

WIRE
Women's Information
and Referral Exchange

Access to Justice Review –

“he who fights dirtiest, longest, wins”



Women's Information

Introduction

WIRE Women's Information and Referral Exchange welcomes the opportunity to participate in the Victorian review into Access to Justice.

We hear every day the experiences of women who are in conflict with the legal system, women for whom the legal system itself is a barrier to "justice". WIRE's vision is for a society where women are safe, respected, valued, empowered and free to make genuine choices in their lives. We believe that many Victorian women are neither empowered nor free to make genuine choices in their engagement with legal issues, and we welcome the opportunity to make some of their experiences heard.

"My family lawyer told me years ago he who fights dirtiest, longest, wins."

WIRE Women's Information

WIRE Women's Information has been operating for over 30 years. WIRE is Victoria's only women's service that provides information, referral, and support to all Victorian women regardless of the issues they face. WIRE is well known for its gender-informed research and advocacy, particularly around family violence, financial abuse and women's financial capability. Our education programs and information booklets enable the reach and impact of our gender expertise to be magnified throughout the state of Victoria and beyond.

WIRE's services to Victorian women include: a Women's Support Line offering phone, email, and online support, our walk-in Women's Information Centre, a range of education programs, a broad range of online resources, and professional development training for the community sector. We also offer one-on-one pro bono legal clinics for women.

WIRE's research and advocacy is well respected and has been a catalyst for change. In 2014 WIRE published its ground breaking research into financial abuse, *Money Problems with your partner: Women speak about financial abuse*¹. This research has been used to inform the community, community sector and government regarding the extent and insidious nature of financial abuse, and to give women that have experienced financial abuse an active voice in the policies and service interventions around financial abuse. The research report won Financial Literacy Australia's national award for Outstanding Achievement in Research in 2015.

This submission is based substantially on that report, and WIRE would like to acknowledge the outstanding work done by researcher Prue Cameron in researching and writing this influential report.

¹ Relationship Problems and Money: Women talk about financial abuse, WIRE Women's Information, Cameron Prue, (2014)

Women's experiences

WIRE receives over 12,000 contacts from women each year, seeking information, referral and support. Of these, 11% are specifically seeking support on legal issues. The largest single reason for contact is family violence (25% of contacts), and almost all family violence contacts also have a legal aspect.

In WIRE's 2014 research report *Relationship Problems and Money: Women talk about financial abuse*, WIRE spoke to 59 women in focus groups about their experience of financial abuse and 145 women participated in an on-line survey. Our findings clearly show that women's financial security and emotional well-being are negatively impacted in the short and long-term as a result of financial abuse, and provides a clear picture of the legal system being used to continue financial abuse post-separation. The stories of the women in the research report are typical of those heard on WIRE's telephone support line and in our Women's Information Centre.

"Thirteen years in court. I have lost my kids' childhood because all I am doing is sitting on the computer writing legal documents." (Susan, 53, four children, Melbourne)

Responses to the Terms of Reference

A. The availability of easily accessible legal information

WIRE produces information booklets on a range of legal issues, including stalking, family violence and financial abuse. These booklets are regularly reprinted and distributed to a range of support services, which demonstrates the need for simple, easily accessible information specifically for women. Legal issues are one of the most common issues for which women contact WIRE seeking support, particularly in the context of family violence. WIRE also deals with many women who are experiencing homelessness and have complex and difficult personal histories, who often have stories of a range of legal problems.

Family violence and financial abuse

WIRE's research and service delivery experience tells a consistent story - that the majority of women leaving relationships in which they have experienced family violence do not pursue their financial entitlements through the legal system. A range of reasons act as barriers to these women engaging in legal action, to their financial disadvantage. These include fear, cost and lack of knowledge about how the system works.

"All along I have been just concerned with protecting the kids. One lawyer said, 'You should start a bun fight, he has got a house and you are not asking for anything' and I didn't go with that lawyer because I didn't want to start a fight. It would be helpful to have some service tell me actually you have financial rights because I have been told by lawyers since then 'Just don't go there, don't ask for anything because if you focus on the child's well-being it's actually better for the child.'" (Sarah, 33 two children, aged 14 and 5, Melbourne)

B. Potential reform to Victorian Civil and Administrative Tribunal (VCAT)

WIRE acknowledges and welcomes the support of the VCAT family violence support worker. We deal with many women who are going through VCAT proceedings as a result of family violence, often related to tenancy issues, and a referral to the family violence support worker at VCAT can give these women valuable additional support.

Vexatious litigation in the context of financial abuse

Many women consider the legal actions of their former partners to be vexatious - deliberate and malicious, a continuation of the pattern of abuse they established in the relationship. They express their frustration that the legal system appears to do nothing to protect them from this abusive behaviour. One legislative mechanism for preventing financial abuse through the legal system is the finding of vexatious litigation. However, this is a technically complex process and women feel it offers them little practical protection.

C. Pro bono legal services

WIRE is extremely fortunate to enjoy a strong relationship with a number of private legal firms, who provide pro bono legal services to women who contact WIRE. This limited service is used by many women who are ineligible to access Legal Aid but do not have the means to pay for the legal representation they need.

Women whose partners earn higher incomes face particular disadvantage

Women with paid work, some assets and former partners with high incomes are more likely to be subjected to financial abuse through ongoing legal disputes over parenting and child support arrangements. In particular, women whose partners earn higher incomes experience:

- high legal costs that cause financial hardship - they are usually ineligible for Legal Aid and community legal services because they have an income and assets, such as a house or car;
- former partners who are more likely to contest court orders and minimise child support payments through strategies designed to hide or reduce income, such as through small businesses, family trusts and changes to business trading names; and
- high stress and anxiety caused by continual legal disputes and court appearances that require women to prepare and respond to documents, and often to represent themselves in court and tribunal hearings. The constant fear of losing their children and covering the costs of court-ordered psychologists and other specialists increases the pressure of participating in these processes.

D. Resourcing of Victoria Legal Aid (VLA)

“I was stuck and out of choices”

Many families are unable to reach post-separation agreements and have to deal with their property settlement and parenting arrangements through the Family Courts. Legal proceedings are complex and confusing for most people, and for women who have experienced family violence it is a hugely daunting experience to face their abusive former partner in the legal process. And for many women, the financial abuse they have experienced means they had little money and few assets with which to act.

“I was forced into Family Court through an application that he made up to be ‘urgent’. Family mediation was not initiated. It cost me \$18,000 and when I ran out of money I qualified for a free lawyer to finish up the hearings. I could not afford to go to trial, did not qualify for Legal Aid (due to working part-time) and sought assistance from a community law service to finish up but they could not assist with trials. I was stuck and out of choices and was forced to agree to a destructive shared parenting routine.” (Survey respondent)

The debilitating impact of legal costs

Access to justice is a matter of growing concern in Australia. The costs involved mean that many Australians cannot afford to access the justice system or secure legal representation. Funding reductions have resulted in increasingly restricted eligibility criteria for access to Legal Aid services and community legal services. This has had a major impact on many women who contact WIRE, who were ineligible for these services but could not afford to pay for legal representation. The cost in terms of money, time and mental health is significant. The fees charged by solicitors and barristers are also a huge financial impost on the limited budgets of women who have experienced financial abuse.

“I want to tell you this but I am so ashamed and embarrassed, but I want to say this. Do you know how I am paying for my lawyer? I am having sex with him. He offered to do this at our first meeting. When I have an appointment with him, we have sex. And do you know what? It’s not bad - it’s just sex. And my ex-husband says, ‘You’re wasting all the kids’ money on legal costs’ and I think, ‘If you only knew how I am paying for it!’ That’s partly why I can do it. Because I know he would just go mad if he knew. And if I didn’t do it, I wouldn’t know any of the things he was doing with the money. I wouldn’t know anything.”(Sally, 52, three teenage children, Melbourne)

According to several members of the legal profession, when asked to comment on this situation, anecdotally at least, Sally’s experience is not unique.

E. Better support for self-represented litigants

Post separation – continuing financial abuse enabled by legal support systems

The research undertaken by WIRE illuminates the ways in which the financial abuse of women by their former partners continues after separation. It is common for financially abusive men to use the legal, child and income support systems as a way of directly or indirectly controlling the woman and threatening her ongoing financial security and self-sufficiency. This systemic form of financial abuse, in which women are repeatedly forced back into the legal system to respond to disputed parenting arrangements, breaches of court orders, and

non-compliance and frequent changes of assessment to minimise or avoid child support payments, is a common experience for the women who contact WIRE.

The tactics of financial abuse in the legal system

A recurring theme heard from the women who contact WIRE is the apparent failure of the legal profession to identify financial abuse in the context of family violence, and little recognition of the ways in which financial abuse continued after separation via legal processes and systems. Many women report that the lack of understanding among legal professionals and their ability to recognise the signs of financial abuse exacerbate the problems they face:

“I found the entire legal system oppressive, not understanding, ignorant of abuse in any form, especially child abuse and indifferent to the needs of my child.” (Survey respondent)

“I was unable to get Legal Aid because my husband had a trust, even though I had no assets, enormous debts and relied on Centrelink. My husband used the legal process to continue his abuse of me for almost five years beyond the end of our marriage. The courts (including judges and lawyers/barristers) do NOT take financial abuse seriously.” (Survey respondent)

Women report a range of tactics adopted by their former partners to drag out legal processes over years and increase the financial and psychological costs for them. The tactics include repeatedly sacking solicitors or self-representing, thus ensuring continual contact with his former partner’s solicitor to deliberately drive up her costs, and challenging his former partner’s mental health and capacity to parent.

“My ex is a lawyer. He knew a lot more about the law than I did so he used a lot of those skills against me. So for example, I’ve not yet been able to get him into mediation, I can’t get him there. I can’t get him to engage in a lot of things. Originally when we started proceedings for settlement he acted for himself, which meant he could run up every interaction like a bill. I saw my lawyer maybe four times and he spoke to her every day for five months. Yeah, so that was his first little trick.” (Vicky, 54, three children, Melbourne)

“Once the ex ‘sacked’ his lawyer and self-represented the process got worse. So many times I attended court with my lawyer without him turning up. Therefore my costs escalated, ultimately affecting his child as well as me.” (Survey respondent)

Hiring aggressive and adversarial legal representatives was also a common tactic employed by many participants’ former partners, as an extension of their abusive behaviours during the relationship.

“What I discovered was because my ex-partner was a bully in a very passive aggressive way, all his lawyers were bullies and there was a sense of urgency and the stress of it. It was very bullying.” (Heather, 55, academic, three children, Melbourne)

Many women report that their former partner explicitly stated his intention to ‘destroy’ them through the courts. This is a sharp contradiction to the dominant social misconception of men ‘being taken to the cleaners’ by their former wives.

“He has got all the assets and he is saying to friends that he is not going to stop until he has totally destroyed me and he is going to do it on a financial level. And he has said that in advance

that he is going to use everything in the court system to destroy me financially because I cannot afford the legal fees. I have paid \$65,000 so far.” (Susan, 53, four children, Melbourne)

The emotional and psychological toll

The effect of these protracted dispute processes, whether intentional or indirect, is exhaustion of a woman’s financial and psychological resources. Many women say they were ultimately unable to afford the costs of legal representation and were forced to represent themselves at multiple court appearances. Women often use the free computer access and internet services at WIRE’s walk-in centre to manage their own legal cases, spending hours, days, weeks, and months dealing with legal battles. Women report feeling they have no choice or control over the course their lives have taken and report spending almost all their time at the mercy of their former partner’s whims, preparing responses for and representing themselves at various tribunals and courts. They describe experiencing high anxiety, powerlessness and frustration as a result of this process, which replicates the experience of their abusive relationship. There appear to be no mechanisms within these systems to identify and prevent this practice of abuse.

“I wake up in the morning and I feel just physically sick and I think, ‘where do I start?’ I wake up every morning and I vomit in the shower.” (Tanya, 44, one child aged 9, regional Victoria)

A common theme - “he’s using the system”

Disputed parenting orders

Disputed parenting orders are a common reason women are repeatedly engaged with the legal system. Disputes over parenting arrangements, including children’s residency arrangements and a range of other issues relating to the children’s lives, most often end up in the Family Courts for families with a history of family violence. The disputes can be over relatively minor matters, which many women believe is a deliberate strategy by their former partners to drain their finances. Disputes around their children’s health needs, including their former partner’s refusal to provide court ordered private health insurance cover, are a common occurrence reported by women.

“It’s really awful...even though we’ve got court orders, like we have court orders to pay [child support], he can just decide ‘I don’t want to pay it’. So I still have out of pocket expense because someone’s got to pay...The only way you can enforce it, because you can enforce it because it’s a court order, is back to court. And you can’t afford that.” (Karen, 44, nurse, five children aged 3 to 16, Melbourne)

“...but this is the fear, this is the torment, the money. It makes you feel like you are going mad even though you know you are sane. Every day is a living nightmare, you lie in bed and you wonder, ‘how am I going to pay that?’ It is just terrible. All I do is I have a table and it has child support, court, medical [on it] and every night you come home from school, you do all the readers and then you look and you go ‘I am exhausted’. And I think ‘which one am I going to do tonight?’ I have to write to that person, I have a court order, if I don’t do it they will take my children.” (Louisa, 45, three children aged 9, 7 and 4, Melbourne)

Another strategy employed by former partners of several women is contesting parenting orders on the grounds that the woman, with whom the children primarily live, is an unfit mother.

“He told me one thing one day and told our court psychologist the opposite thing the other day and painted me really badly, made out that I was crazy and went for full custody of our daughter. [He] employed some really horrible techniques to make it possible for him to get custody after what I have been through. It was crazy making stuff. Because I had lived in a refuge and there was some evidence that he had been abusive. He had a big team of lawyers and the only way they could paint it so that he could still have control in the situation was to make me look crazy. Before the appointment with the court psychologist I was followed in cars and I mentioned that to the court psychologist so I looked crazy, I looked paranoid which is often how women are painted in family court.” (Sarah, 33, two children aged 14 and 5, Melbourne)

Child Support and the Family Courts

Many of the research participants’ former partners repeatedly challenged court order and child support assessments through the legal system, exhausting her financial and emotional resources. Serena has been battling with her wealthy ex-husband over parenting arrangements and child support since their separation 12 years ago. She is about to go to court for the eighth time. She has to represent herself because she can’t afford to pay for legal representation.

“It’s all to do with money and it’s about child support. It’s ridiculous; it shouldn’t even be in the court system... And I would get abused by him and questioned by everyone and it just wasn’t worth it. So I was like, ‘well, OK don’t pay child support’ because I can’t cope with the workload of doing all these applications and getting nothing out of it and just getting abused and questioned from all sides.” (Serena, 50, two children, 14-year-old son lives with her, regional Victoria)

All the research participants who had interactions with the child support system told stories of non-compliance, avoidance and manipulation of the child support and legal systems by their former partner. The financial hardship this caused is evident and the emotional cost is profound.

Sophie’s ex-partner is a financial advisor and comes from a wealthy family. According to Sophie, he has quit his \$250,000 plus job to avoid paying child support and routinely appeals his assessments through the courts and the Social Security Administrative Tribunal. The Child Support Agency estimates that he owes Sophie more than \$20,000 in child support payments. Sophie and her two daughters, aged 6 and 8, have been living in a bungalow at the back of her mother’s home for the last four years. She lives on a single parenting payment and is unable to work as a teacher because of the demands of caring for two young children and the continual stress of dealing with her ex-partner. He regularly moves around Australia without notifying her, the Child Support Agency or Centrelink of his changed address, despite being ordered by the court to provide the information. This creates an intolerable situation for Sophie when she is required to send her daughters for their court ordered visits with their father.

“This is what happened a year ago and his lawyer threatened that I would go to jail and lose my children, causing more extreme anxiety. It is the same when you see it written down and you know it’s not true but the anxiety and the stress it causes you. When you don’t have Legal Aid,

you don't have Women's Legal Service, when they have barristers you don't know what they can do. Maybe it is his address but I don't know. I don't know where he is." (Sophie)

In the context of family violence situations, payment of child support, like other post-separation processes, needs special consideration. The costs entailed in pursuing non-payment through the legal system are significant, and, as this respondent's comment highlights, mediation in these circumstances is also pointless and unfair.

"I could have taken my ex to court regarding unpaid monies but was advised that even after a ruling in my favour, they could not enforce the payment of the monies and I would have to go back to court to fight his non-payments. At over \$5K for each appearance, and I would have had to represent myself (hence time taken off work for each hearing) and hold down a fulltime job and care for three of my four children and support them, I decided it would be a worthless exercise for \$2000. Mediation is a joke. They do not account for parents working full time, and although some mediation would have benefited our situation, finding someone to look after my children, take time off work to travel 50km, plus pay for 3 compulsory sessions at \$70 an hour each (most sessions taking 90 minutes) while my ex could pay nothing was utterly incomprehensible." (Survey respondent)

Child Support: continuing the financial abuse

The failure of their children's father to pay regular child support, to avoid or challenge child support arrangements, creates ongoing problems for many women. This is a principal cause of financial hardship for many women with dependent children, because it is costly to pursue their former partner for under-payment or non-compliance and can also result in loss of income as they are forced to take time off from work. In some cases, women have to bear the costs of responding to the former partner's repeated challenges to existing child support assessments.

WIRE's research found that men with a history of family violence commonly employ a variety of strategies to reduce or avoid child support payments. Many women describe how their former partners routinely left jobs, were paid cash in hand, transferred income to their new partner or hid income in family trusts or businesses or applied for changes of assessment based on dubious claims of parenting arrangements.

Many women report that their ex-partners were able to 'game' the system with apparent ease when dealing the Child Support Agency. The strain of ongoing battles with their former partner through the Child Support system forces many women to simply give up the pursuit of child support altogether.

"Child Support don't recognise [financial abuse]. They rang me, when he put in his claim to have his income reduced at the beginning of the year, they rang me the very next day to discuss it with me and I said, 'Look, I have left this relationship because it was abusive and I believe that he is doing this to abuse me further and control me' and they did not take any word of my conversation on board... [H]e provided no evidence of needing to take that reduction and when he put in the claim they didn't ask for anything; they just took his word for it. They didn't even listen to what I said. I think that was the worst thing, they didn't even listen." (Loren, 36, two children aged 4 and 2, Melbourne)

Recommendations

WIRE's research and the stories of women who contact WIRE for support identifies the need for greater access to low cost or free legal, financial and personal counselling services for women experiencing financial abuse in the context of family violence. It also highlights the need for mechanisms that identify and prevent the use of legal, child support and income support systems to perpetuate the financial abuse of women and children by their former partners and fathers. Options proposed to address this include: legislative reforms to strengthen the definition of financial (or economic) abuse; provisions for vexatious litigation applications where financial abuse is occurring, and the adoption of a diagnostic screening tool for financial abuse to be routinely applied in the legal and banking systems, as well as by the Child Support Agency and Centrelink.

Other recommendations from WIRE's research into the impact of financial abuse and the interplay between financial abuse and the legal system include:

- Funding community legal services to provide forensic accounting services and make these services free or low cost for women experiencing financial abuse.
- Allocation of a special funding grant to women's support services to help women experiencing financial abuse access free or low cost photocopying and assistance with online research and other facilities, thus reducing the financial burden of providing documentary evidence to courts and agencies and the legal costs and stress associated with self-representation.

WIRE supports the recommendations of the report produced by Women's Legal Service, *Stepping Stones: Legal Barriers to Economic Equality after Family Violence*, authored by Emma Smallwood. In particular, that the Federal Government and Victorian Government increase funding to the legal assistance sector including:

- Funding for additional specialist family lawyers at community legal centres to increase access to small claim property settlements for victims of family violence.
- Funding for additional lawyers specialising in family violence available at all Victorian Magistrates' Courts to assist women with the range of legal issues that result from family violence.

To increase access to and improve outcomes through the legal system, WIRE recommends that:

- The Federal Government and State Governments increase funding to Legal Aid and community legal services to enable the provision of specific legal advice and representation in family law matters that involve property where there is a history of family violence.
- The Australian Law Reform Commission:
 - a) develops a diagnostic screening tool for financial abuse to be adopted as a routine assessment in family law and family violence matters, and reviews the specific

inclusion of financial abuse on relevant application forms, such as family violence intervention orders.

- b) undertakes a review of measures to protect a woman’s financial security in cases where financial abuse occurs, such as amending state-based family violence protection legislation to allow Magistrates Courts to order the freezing of bank accounts to prevent transfer of funds and facilitate access to necessary financial documents.
 - c) considers legislative reform to strengthen vexatious litigation applications in cases where the legal system is being used as a mechanism of financial abuse.
 - d) considers expanding definitions and examples of financial abuse in the Family Law Act 1975 (Cth) and state and territory family violence protection laws to address the complexity and multifaceted nature of this form of family violence.
- Peak legal bodies:
 - a) provide information about family law specialisation and the value of using family law solicitors who have an understanding of financial abuse in cases where there is a history of family violence.
 - b) regularly deliver programs of judicial development on the nature and impact of financial abuse, including the practice of systemic post-separation financial abuse, for legal professionals at all levels of the system, including judges, solicitors and barristers, and court staff.
 - c) provide forensic accounting services to clients with a history of financial abuse.

Conclusion

WIRE is grateful for the opportunity to amplify some of the stories we hear from the women who contact us for support, and we look forward to reading the findings of the review.

“I am really angry. I know my case is not an isolated case. I want to know what the legal system is doing to protect the health and well-being of our kids. The abuse is being enabled through the legal system.” (Cathie, 52, one son aged 12, Melbourne)