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Submission to Review of Open justice: Court and tribunal information: access, disclosure and publication.

Feminist Legal Clinic Inc. is a community legal service that works to advance human rights by providing free support to women and girls experiencing poverty and distress. Most of our work relates to alleviating the suffering that arises because of male violence, abuse and discrimination. Our work includes domestic violence advice and advocacy on behalf of women at local courts and our service also co-ordinates a non-legal Women's Court Support Service (WCSS) at the Sydney Family Court.

Thank you for the opportunity to comment on your review paper. We recognise the importance of balancing open justice with the vulnerabilities of victims and complainants. Unfortunately, due to time constraints we cannot respond in detail to the terms of reference but just make the following brief observations.

Increase Access to Court and Tribunal Information

We submit that much greater access should be provided by the government to court and tribunal information, including public access to past court listings. Currently it is only possible to search for upcoming court listings and it is not possible to readily access details of matters that have already been heard. Details of the outcomes of all court matters should also be publicly available by searching court listings as these decisions should be matters of public record. For transparency it would also be useful to list details of the judge, magistrate or decision maker, as well as the court. The failure to disclose this information and make it readily searchable impedes the capacity for individuals to conduct independent research. If this information was publicly searchable it could, among other things, effectively serve a similar purpose as the domestic violence disclosure scheme piloted in recent years, because women would be able to effectively conduct their own investigations before embarking on a new relationship.

Statutory protections often lost

We think that many of the existing protections for vulnerable victims and complainants, such as protecting the identity of sexual assault victims, closing the court for child victim and witness testimony and the use of AVL facilities are appropriate. However, it is our experience that in some local courts on the day that a vulnerable witness or complainant must testify, the AVL facilities are often not functioning or were not booked in advance so insufficient Sherriff staffing prevents use of the AVL location. In such instances and rather than further delay the proceedings, the vulnerable victim or complainant inevitably loses the statutory protections and ends up testifying in the courtroom. There is little point in having statutory protections if these are lost in the day to day realities of court processes.

Open court should continue by default

We have mixed feelings about the *Stronger Communities Legislation Amendment (Domestic Violence) Act 2020* entitling the complainant in criminal proceedings for a DV offence and related ADVO proceedings to give evidence in a closed court. We note that ‘a party’ can request open proceedings, but question why a defendant should have this right if this provision is intended for the protection of complainants? We are also concerned that holding DV proceedings in closed court by default will remove these matters from the scrutiny of the public and we will end up replicating the problems caused by section 121 in the Family Court jurisdiction. This is a significant concern in a context where women are increasingly being misidentified as perpetrators in DV matters with the legal provisions intended for their protection increasingly being weaponised against them. On balance, we suggest that open court should continue to be the default position.

Victims must be free to speak out

We also conscious that it is very important for many victims to have their assailant publicly brought to justice and that this can be an important part of their healing process. It is essential that victims of sexual offences can consent to the lifting of suppression orders. We note that this was a finding of the Royal Commission into Institutional Responses to Child Sex Abuse (Final Report Vol 4 p16). We acknowledge the tension for some women and children between suppression and nondisclosure orders that respect their privacy yet at the same time silences them and protects the defendant. We agree that there is potential for violence to be compounded for some victims if they are not permitted to speak out publicly and identify their assailant.

Thank you for the opportunity to make a submission on this important topic. We are happy to be contacted to expand on any element of it if required.

Yours faithfully



Anna Kerr
Principal Solicitor