

04 July 2025

The Commissioner
Law Reform Commission of Western Australia
GPO Box F317,
PERTH WA 6841
lrcwa@justice.wa.gov.au

Dear Commissioner,

**Re: Family and Domestic Violence Legal Workers Network (FDVLWN) Western Australia (WA)
Submission to LRCWA Project 114**

Background to the FDVLWN

The WA Family and Domestic Violence Legal Workers Network (FDVLWN) welcomes the opportunity to make this submission to the Law Reform Commission of Western Australia in relation to their review of the *Guardian and Administration Act 1990 (WA)* (**the Act**).

The FDVLWN is comprised of members of legal assistance services operating in Western Australia (WA). The FDVLWN provides a mechanism to coordinate systemic advocacy, training and reform for the Community Legal Centre (CLC) sector. The FDVLWN shares information, promotes and organises professionals to assist building the capability of Network members, and leads the preparation of submissions relevant to the Network.

The FDVLWN is convened by Women's Legal Service WA (**WLSWA**). WLSWA is a specialist gender-specific community legal centre, providing services to women around WA who are financially disadvantaged, prioritising women experiencing family, domestic and sexual violence (**FDSV**). In addition to poverty and FDSV, WLSWA clients often live with multiple vulnerabilities which create additional barriers to accessing justice. WLSWA aims to empower women to make informed choices and participate fully in legal processes that impact them and their children. WLSWA also advocates for women's rights to be upheld and fosters social change through education and policy reform.

FDVLWN member CLCs offer a range of legal services, including:

- specific FDSV services for women;
- representation to Applicants and Respondents to Family Violence Restraining Orders (FVRO)s;
- representation for Family Law matters;
- Criminal Injuries Compensation matters;

- Protection and Care matters;
- representation to clients in Criminal matters;
- Consumer Credit and Financial Abuse matters; and
- many other areas of law that intersect with FDSV.

Collectively, our organisations have significant knowledge and practical experience relating to the experiences of victim-survivors and perpetrators of FDSV and their legal and support needs.

Acknowledgments

We acknowledge the Traditional Owners of the country on which WLSWA staff live and work, the Whadjuk people of the Noongar nation, and pay our respects to their Elders past and present.

We also endorse this statement from the National Plan to End Violence against Women and Children 2022-2032:

Victim-survivors must be at the heart of solutions. Victim-survivors have specific and contextual expertise that comes from lived experience of abuse and violence. They have intimate firsthand knowledge of services, systems, and structures that are meant to support them but have sometimes failed them. They know from experience the weaknesses and strengths of interventions in practice (p68).

We cannot develop effective solutions to FDSV without the input of the people most affected by it.

Foundational principles

Please note that our submission to Review has been guided by the following ***underpinning principles***:

- A demonstrated and ongoing need for a systems approach to responding to FDSV including consistent and appropriate support for the victim-survivor throughout the process.
- Prioritising access to legal assistance for victim-survivors, including legal assistance to help navigate intersecting legal issues, from when a victim-survivor is considering whether to report their issue, through to the end of their legal matters.
- A need for an approach which is culturally secure, trauma-informed, and consistent across Australia.
- The need for service responses to consider a dedicated/bespoke and appropriate regional/remote response which is culturally safe for Aboriginal and Torres Strait Islander Peoples. Such responses should have overall relevance for WA, as well as other parts of Australia through service delivery in very remote areas.

- The importance of acknowledging the nuances of responding to the needs of clients with intersectional experiences of FDSV, including gender diverse or queer clients or clients in non hetero-normative relationships, clients from culturally, ethnically, linguistically, or faith diverse communities, clients who also have additional needs relating to their mental health or dependence on alcohol or other drugs, clients with disabilities, clients who need literacy supports and many others.
- Ongoing legislative reform which retains a focus on broader cultural change and systems reform towards having trauma-informed, culturally safe and gendered violence-informed systems – with the purpose of both increasing conviction rates through the criminal justice system, as well as improving other outcomes for victim-survivors.

Formulating the FDVLWN response

The FDVLWN has consulted with lawyers and policy staff across the WA Community Legal Centre (CLC) sector and has built on work previously undertaken by Women’s Legal Services Australia (WLSA) and other submissions to government by the FDVLWN.

Our focus in preparing this submission has been in considering situations where guardianship and administration orders occur in the context of FDSV. We have focused on a consideration of whether we need responses that are tailored to this intersection, as well as recognising additional intersecting legal issues that are likely to co-occur such as family violence restraining orders, family law, protection and care, criminal injuries compensation, migration law (partner visas) and NDIS issues.

This past year has marked a pivotal shift in the WA discourse on FDSV with the implementation of the Family and Domestic Violence Taskforce and Lived Experience Network. The network has considered the Review in light of the current legislation and the State and Federal Governments’ commitment's to addressing FDSV. We have made some comments below which relate to issues of key interest or relevance to the many clients who seek assistance from our respective legal practices. We note that the Project 114 Review Discussion Papers Volume 1 and 2 do not currently include a specific consideration of administration issues relating to FDSV.

Due to timeframe, timing and resource constraints, as well as the specific experience held by members, the review questions have not been responded to individually, nor exhaustively. Instead, we have focused on key issues we would consider to be important within this Review. These are outlined below.

Note, while recognising the separate responsibilities provided for within the Act, to aid in simplicity we have referred to any person appointed as a guardian, administrator or the like as a ‘guardian’ for the purpose of this submission.

Key concerns

1. Consideration of FDSV in The Act

About FDSV and guardianship

We commend the Law Reform Commission for the depth and thoroughness of its work to date, as evidenced by the well-researched, comprehensive and logically written Project 114 Discussion Papers. However, respectfully, the Network strongly suggests a more in-depth consideration of the intersect of the Act and FDSV when determining who should be appointed as an administrator or guardian and the inclusion of specific FDSV safeguards when considering the appropriateness of these appointments.

We note the intersect of FDSV and the Act is broad, and the potential for FDSV to negatively impact individuals may arise in many circumstances. Some examples of relevant intersections are listed below.

1. Protective Guardianship for Victim-Survivors

- **Adults with impaired capacity:** Vulnerable adults (that is, persons with mental health concerns, cognitive impairments, disabilities, or age-related conditions) experiencing abuse may be placed under guardianship to protect them from abusers. This is an important capability.

2. Guardians as protectors

- Where a person is under a protective order, Guardians may act on behalf of a victim-survivor in making decisions about:
 - Safety planning
 - Relocation from an abusive environment
 - Medical or psychological care
 - Legal action, including restraining orders or criminal complaints
- Again, this is an important capability, but success in this circumstance is highly dependent on the knowledge, skills, resources and connections of the Guardian.

3. Legal System Challenges

- FDSV cases often involve multiple courts — family, criminal, and guardianship tribunals. Coordination between legal providers is critical but can be inconsistent, and there is an increased risk of re-traumatization during legal proceedings.

4. Cultural and Gendered Dimensions

- Women, especially from Aboriginal, migrant, or LGBTQIA+ groups may be disproportionately or uniquely impacted.
- A culturally appropriate and informed approach to addressing the intersect of FDSV and is essential.

5. Systemic Issues

- Overuse or inappropriate use of guardianship (e.g., removing decision-making rights from a survivor instead of addressing the abuse) is a human rights concern.
- Advocates stress support over substitution — i.e., empowering survivors instead of removing autonomy unnecessarily.

Consideration of FDSV within the Discussion Papers and the Act

We note both Discussion Papers include a consideration the importance of protecting individuals from abuse and exploitation under the Act. For example, Guiding Principle 6 (Discussion Paper 1) identifies the need to design safeguards “ensuring the accountability of people with decision-making powers and functions under the Act. They also include providing “guardrails for people affected by the Act from the risk of coercion and improper influence, as well as from the risk of violence, abuse, neglect or exploitation.”

We further note Chapter 10 of Discussion Paper Volume 1 underscores the importance of independent oversight mechanisms, citing the relevance of allegations of neglect or misconduct by a guardian or administrator. We note that guardianship can sometimes serve as a protective measure for individuals seeking to escape coercive or controlling family dynamics. At the same time, it is recognised the current system, through the appointment of family members as guardians, may enable an environment that leads to abusive or exploitative relationships. Concerningly, FDSV is not explicitly considered in this analysis. This omission is especially concerning in cases where a person under guardianship is experiencing abuse and lacks the capacity or means to seek legal advice or advocate for their own safety. In such circumstances, the system must be able to identify and respond to risks of coercion, control, and violence.

Discussion Paper Volume 2 explores a broad range of issues concerning guardianship, enduring powers of attorney, advance health directives, restrictive practices, and confidentiality. While it does not explicitly address FDSV within the context of guardianship law, it does engage with related safeguarding concerns. Notably, Guiding Principle 6 highlights that ‘appropriate and effective safeguards are central to the Act.’ Expanding upon this principle, chapter 12 discusses potential legislative reforms aimed at upholding the Act’s core principles with safeguards that are designed to promote accountability, prevent abuse, and protect individuals from improper influence, coercion, neglect, and violence.

While these discussions around safeguards are relevant to the broader dynamics of coercive control, particularly in relation to power imbalances and manipulative behaviours, they do not appear to be reflective of the intent of the language or definitions set out in section 5A of the *Restraining Orders Act 1997* (WA) concerning FDSV. The need to adopt a reflective approach when considering reform is particularly important where the intersectional groups include people with increased levels of vulnerability. Considering the disproportionately high rates of FDSV experienced by women with disabilities, there is a clear need for safeguards to ensure the guardian or administrator is the not alleged perpetrator.

It is acknowledged that the current legislation does contain some safeguards which can be, and have been, interpreted as applying to situations of FDSV. However, without clear language, stronger safeguards, and mechanisms specifically addressing FDSV, the guardianship framework risks reinforcing unsafe arrangements and further entrenching vulnerability.

Impact of lack of consideration FDSV in guardianship

The impact of a lack of consideration of FDSV is complex and nuanced. On this basis, we encourage the LRCWA to consider in depth some key potential impacts, as detailed below.

1. **Appointing or retaining an abuser as a guardian**

Without an explicit consideration of FDSV in determining who should be appointed or removed as a guardian, the court may be directly responsible for appointing an abuser as a guardian of a protected person. This is particularly relevant when considering SAT's insufficient powers to provide compensation for harms resulting from decisions made by Guardians.

2. **Risk of ongoing harm**

Where a protected person is being subjected to FDSV, and where this is not recognised, or where there are legislative, structural and social barriers to seek remedy, such as where a guardian may be the abuser or under their influence of an abuser, this puts the protected person at continued risk of serious harm, and compromises their best interests.

3. **Hidden coercion and conflicts of interest**

Without a dedicated consideration on FDSV, subtle forms of control—such as emotional, psychological, or financial abuse—can go undetected, undermining the protected person's independence and reinforcing the control held by their abuser.

4. **Potentially unsafe reliance on family relationships**

Prioritising family ties without explicitly considering FDSV when assessing safety may lead to inappropriate appointments within abusive dynamics.

5. **Misinterpreted compatibility or wishes**

Apparent agreement between the person and guardian, or the person's stated preferences, may reflect coercion, rather than genuine will.

6. Blocked access to legal protection

Victims under guardianship may be unable to seek legal advice or restraining orders if the guardian is unwilling to act, leaving them without recourse.

7. No clear pathway to remove unsafe guardians

Without accessible review mechanisms or external oversight, harmful arrangements can remain in place indefinitely.

8. Inadequate or inconsistent communication between relevant administrative and support agencies

Without clear guidance around information sharing protocols between support services or legal services, people may fall through the cracks and remain indefinitely at risk. There is currently no systemic mechanism that identifies (and then provides an alert) that a guardian is involved in criminal or civil matters that include FDSV, irrespective of whether the victim-survivor is a person under a guardianship order.

9. Inconsistency with other WA and Commonwealth legislative reforms

By not including specific reference to FDSV in Guardianship and Administration legislation, particularly where other legislative reforms have included extensive provisions to consider FDSV, the government may inadvertently give a broader impression that FDSV is specifically NOT relevant to guardianship. This is not preferable given the inherent vulnerability of clients within this system.

2. Consideration of other legal jurisdictions

Protection and Care

We note that the Terms of Reference for this Review reflect the current scope of the Act, as applying to adults only and therefore the interaction between the Act and protection orders is not considered extensively. However, Chapter 10 of Volume 1, does discuss the operation of plenary guardians which apply in circumstances where a parenting order pursuant to the Family Court Act 1997 (WA) has been made. However, there are instances where a person protected under a guardianship order is also a parent with children under Protection Orders under the Protection and Care Act. Although both pieces of legislation work sufficiently for these circumstances in most instances, challenges may still arise. We suggest that this intersection be considered more fully in any subsequent stages of this Review.

Compensation

FDVLWN notes that Chapter 12 of Volume 2 considers the issue of compensation to a represented person if they have suffered loss as a result of the unlawful conduct of a guardian or administrator. The Act does not currently empower SAT to award compensation to a represented person if they have suffered loss as a result of the unlawful conduct of a guardian

or administrator. Section 114 of the Act currently provides immunity from personal liability for any person performing a function under the Act or under an order of SAT, unless the act was done dishonestly, in bad faith or without reasonable cause. FDVLWN supports the view that additional whistleblower provisions are needed within the Act and suggest a more in-depth consideration of the possibility of compensation in circumstances of unlawful conduct.

In addition, we note that there are significant barriers to vulnerable people accessing Criminal Injuries Compensation, including people under Guardianship or Administration orders and suggest that consideration be made to improving the accessibility to this area of the justice system.

3. Consideration of impact on young people exiting subject to the care and protection system

FDVLWN reinforces concerns raised by others (e.g. RAW) about the need to more deeply consider issues relating to the transition of young people from the child protection system into the adult Guardianship and Administration framework. This group is particularly vulnerable, and there is a lack of structured support during this critical period. The FDVLWN supports an in-depth consideration of this issue in the next stage of the Review.

4. Consideration of impact on people living regionally

FDVLWN notes the relative disadvantage faced by individuals in regional, rural, and remote areas in achieving a range of justice outcomes, including guardianship and administration matters. In general, limited access to local supports and legal advice, and a reliance on remote communication can impact on access to justice for Western Australians living in regional rural and remote areas. Where a person is more vulnerable, and has additional or diverse support and communication needs, there is a greater risk of misunderstandings and misjudgements about capacity, leading to inappropriate orders being made.

5. Consideration of impact on Aboriginal and Torres Strait Islander Peoples

The National Agreement on Closing the Gap (NAOCG) and the Aboriginal Empowerment Strategy 2021 – 2029 (AES), outlines the targets and priorities aimed at improving life outcomes for Aboriginal and Torres Strait Islander people such as shared decision making, building the community-controlled sector and improving mainstream institutions. We suggest that any reform to the Act may benefit from placing a greater priority on culturally appropriate practices, process and definitions. This is specifically relevant in the situation of restricted practices and shared decision making, where having a dedicated consideration of a person's culture may be appropriate. A cultural consideration might include elements such as religion,

language, clothing, food, type of living situation, attendance at important cultural days, events or locations, definitions of family and others. In addition, when shared decision making or restricted practices are to be enforced on an Aboriginal or Torres Strait Islander person, it may be appropriate to also incorporate the views of a member from the person's community or kinship group, to ensure that orders are likely to be consistent with the person's culture and values.

The FDVLWN notes that the *Children and Community Services Act (2007) (WA)* includes an explicit reference to the preparation of a cultural support plan when placing Aboriginal and Torres Strait Islander children in care. FDVLWN suggests that the next stage of the LRCWA Review consider whether a similar consideration would be appropriate in a reform of the Act, particularly where it applies to people with highly restrictive guardianship orders.

6. Ability to seek independent legal advice

FDVLWN notes that inherent in the application of the existing Act, a person is not easily able to seek legal advice or representation without their Guardian's support. Further, it is difficult to seek legal advice outside of the Office of the Public Advocate. We view this to be potentially problematic where FDSV is being used. We would support a legislative and service-based response that provided for an additional avenue for seeking legal services.

7. Right to be a parent

Lastly, we would like to highlight that the Review did not consider the situation where a person, due to their Guardianship, may not be permitted by their Guardian to choose to remove contraceptive devices. While it is acknowledged that this is a rare and nuanced circumstance, we believe that it warrants deeper consideration in later stages of this Review.

Review questions

Definition of Disability – questions 1, 2, 3

The FDVLWN would be supportive of reforms to the *Guardianship and Administration Act 1990 (WA)* which adopt the s. 24 *National Disability Insurances Scheme Act 1913* definition of disability. The National Agreement with the Commonwealth Government and the incorporation of the National Disability Insurance Scheme (NDIS) has created a unified framework to promote the definition and understanding of disability broadly within our community. By adopting the national definition of disability in the reform of the Guardianship and Administrations Act it will continue to promote a clear, consistent and shared understanding and application of disability in WA.

The key benefit of the definition of disability under s. 24(1) *NDIS* is that it is specifically person-focused and allows for flexibility and personalization of supports that a person with disability can receive. Using a consistent definition in a reformed Act would ensure the same person-focused principles could be applied when a person with disability engages with the Act.

At s. 24(2) of the *NDIS Act* acknowledges that “a person’s impairments can vary in intensity”. By adopting this standard definition, it will follow that a person’s engagement with the Act (when considering the application of restricted practices or shared decision making) can vary over time as their disability support needs vary in intensity.

Additionally, at s. 21(1)(c) of definition in *NDIS Act* more expressly articulates that a person’s impairment/s can result in substantially reduced functional capacity to undertake one (or more) functions, communication, social interaction, learning, mobility, self-care and self-management.

The s. 24 definition of disability allows a flexible approach to incorporate shared decision-making object and principles to any reform of the Act. The incorporation of the s. 24 definition would incorporate both the medical model and key principles of social and human rights.

Guiding Principles, questions 5, 6, 15, 16, 17, 20, 22

FDVLWN supports the proposed inclusion of guiding principles within future revisions to the Act. However, we suggest that the drafting of these guiding principles would benefit from the consideration of intersectional groups of people who are potentially both overrepresented and additionally vulnerable within the guardianship and administration system, including: Aboriginal and Torres Strait Islander peoples; children and young people; and people with disability. As outlined in Discussion Paper 1, Part 2 – ‘Overrepresentation of Aboriginal people in public guardianship orders’ and ‘The Acts cultural relevance’, we agree that it is imperative the principles thoroughly consider individual cultural and associated needs and the impact of the Act.

Children and young people

The current Act does not impact on children. However, if the revised Act were to incorporate legislation for restricted practices and shared decision making, the principles should consider the impact on children, or on other legislation that relates to children. For consistency in the implementation of restricted practices, the legislation regarding restricted practices should be found in one unified Act. Therefore, the reformed GAA should extend an application to children specifically for matters such as restricted practices.

Additionally, the reformed Act could legislate to bridge the gap for children with disability. Although a child’s voice may not automatically be considered at a certain age, children with disability have a greater risk of disadvantage in having their voice silenced. By legislating a

means for children with disability to partake in shared decision making or having access to a communication partner may bridge the gap and provide an individualised way of evaluating their maturity, intellect and capacity to understand issues related to them. A child should have a communication partner/ disability advocate to provide them with a voice and decision-making power if restricted practices are placed on the child.

Language, Name of the Act and Defined terms, questions 6 - 10, 12, 14

FDVLWN makes the following suggestions in relation to language, name of the act and defined terms:

1. FDVLWN supports the retention of the existing title of the Act to build on the historic understanding of its purpose and terminology. However, the long title of the Act could potentially incorporate additional purposes of the Act such creating an established framework for application of restrictive practices and shared decision making.
2. Likewise, we note the benefits in retaining the majority of terminology currently used in the Act. For example, the definitions of guardian, administrator, mental disability should be retained.
3. However, the FDVLWN would fully support the adoption of neutral gender and modernized language across each of the definitions contained in the Act. FDVLWN supports one substantive change, specifically the term mental disability should either define psychiatric condition and establish whether a psychiatric condition is a changeable term such as mental illness. If the term psychiatric condition uses the term mental illness, it should further defined whether it is applying the term “mental illness” broadly as defined in the *Mental Health Act 2014* (WA) or applying a narrower definition as defined in the *Criminal Code Act Compilation Act 1913*.
4. it is suggested that the term “family” is defined within the act in such a way as to recognize the definitions of family and kinship groups used by Aboriginal and Torres Strait Islander, other cultural groups within Australia, LGBTQIA+ families, and other groups. And clarify how the definition of nearest relative in conjunction with the definition of family will apply to Aboriginal and Torres Strait Islanders.
5. We suggest that definitions within the Act should be consistent with the definitions found in the *Restraining Orders Act 1997*.

Support for member submissions

We recognise that many of our members have independently prepared submissions to this Review. We support their views and endorse their recommendations.

Concluding remarks

The FDVLWN again thank the LRCWA for the opportunity to prepare this submission. We are heartened by the commitment of the Western Australian and Australian Governments towards increasing the safety of vulnerable women and their children, particularly in the context of FDSV. However, we contend that significantly more needs to be done in the Guardianship and Administration space, and hope that the work of the LRCWA will go some way to achieving this.

Yours Sincerely,

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