding of family violence across the legal profession.

Focus Question 10: Is there a need to improve the availability and accessibility of family violence training packages that address the key capabilities and training needs of legal practitioners through government funded or government subsidised initiatives?

Community Legal Centres NSW believes that there is a real need to improve the availability and accessibility of family violence training packages, particularly in rural, regional and remote areas.

In particular, small rural and regional practitioners may struggle to meet training requirements if there are significant costs involved. This could be mitigated through government funded or subsidised initiatives. Funded initiatives would also facilitate the development of standardised and consistent training.

As such, we support Women's Legal Service NSW's recommendation that specialist women's legal services (e.g. Women's Legal Service NSW and Wirringa Baiya Aboriginal Women's Legal Centre) be funded to deliver family violence training for lawyers, including in regional, rural and remote areas.

Focus Question 11: What are the existing options in your jurisdiction for enhancing the family violence competency of criminal law practitioners; police and public prosecutors; and lawyers for child protection authorities?

In NSW, opportunities to improve competence in family violence for criminal lawyers are delivered ad hoc, for example through conferences, seminars and online resources. For example, one of our members located in regional area reported that a criminal lawyer and member of the local law society recently delivered a session on AVOs for local practitioners. However, the session focused on process and procedure and did not address the complexities of family violence and how this may impact victims-survivors subsequent actions or behavior.

The Legal Profession Uniform Continuing Professional Development (Solicitors) Rules 2015 don't require lawyers to undertake annual family violence training. Nor does NSW have a set of Family Violence Best Practice Principles as there are in Queensland.

Please use this space for any other feedback on the family violence competency of legal practitioners.