

Djirra's response to the Australian Government's Consultation Paper on Improving the Competency and Accountability of Family Report Writers

21 December 2021



Background

Djirra welcomes the Australian Government's Consultation Paper on Improving the Competency and Accountability of Family Report Writers (**Consultation Paper**).

Djirra provides this submission in the context of supporting Aboriginal and Torres Strait Islander women and children in their experiences of family violence. Djirra (formerly the Victorian Aboriginal Family Violence Prevention and Legal Service) was established in 2002 to respond to the needs of Aboriginal and Torres Strait Islander people experiencing family violence. Djirra is also a member of the National Family Violence Prevention and Legal Services Forum (**NFVPLS Forum**), which is the only national peak body for Aboriginal and Torres Strait Islander victim survivors of family violence and sexual assault.

Djirra (meaning 'reed' in the Woirwurrung language of the Wurundjeri peoples of the Kulin Nation) is an Aboriginal Community Controlled Organisation (**ACCO**). It is managed and governed by Aboriginal people and employs a high number of Aboriginal staff members. It is an organisation specifically for Aboriginal and Torres Strait Islander people experiencing family violence. Given the rates of family violence against Aboriginal and Torres Strait Islander women, it is overwhelmingly women and their children who access our services. Djirra has extensive expertise working with Aboriginal and Torres Strait Islander women through the delivery of legal advice and representation services (in family violence, child protection, family law and victims of crime assistance), case management services, and cultural and personal supports such as group programs, yarning circles, personal development and counselling. Djirra also has strong connections with Aboriginal and Torres Strait Islander women through the delivery of services such as Sisters Day Out, Young Luv and Dilly Bag, which are community delivered programs focused on the strength of connection between Aboriginal and Torres Strait Islander women.

Djirra generally welcomes the proposals to improve the quality of family reports set out in the Consultation Paper, while noting the importance of ensuring the unique experiences of Aboriginal and Torres Strait Islander people as First Peoples of this country are prioritised and distinct from other 'diverse' groups. Proposals for Aboriginal and Torres Strait Islander people must be led by and developed with ACCOs such as Djirra, which bring frontline experience and expertise to the process. We also note that a focus on credentials for report writers may not sufficiently address the substantial problems in the court process itself for Aboriginal and Torres Strait Islander victim/survivors of family violence. These include inaccessibility of the family law system and the need for increased cultural safety, courts inadequately recognising and managing the impact of family violence and reliance on the report in comparison to other evidence.

Competency and quality of report writers

Djirra generally supports the proposals relating to increased competency, subject to seeing what this looks like in practice.

Djirra supports and welcomes measures to assist others whose identity creates additional obstacles to participating in and being treated fairly by the justice system. However, the position of Aboriginal and Torres Strait Islander people is unique. It is important to recognise that the historical legacy of colonisation is still felt today, and that the disruption experienced by Aboriginal families left many marginalised, disadvantaged and vulnerable to contact with the justice system. Some studies show that up to 90% of violence against Aboriginal and Torres Strait Islander women goes unreported¹, indicating significant barriers to reporting. In Djirra's experience, key reasons for underreporting include profound police mistrust and police inaction. Clients also fear that reporting to police may result in child removal, incarceration, and victim/perpetrator misidentification.

As the detail is developed, ACCOs must lead the development of measures directed at cultural competency, from training through to the report writing process, to ensure they are culturally informed and embedded in the principles of self-determination.

We suggest adding an additional competency around basic knowledge of relevant family law and procedure or embedding this within existing proposed competencies. While reports should not reflect 'legalistic' concerns, it would be useful for the report writers to have a strong understanding of the context in which reports are used.

In our experience, report writers frequently fail to understand the dynamics around abuse and family violence or address cultural safety for our clients. Family violence and its devastating impact on the safety of our clients and their children is frequently minimised. It is often referred to in passing, then given insufficient weight when assessing risks around the child having contact with a violent parent. Report writers often prioritise the purported benefit of the child having a meaningful relationship with both parents over the need to protect them from risk, which is the opposite of what the legislation requires.²

As noted below, Djirra are concerned that too much focus on credentials may allow other problems with the way reports are used, including issues with the courts themselves, to be ignored.

Consistency of reports

Djirra would welcome additional steps to bring about consistency in family reports. In particular, we suggest a standardised structure for all reports, ensuring all key risks are considered as well as cultural and other needs. This will assist with improving the consideration of abuse and family violence in the context of contact recommendations. It is not enough to just 'cover' family violence as an 'issue' – there needs to be a separate process whereby the report writer integrates these matters into their recommendations.

¹ Matthew Willis, 'Non-Disclosure of Violence in Australian Indigenous Communities' (Trends and Issues in Crime and Criminal Justice No 405, Australian Institute of Criminology, January 2011) 4–10.; Australian Government, Online safety for Aboriginal and Torres Strait Islander women living in urban areas, (October 2019), 26.

² Section 60CC(2A), *Family Law Act 1975*.

Process and support for Aboriginal and Torres Strait Islander families

Djirra welcomes not only the emphasis on cultural competency for family report writers working with Aboriginal and Torres Strait Islander people, but also the proposal from ‘stakeholders’³ for such reports, where possible, to be prepared by Aboriginal and Torres Strait Islander report writers.

We note that more consideration could be given to the practicalities of the assessment. Currently support workers are never allowed to be present. While we understand the concerns that might be behind this, such as non-interference, these could be addressed via guidelines.

Djirra’s workers often assist Aboriginal and Torres Strait Islander women in attending mediations and case-planning meetings. Even if their role is heavily curtailed, the presence of such workers gives a level of cultural safety and reassurance, especially to Aboriginal and Torres Strait Islander women who have experienced family violence. ACCOs like Djirra can inform the development of this process given our on-the-ground experience, expertise and Aboriginal leadership.

Report writers should also consider whether multiple meetings are required, as the current tendency to only meet once can make that meeting very ‘high stakes’ and risk it not being indicative of the true family dynamic.

Complaints and accountability

An issue with the scope of the Consultation Paper is the assumption that it is mainly the quality of writers and their reports that leads to poor outcomes. It is stated that within the court process ‘a complaint can be raised and addressed’ and ‘The judge takes into account all issues and evidence and makes decisions in the best interests of the child.’⁴

Our experience is that there are issues within the court process itself that exacerbate any imperfections in the family report, including:

- Difficulty in practice with challenging report findings;
- Excessive reliance on the report, in comparison to other evidence and submissions; and
- Poor understanding of, or insufficient weight given to abuse and family violence by some members of the judiciary.⁵

Some of these issues are touched on in the Consultation Paper,⁶ however these appear to be in the context of justifying the strengthening of measures around report writers and reports.

Even taking these steps, reports will always be imperfect, and prone to subjectivity and wide variations in quality. It is not enough to improve the quality of the reports and their writers; there need to be improvements to the way they are incorporated into the legal process. This might even extend to legislation change and include additional training for the judiciary.

³ Page 10.

⁴ Page 26.

⁵ Our lawyers have noted a greater understanding of the effects of abuse and family violence in the Children’s Court of Victoria, for example. The training and materials used by that court may be of assistance.

⁶ Page 27.

Ideally, poor quality reports are best addressed in the court process. Other mechanisms for complaining about report writers also have an important role, but these may be too late for parties, especially those with few resources, who are adversely affected.

Conclusion

Djirra generally welcomes the proposals to improve the quality of family reports set out in the Consultation Paper. To ensure proposals affecting Aboriginal and Torres Strait Islander people are effective and culturally safe, the Aboriginal and Torres Strait Islander community and ACCOs such as Djirra must be extensively consulted, empowered and funded to lead this work. We note the concern that an excessive focus on credentials for report writers may not sufficiently address the substantial problems in the court process itself, from excessive reliance on the report to the courts inadequately recognising and managing the impact of family violence.

We thank you for the opportunity to contribute to this consultation process, and would welcome the opportunity to be involved in further consultations.