

## Suggested draft text for submissions to Joint Select Committee on Australia’s Family Law System

### How to use this text

- This document contains suggested draft text and references to assist organisations writing submissions to the Joint Select Committee on Australia’s Family Law System.
- It is drawn from AWAVA’s (ongoing) drafting of our own submission but does NOT represent finalised text for citation or attribution to AWAVA. It is text that you might like to use in preparing your own submission, which will then be attributed to you or your organisation.
- AWAVA has an extension for our submission to 31 January 2020. If you are planning to make a submission we encourage you to seek a submission too, by emailing the Committee secretariat at [familylaw.sen@aph.gov.au](mailto:familylaw.sen@aph.gov.au)
- We encourage you to adapt the text to suit your own work and if possible to include de-identified case studies and details drawing on your practice or experience.
- We do NOT encourage you to reproduce this whole text verbatim as your submission. It is a resource, not a template. Submissions will be more persuasive and influential if they are different and draw from different sources of knowledge, testimonies etc.
- Where possible, please tie recommendations you make to recommendations that appear in existing reports/reviews etc. This is to reinforce the message that this inquiry was not necessary and that Government already has information at hand to guide much-needed urgent reforms to the system.

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## About the inquiry

The current inquiry was set up in a way that disregarded the gendered dynamics of domestic and family violence and cast doubt on the validity of people giving accounts of their own experiences of domestic and family violence within the family law system. The inquiry was set up to create a platform for those who seek to discredit victims/survivors and prioritise “parents’ rights” to have access to children over the safety of children and other adults.

On the 18<sup>th</sup> of October in partnership with Fair Agenda, AWAVA issued a [Joint Statement](#) rejecting the legitimacy of the proposed inquiry and calling for immediate reform to ensure safety in the family law system. The statement has been signed by 110 organisations across Australia. We support this statement.

We also support [Safety First in Family Law](#), a policy platform developed by Women’s Legal Services Australia outlining 5 steps to creating a family law system that keeps women and children safe.

We strongly believe that the government has enough evidence and reports to make much-needed changes in the family law system and that waiting for the outcomes of further inquiries will only put victims/survivors in harm’s way by delaying change. Since 2009, 12 major reports on the operation

and improvements of the family law system have been released outlining the reforms that need to be implemented.<sup>1</sup>

This inquiry was not necessary and it was set up in a way that does not give us confidence. However, we are making a submission in order to counter misinformation and support victims/survivors trying to build lives free of violence.

### Prevalence of violence against women in Australia

Violence against women is widespread in Australia and in the family law system. The mass of evidence showing widespread violence against women cannot be ignored when this inquiry addresses problems with the family law system.

Domestic and family violence is a gross human rights violation that does not discriminate. It can happen in any relationships where one partner chooses to use control, coercion and violence over another. However, it has been established that **family violence is a gendered crime** with the vast majority of family violence perpetrated against women and children, most commonly by men.<sup>2</sup>

Violence against women remains endemic, and it affects women of every class, age, sexuality, race, ability/disability, religion or other background:

- Since the age of 15, **1 in 6 women** and 1 in 16 men have **experienced physical and/or sexual violence by a current or previous partner.**<sup>3</sup>

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<sup>1</sup> Australian Law Reform Commission Family Law for the Future — An Inquiry into the Family Law System <https://www.alrc.gov.au/publication/family-law-report/>; 2018 Law Council of Australia, The Justice Project, People who Experience Family Violence <https://www.lawcouncil.asn.au/justice-project/final-report/>; 2017 House of Representatives Standing Committee on Social Policy and Legal Affairs. A better family law system to support and protect those affected by family violence. Recommendations for an accessible, equitable and responsive family law system which better prioritises safety of those affected by family violence [https://www.aph.gov.au/Parliamentary\\_Business/Committees/House/Social\\_Policy\\_and\\_Legal\\_Affairs/FVlawreform/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/FVlawreform/Report;); 2016 Family Law Council Final Report on Families with Complex Needs and the Intersection of Family Law and Child Protection <https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Documents/Family-with-Complex-Needs-Intersection-of-Family-Law-and-Child-Protection-Systems-Final-Report-Terms-3-4-5.PDF>; 2015 Family Law Council Interim Report on Families with Complex Needs and the Intersection of Family Law and Child Protection <https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Documents/Families-with-Complex-Needs-Intersection-of-Family-Law-and-Child-Protection-Systems%E2%80%93Interim-Report-Terms-1-and-2.pdf>; 2016 Victorian Royal Commission into Family Violence Report <http://files.rcfv.com.au/Reports/Final/RCFV-All-Volumes.pdf>; 2015 Australian Institute of Family Studies evaluation of the 2012 Family Law Act amendments <https://aifs.gov.au/publications/evaluation-2012-family-violence-amendments/export>; 2015 Federal Senate Finance and Public Administration References Committee inquiry report titled Domestic violence in Australia [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Finance\\_and\\_Public\\_Administration/Domestic\\_Violence/Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Domestic_Violence/Report); 2014 Productivity Commission Access to Justice Arrangements Inquiry Report <http://www.pc.gov.au/inquiries/completed/access-justice/report>; 2010 Joint report of the Australian Law Reform Commission and NSW Law Reform Commission titled Family Violence – A National Legal Response <http://www.alrc.gov.au/publications/family-violence-national-legal-response-alrc-report-114>; 2009 report of Professor Richard Chisholm titled Family Courts Violence Review report; <https://www.ag.gov.au/FamiliesAndMarriage/Families/FamilyViolence/Documents/Family%20Courts%20Violence%20Review.doc>; 2009 FLC report titled Improving Responses to Family Violence in the Family Law System: An Advice on the Intersection of Family Violence and Family Law Issues <https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Documents/Improving%20responses%20to%20family%20violence.pdf>

<sup>2</sup> See ABS, Crime victimisation, Australia, 2012–13 cat no 4530.0 December 2014 <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4530.0main+features100022012-13>; Royal Commission into Family Violence, in the terms of reference states: “Family violence is the most pervasive form of violence perpetrated against women in Victoria. While both men and women can be perpetrators or victims of family violence, overwhelmingly the majority of perpetrators are men and victims are women and children”.

<sup>3</sup> Australian Institute of Health and Welfare (2018) Family, Domestic and Sexual Violence in Australia, p. ix

- **Women are more likely to experience violence from a known perpetrator**, while men are more likely to experience violence from strangers.<sup>4</sup>
- **DFV and sexual violence happens repeatedly**—more than half (54%) of the women who had experienced current partner violence experienced more than one violent incident.<sup>5</sup>
- Almost **1 in 5 women** (18%) and 1 in 20 men (4.7%) have **experienced sexual violence** (sexual assault and/or threats) since the age of 15.<sup>6</sup>
- In 2018 a report was published analysing 152 domestic and family violence (DFV) related **homicides** (between 01/07/10 and 30/06/14), the large majority of which were **perpetrated by men against women**.<sup>7</sup>
- In 2014–15, on average, almost **8 women** and 2 men were **hospitalised each day** after being assaulted by their spouse or partner.<sup>8</sup>
- Australian police deal with 5,000 family violence matters on average every week, which averages to one matter every two minutes.<sup>9</sup>

Understanding DFV and sexual violence requires intersectional and gender lenses that view violence against women as occurring within a patriarchal society where male dominance and privilege are normalised. From this point of view sexual and gender-based violence against women needs to be understood in the context of oppression and privilege arising from the intersection of racism, colonisation, classism, sexual orientation and gender identity, ethnicity, nationality, religion, dis/ability and age. Understanding violence against women in this way highlights how systemic gaps place particular groups of women at more risk, especially within the family law system.

**Aboriginal and Torres Strait Islander women** are overrepresented in the DFV and sexual violence statistics. They are:

- 45 times more likely to experience DFV than non-Indigenous women;<sup>10</sup>
- 32 times more likely to be hospitalised as a result of DFV;<sup>11</sup> and
- up to 3.7 times more likely than other women to be victims of sexual violence;<sup>12</sup>

The high levels of family violence against Aboriginal and Torres Strait Islander women are inherently linked to the ongoing impacts of colonisation, including the continued dispossession from cultural lands, the breakdown of traditional social, cultural and legal institutions and the ongoing experience of discrimination and marginalisation that results in significantly lower health, education and employment outcomes for Aboriginal and Torres Strait Islander people. In addition, Aboriginal and Torres Strait Islander women's experience of social and cultural marginalisation, racism, and lack of culturally sensitive services also act as barriers to accessing support services.

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<sup>4</sup> Ibid

<sup>5</sup> ABS 2017b. Personal Safety Survey 2016. ABS cat. no. 4906.0. Canberra: ABS.

<sup>6</sup> Ibid

<sup>7</sup> Australian Domestic and Family Violence Death Review Network (2018) Data Report.

[http://www.coronerscourt.vic.gov.au/resources/e7964843-7985-4a25-8abd-5060c26edc4d/website+version+-+adfvdn\\_data\\_report\\_2018\\_.pdf](http://www.coronerscourt.vic.gov.au/resources/e7964843-7985-4a25-8abd-5060c26edc4d/website+version+-+adfvdn_data_report_2018_.pdf)

<sup>8</sup> ABS 2017b. Personal Safety Survey 2016. ABS cat. no. 4906.0. Canberra: ABS.

<sup>9</sup> Clare Blumer, 'Australian police deal with domestic violence every two minutes' ABC News 21 April 2016

<http://www.abc.net.au/news/2016-04-21/domestic-violence/7341716>

<sup>10</sup> Government of Western Australian (2001) Gordon Inquiry Report. Available at

[http://www.strongfamilies.wa.gov.au/about/How\\_it\\_started/gordon\\_inquiry](http://www.strongfamilies.wa.gov.au/about/How_it_started/gordon_inquiry)

<sup>11</sup> The Australian Productivity Commission (2016), Overcoming Indigenous Disadvantage - Key Indicators 2016, page 4.98, table 4A.12.13 available at <http://www.pc.gov.au/research/ongoing/overcoming-indigenous-disadvantage/2016/report-documents/oid-2016-overcoming-indigenous-disadvantage-key-indicators-2016-report.pdf>.

<sup>12</sup> See: Australian Institute of Health and Welfare, Family Violence Among Aboriginal and Torres Strait Islander Peoples (2006).

**Women with disabilities** face systemic barriers in gaining access to services and accommodation, and receiving services which are not adjusted to their individual needs.<sup>13</sup> Women with disabilities in Australia experience additional violence because of their disabilities and encounter more barriers when they try to protect themselves and seek justice.<sup>14</sup>

- More than a third of women with disability report experiencing violence or abuse, and almost 50% of women with disability report feeling unsafe where they live.<sup>15</sup>
- Women with disability are also 40% more likely to be the victims of domestic violence than women without disability.<sup>16</sup> Evidence indicates that every week in Australia, three women are hospitalised with a brain injury as a direct result of family violence.<sup>17</sup>
- More than 70% of women with disability having been victims of violent sexual encounters at some time in their lives.<sup>18</sup>
- Twenty per cent of women with disability report a history of unwanted sex compared to 8.2% of women without disability,<sup>19</sup> and the rates of sexual victimisation of women with disability range from four to 10 times higher than for other women.<sup>20</sup>
- More than a quarter of rape cases reported by females in Australia are perpetrated against women with disability.<sup>21</sup>

There is still limited data available on the experiences of violence for **culturally and linguistically diverse (CALD) women**. It is well established that CALD women are less likely to seek assistance in situations of family violence due to compounding barriers such as isolation of living in a new country, community pressures and expectations, higher levels of financial dependence on perpetrators or community, lack of knowledge of rights and available services; and fear of deportation and removal of children or perpetrator.<sup>22;23</sup> Women on temporary visas including those seeking asylum are ineligible for many government services, leaving many victims/survivors financially dependent on a perpetrator (partner or other family member), and less able to take steps towards establishing a life free of violence.

People who identify as **lesbian, gay, bisexual, transgender and intersex (LGBTI)** and who are experiencing family violence often too remain invisible. The family violence experiences of LGBTI people and the barriers they face in obtaining services are distinct from those of other victims of family violence.<sup>24</sup>

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<sup>13</sup> State of Victoria, Royal Commission into Family Violence: Report and recommendations, Vol V, Parl Paper No 132 (2014–16).

<sup>14</sup> See: Women with Disabilities Australia, Submission to the UN Analytical Study on Violence Against Women with Disabilities (2011).

<sup>15</sup> National CRPD Survey (2019) Findings.

<sup>16</sup> Brownridge, D. (2006) 'Partner violence against women with disabilities: Prevalence, risks and explanations', Violence against Women, vol. 12, no. 9, pp. 805–22.

<sup>17</sup> Brain Injury Australia (August 11, 2015) Media Release: Every week in Australia, one woman is killed - the result of family violence. Every week in Australia, three women are hospitalised with a brain injury - the result of family violence. <http://www.braininjuryaustralia.org.au/> See also: Gorman, G. (2019) '[The terrible injury often overlooked in domestic violence](#)'.

<sup>18</sup> Women With Disabilities Australia (WWDA) '[WWDA Position Statement 1: The Right to Freedom From All Forms of Violence](#)'. WWDA, September 2016, Hobart, Tasmania.

<sup>19</sup> Dowse, L., Soldatic, K., Didi, A., Frohmader, C. and van Toorn, G. (2013) [Stop the Violence: Addressing Violence Against Women and Girls with Disabilities in Australia. Background Paper](#). Hobart: Women with Disabilities Australia.

<sup>20</sup> Dowse, L., Soldatic, K., Didi, A., Frohmader, C. and van Toorn, G. (2013) [Stop the Violence: Addressing Violence Against Women and Girls with Disabilities in Australia. Background Paper](#). Hobart: Women with Disabilities Australia.

<sup>21</sup> Heenan, M., & Murray, S. (2006). Study of reported rapes in Victoria 2000–2003. Summary research report. Melbourne: Statewide Steering Committee to Reduce Sexual Assault. Published by the Office of Women's Policy, Department for Victorian Communities.

<sup>22</sup>AWAVA, Submission into the Public Consultation on Visa Simplification, 4.

<sup>23</sup>Vaughn et al., The ASPIRE Project: Research report, 11.

<sup>24</sup> See: Safe Steps Family Violence Response Centre and No To Violence (2015) Joint submission into the Royal Commission into Family Violence: Family Violence and LGBTIQ Communities; Drummond Street Services and the Victorian AIDS Council

The existing evidence suggests that same sex couples experience the same or similar levels of family violence, domestic violence, and intimate partner violence as heterosexual couples.<sup>25</sup>

- 32.7% of LGBTI Australians have reported experiences of being in a relationship where their partner was abusive.<sup>26</sup> One third of this group reported having been physically injured, but only 20% had reported this to police.
- Transgender people may experience significantly higher levels of emotional, sexual or physical abuse from a partner or ex-partner.<sup>27</sup>

To summarise, structural barriers and systemic inequalities exacerbate one's experiences of violence and may impact on the ability to seek help. They may also worsen the justice outcomes for victims/survivors due to biases held by decision-makers. It is thus essential that in contexts like family law, gender and intersectional lenses are used to understand the complexity of experiences, highlight systems' gaps and find relevant solutions.

### Family violence in family law cases

Numerous studies and reports have found that family violence is a factor in the vast majority of cases brought before the Family Courts. Given the widespread nature of violence against women in Australian society generally, it is not surprising that family violence is prevalent in family law cases. Family violence therefore needs to be addressed as part of the core business of the courts, not treated as if it were a rare and exceptional circumstance.

In its major review, the ALRC found that up to 70 per cent of parents in family law proceedings reported their children had been exposed to family violence, and almost one in five said they had safety concerns either for themselves or their children, or both. Analysis of cases before the Federal Circuit Court conducted by Harmon<sup>28</sup> showed that 76.12% cases before the court involved allegations of family violence.

Another report by AIFS notes that family violence is "the most commonly raised factual issue in litigated proceedings".<sup>29</sup> The number of cases before the court that involve family violence is increasing.<sup>30</sup> With this information it is evident that, unfortunately, allegations of family violence cannot be treated as rarely occurring or a possibility. It also becomes evident that family violence is a core business of the family system, yet it is not dealt with like one.

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(2015) Joint submission into the Royal Commission into Family Violence: Family Violence and LGBTIQ Communities; State of Victoria, Royal Commission into Family Violence: Summary and recommendations, Parl Paper No 132 (2014–16).

<sup>25</sup> Chan, C. (2005) Domestic Violence in Gay and Lesbian Relationships, Australian Domestic and Family Violence Clearinghouse; Pitts, M, Smith, A, Mitchell, A, Patel, S (2006) Private Lives: A report on the health and wellbeing of GLBTI Australians. Gay and Lesbian Health Victoria and the Australian Research Centre in Sex, Health and Society, La Trobe University, Melbourne; Leonard, W., Mitchell, A., Patel, S., Fox, C. (2008) Coming forward: The under-reporting of heterosexist violence and same sex partner abuse in Victoria, Gay and Lesbian Health Victoria, La Trobe University, Melbourne; Scottish Transgender Alliance (2010) Out of sight, out of mind? Transgender people's experiences of domestic abuse, Scotland

<sup>26</sup> Pitts, M, Smith, A, Mitchell, A, Patel, S (2006) Private Lives: A report on the health and wellbeing of GLBTI Australians. Gay and Lesbian Health Victoria and the Australian Research Centre in Sex, Health and Society, La Trobe University, Melbourne

<sup>27</sup> Scottish Transgender Alliance (2010) Out of sight, out of mind? Transgender people's experiences of domestic abuse, Scotland

<sup>28</sup> Harmon, J. (2017). The prevalence of family violence in proceedings before the Federal Circuit Court of Australia. Family Law Review, 7, 3–19. Retrieved from <http://westlaw.com.au.ezproxy.usc.edu.au>.

<sup>29</sup> Rae Kaspiew et al, 'Evaluation of the 2012 Family Violence Amendments: Synthesis Report' (Australian Institute of Family Studies, 2015) 49

<sup>30</sup> <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/news/mr200616>

## Responses to terms of reference

Despite the fact that family violence has been identified by numerous reviews as a key issue in family law, this inquiry's terms of references do not identify questions of safety for victims/survivors who are engaging with the family law system. We strongly advise that there needs to be a more nuanced gender analysis applied in relation to safety. We reiterate that women's safety (specifically) needs to be a central priority alongside children's safety.

We note the absence of Terms of Reference recognising that experiences of family violence and experiences within the family law system will differ for diverse groups of women.

We wish to reiterate the position that urgent reforms (identified in our [Joint Statement](#)) need to be immediately undertaken to make family law safe for victims/survivors of domestic and family violence – before the conclusion of this inquiry. These include:

1. Making sure courts identify safety risks that should be considered in any court decision, by implementing consistent screening and risk assessment process to protect children and parents at risk of violence;
2. Ensuring the courts have access to all relevant information by establishing a national information sharing framework to ensure information from state jurisdictions can be considered where relevant, and the courts are supported to make informed decisions that prioritise child safety and wellbeing;
3. Ensuring victim-survivors of family violence are supported and don't have to go through the court process alone – by providing social and legal supports for all parties to family law matters involving family violence or child abuse;
4. Prioritising matters where people are at high-risk – by creating a specialist case management stream for family violence matters involving children and parents at serious risk of harm, and
5. Requiring those who influence court proceedings to have competency in identifying and responding to domestic and family violence in diverse family contexts – by implementing an accreditation framework for all court officials and family law practitioners and professionals, starting with court report writers and supervised contact centre workers.

More broadly, reform must be undertaken to implement WLSA's comprehensive Safety First in Family Law, which includes the following steps:

1. Strengthen family violence response in the family law system
2. Provide effective legal help for the most disadvantaged
3. Ensure family law professionals have real understanding of family violence
4. Increase access to safe dispute resolution model
5. Overcome the gaps between the family law, family violence and child protection systems

We also refer you to the 2018 United Nations Committee on the Elimination of Discrimination Against Women's Concluding Observations on Australia, and in particular the recommendation to ensure "gender-sensitive approaches to the family violence" in the family law system.<sup>31</sup>

For the family law system to function more effectively, it needs better funding. It is concerning that the proposed merger of the Family Law Court and the Federal Circuit Court is aimed at releasing money from already overstretched family law system. While we understand that the courts merger was out of scope of this inquiry, it is vital to ensure that the sufficient funding is allocated to improve the family law system rather than generating savings.

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<sup>3131</sup> Committee on the Elimination of Discrimination against Women (2018) Concluding observations on the eighth periodic report of Australia, para 28(e).

We also note the very short timeframe allocated to make submissions. This timeframe is too restrictive, in light of the need to gather and share information in a way that is accessible, inclusive and safe. Victims/survivors who are trying to build a life free from violence are navigating complex and demanding systems at the same time as dealing with extreme personal impacts on health, wellbeing, finances and living arrangements, often with children in their care. Finding the time and space to write a submission while dealing with these pressures is very difficult. For services working with victims/survivors and the peak bodies who represent them, our capacity is extremely stretched in light of the ever-escalating demand for assistance in the context of widespread violence. We suggest that a February 2020 deadline would be more suitable.

## Suggested draft text on Terms of Reference

### a. Information sharing

**a. ongoing issues and further improvements relating to the interaction and information sharing between the family law system and state and territory child protection systems, and family and domestic violence jurisdictions, including**

- the process, and evidential and legal standards and onuses of proof, in relation to the granting of domestic violence orders and apprehended violence orders, and**
- the visibility of, and consideration given to, domestic violence orders and apprehended violence orders in family law proceedings;**

### Need for improved information sharing

Child protection and family law systems often do not work together properly. In focusing on the safety of children, child protection systems sometimes neglect to consider the situation of a protective parent who is being subjected to violence. The family law system, in contrast, often does not have enough resources devoted to the safety of children and young people. Victims/survivors are sometimes reluctant to have contact with child protection services, because these services often place the responsibility on the victim/survivor for protecting children from the perpetrator, while not taking into account the bigger picture and impact of family violence. In some cases, gaps between the two systems are resulting in children being returned to a perpetrator.<sup>32</sup>

There should be an effective mechanism for information sharing developed between the child protection and family law systems. Decisions regarding children should be made in the best interests of the child with the safety of the child as paramount. Child protection services need better training on family violence and cultural competency to prevent them from reinforcing the unjust barriers, marginalisation and control exercised against mothers who are victims/survivors of domestic and family violence (particularly Aboriginal and Torres Strait Islander mothers).

While we support improvements in information sharing between systems, we urge the Commission not to see the information sharing as an easy solution.<sup>33</sup> We share the concerns expressed by Women's Legal Services Australia in relation to the ability to analyse and interpret information shared, the privacy of sensitive and personal records as well as access to the records when parties do not have legal representation.

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<sup>32</sup> Standing Committee on Social Policy and Legal Affairs (2017) A better family law system to support and protect those affected by family violence. Report; Women's Legal Services Australia (2017) Submission to the parliamentary inquiry into a better family law system to support and protect those affected by family violence.

<sup>33</sup> Women's Legal Service Australia (2018) Submission to the Australian Law Reform Commission's Issues Paper on Review of the Family Law System

There is a need to produce resources in plain English and have them translated outlining the intersection of child protection and family law systems, including the roles of key players (eg. police, courts, child protection agency etc).

We also encourage the government to ensure that the only risk relevant information is shared and that there are safeguards against the inappropriate use of information. Perpetrators must be prohibited from accessing information about women and children affected by violence. Most importantly, victims/survivors' consent should be required before sharing of their information.

## **b. Evidence of domestic and family violence in family law courts**

**b. the appropriateness of family court powers to ensure parties in family law proceedings provide truthful and complete evidence, and the ability of the court to make orders for non-compliance and the efficacy of the enforcement of such orders;**

### **Ingrained disbelief in experiences of domestic and family violence**

This inquiry was instigated for the purpose of casting doubt on the validity of victims/survivors speaking about their experiences within the family law system. We call on the Committee as a whole to reject this biased premise and instead affirm the rights of victims/survivors to build lives free of violence, including the right to speak out and the responsibility of systems such as family law to respond in a just and compassionate way.

Despite the widespread nature of domestic and family violence, there are some persistent and damaging patterns of disbelief in victims/survivors' accounts of the violence they have been subjected to. For example, the Guardian Essential poll has shown that 37% of men surveyed do not believe sexual assault would be considered a type of family violence, with almost 50% of men aged 18 to 34 not recognising the behaviour as abusive.<sup>34</sup> The most recent National Communities Attitudes Survey run by ANROWS found that despite the majority of people in Australia rejecting attitudes supportive of violence against women, 2 in 5 believe that women make up false reports of sexual assault in order to punish men; 1 in 3 believe that if a woman does not leave her abusive partner then she is responsible for the violence continuing and nearly 1 in 5 do not believe financial control is a serious problem.<sup>35</sup> Extensive research into gender-based violence over several decades has debunked these myths and shown how they are rooted in misogynistic attitudes.[ref] Yet these damaging narratives continue to influence the way systems such as family law operate and contribute to unjust court outcomes for victims/survivors of violence.

Analysis of cases before the Federal Circuit Court conducted by Harmon<sup>36</sup> showed that 76.12% cases before the court involved allegations of family violence. Despite the high prevalence of DFV in family courts, the 2006 study<sup>37</sup> of attitudes towards family violence "found that a lack of sympathy toward family violence victims remained prevalent amongst lawyers and decision makers." The ongoing prioritisation of parental involvement instead of child safety within the family law system exposes children and their mothers to further abuse.<sup>38</sup>

<sup>34</sup> [https://www.theguardian.com/australia-news/2019/oct/10/essential-poll-young-men-least-likely-to-identify-abusive-domestic-behaviour?fbclid=IwAR1Rth7S4SoY1AWyOXFI04sOY4u\\_V9R4TvZe9EcbWSOORYLfbR3RXSdPOhY](https://www.theguardian.com/australia-news/2019/oct/10/essential-poll-young-men-least-likely-to-identify-abusive-domestic-behaviour?fbclid=IwAR1Rth7S4SoY1AWyOXFI04sOY4u_V9R4TvZe9EcbWSOORYLfbR3RXSdPOhY)

<sup>35</sup> For full report visit <https://ncas.anrows.org.au/findings/4-attitudes-to-violence-against-women/>

<sup>36</sup> Harmon, J. (2017). The prevalence of family violence in proceedings before the Federal Circuit Court of Australia. *Family Law Review*, 7, 3–19. Retrieved from <http://westlaw.com.au.ezproxy.usc.edu.au>.

<sup>37</sup> Hunter, R. (2006). Narratives of domestic violence. *Sydney Law Review*, 28, 733. Retrieved from [http://sosvics.eintegra.es/Documentacion/00-Genericos/00-05-Documentos\\_basicos/00-05-062-EN.pdf](http://sosvics.eintegra.es/Documentacion/00-Genericos/00-05-Documentos_basicos/00-05-062-EN.pdf).

<sup>38</sup> Keogh, E., Smyth, B., & Masardo, A. (2018). Law reform for shared-time parenting after separation: Reflections from Australia. *Singapore Academy of Law Journal*. Retrieved from <https://www.eprints.glos.ac.uk/id/eprint/5372>; Smyth, B.M., Hunter, C., Macvean, M., Walter, M., & Higgins, D. (2018). Education in family life in Australia. In M. Robila and A.C.Taylor (Eds), *Global perspectives on family life education* (pp. 93–113). New York: Springer.

A study by Laing<sup>39</sup> reported that 63% of the women surveyed in the study experienced secondary victimisation within the Australian family law system. Laing described them as not being heard about the abuse they experienced, feeling dismissed. Such findings are similar with another study<sup>40</sup> where mothers who experienced family violence reported their experiences not being taken seriously. Not believing victims/survivors of violence further silences them, causes additional trauma and harm, as well as impeding their journey to recovery.

### Experiences of victims/survivors of violence in the family law system

Women who have had violence perpetrated against them become particularly susceptible to further harm within the family law system for a number of reasons: lack of consideration of family violence and its impact on the ability of a woman to equally participate financially and acquire property<sup>41</sup>, the impacts of trauma, the complexity of the legal system and the lack of fully funded specialist women's services and community legal centres able to provide women with the necessary information and legal representation; and a risk of an ongoing abuse and control exercises by the perpetrator through systems' misuse.

The family law system is one of the major institutions that has to be navigated by people (often by themselves without any legal representation) who are living in violence and are trying to build safer lives for themselves and their children. Following the reform of the Family Law Act and the increasing engagement with families in crisis,<sup>42</sup> it is imperative that the main responsibility of the family law system is to ensure safety for women and their children, mitigate any risks of their further re-traumatisation and remove barriers to access to justice for women affected by violence.<sup>43</sup>

The family law system as it operates at present does not place the safety of victims/survivors and their children at its heart. Cultural perceptions surround family law that indicate that the disclosure of family violence will be to the detriment of a victim/survivor. The system itself does not do enough to prove otherwise. For example, a presumption of shared parental responsibility is still being applied in practice by judges that privileges the right of a violent father to have contact with his children as opposed to prioritising the safety of the children and their mother.

The most recent study<sup>44</sup> conducted by Francia, Milllear and Sharman looked at child custody decisions following parental separation where family violence was present. They interviewed 40 parents who experienced family violence (36 female and 4 male). Results revealed that the experience of engaging with the Australian family law system caused considerable anxiety and distress for these separated parents. Francia at all highlighted how mothers were labelled as 'alienating' for disclosing family violence. They also reported that disclosures of family violence were not treated seriously. Francia et al write: "They [parents] felt powerless, isolated, and believed their children were at risk of falling through jurisdictional gaps."<sup>45</sup>

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<sup>39</sup> Laing, L. (2017). Secondary victimization: Domestic violence survivors navigating the family law system. *Violence Against Women*, 23(11), 1314–1335. doi:10.1177/1077801216659942

<sup>40</sup> Roberts, D., Chamberlain, P., & Delfabbro, P. (2015). Women's experiences of the processes associated with the Family Court of Australia in the context of domestic violence: A thematic analysis. *Journal of Psychiatry, Psychology and Law*, 22, 599–615. doi:10.1080/13218719.2014.960132

<sup>41</sup> Ibid.

<sup>42</sup> Reports on Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems <https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Pages/FamilyLawCouncilpublishedreports.aspx>

<sup>43</sup> Women's Legal Services Australia and Rosie Batty's Five Step Plan for Safety First in Family Law accessed at: [http://www.womenslegal.org.au/files/file/SAFETY%20FIRST%20POLICY%20PLATFORM.MAY%202016\\_FINAL.pdf](http://www.womenslegal.org.au/files/file/SAFETY%20FIRST%20POLICY%20PLATFORM.MAY%202016_FINAL.pdf)

<sup>44</sup> Leanne Francia, Prudence Milllear & Rachael Sharman (2019) Addressing family violence post separation – mothers and fathers' experiences from Australia, *Journal of Child Custody*, 16:3, 211-235, DOI: 10.1080/15379418.2019.1583151

<sup>45</sup> Ibid, page 221.

Their study has also highlighted that various professionals within the family law system showed a concerning lack of knowledge around family violence. Lastly, study participants reported that they were coerced by professionals not to disclose experiences of family violence. Francia et al write that “mothers and fathers, often under considerable time pressure, were threatened, or warned, that if they did raise concerns about the other parent, that they would lose care of their child or children.”<sup>46</sup>

Such results are also supported by other studies. In 2017 Meir and Dickson analysing parent’ experiences reported that “family courts were hostile venues for mothers who raised concerns.”<sup>47</sup> Kuhn described that coercive control was enacted by family law professionals who demanded compliance from a parent, framed as necessary for the best interests of the child.<sup>48</sup> Lastly, Laing’s study concluded that “female participants reported receiving warnings from a number of sources, including lawyers, not to raise allegations of family violence.”<sup>49</sup> All of these findings shared another commonalities that mothers who experienced family violence were being labelled as an alienating parent. This has caused much fear and distress to mothers that they may lose their children and care instead will be transferred to a violent parent. In some cases that fear

### **Recommendations**

- We strongly believe that early risk assessment and capacity for early determination of family violence by the court need to be in place.
- This requires sufficient training and resourcing for courts, starting from the premise that safety is the primary consideration.
- The judiciary and all other relevant professions need to be trained in family violence to be able to apply that lens and identify potential violence to support disclosure.

### **Misuse of systems and processes as family violence**

Misuse of courts systems and processes or systems abuse by perpetrators constitutes family violence as perpetrators continue to exercise control over victims/survivors pressuring them to enter into court orders that do not address family violence and dragging the length of the process that significantly and unnecessarily increases its costs for victims/survivors.

The systems abuse has been consistently identified throughout the Australian and international literature and evidence as being used in family law proceedings:

- 2010 Australian Law Reform Commission report identified systems abuse as “the vexatious use of cross applications for protection orders and giving false evidence”;<sup>50</sup>
- 2014 WIRE research reports that examined experiences of 200 women found systemic continuation of financial abuse post separation through legal systems by their violent partners. This included financial costs of protracted legal costs, vexatious litigation, and partners hiding their assets to avoid paying child support;<sup>51</sup>

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<sup>46</sup> Ibid, p 223.

<sup>47</sup> Meir, J.S., & Dickson, S. (2017). Mapping gender: Shedding empirical light on Family Courts’ treatment of cases involving abuse and alienation. *Law & Inequality: A Journal of Theory and Practice*, 35, 311. Retrieved from <https://heinonline.org/HOL/LandingPage?handle%3Dhein.journals/lieq35&div%21&id%26amp;page%26>

<sup>48</sup> Archer-Kuhn, B. (2018). Domestic violence and high conflict are not the same: A gendered analysis. *Journal of Social Welfare and Family Law*, 40(2), 216–233. doi:10.1080/09649069.2018.1444446

<sup>49</sup> Laing, L. (2017). Secondary victimization: Domestic violence survivors navigating the family law system. *Violence Against Women*, 23(11), 1314–1335. doi:10.1177/1077801216659942

<sup>50</sup> Australian Law Reform Commission and New South Wales Law Reform Commission, *Family Violence – A National Legal Response*, Report 114 (2010).

<sup>51</sup> Cameron, Prue, [‘Relationship Problems and Money: Women Talk about Financial Abuse’](#) (Research Report, Wire Women’s Information, 2014).

- 2017 ANROWS research<sup>52</sup> has found that systems abuse type behaviors of perpetrators included: exploiting the intersection between family law, child protection and criminal legal systems to their advantage, raising counter-allegations and unjustifiable application in family law or personal protection orders; manipulative engagement with family law services, non-compliance with court orders and exhausting women’s legal and financial resources;
- Douglas<sup>53</sup> in her study reports that women’s engagement with the legal systems is experienced as an extension of coercive control (p.88). these included frequent requests for adjournments, making counter allegation, calling irrelevant witnesses and initiating excessive litigation in the Family court.

The National Domestic And Family Violence Bench Book provides a complete list of further references that identify how perpetrators of domestic and family violence continue to use systems abuse to further inflict violence on their separated partners.<sup>54</sup>

The discussion paper produced by the ALRC during the review of family law has also identified the following common systems abuse patterns:

- manipulation in engagement with Family Relationship Centre services either prior to lodging a court application or when mandated by a court order;
- refusing to attend meetings, rescheduling meetings, or refusing to sign documents, which can increase time and potentially costs for the other party;
- seeking preliminary advice to create a conflict of interest and prevent the other party from obtaining legal advice, using litigation to waste the resources of the other party and using the threat of indemnity costs (these are costs that a court might award if it found that a party had failed to accept a reasonable offer to settle the proceedings) to intimidate the other party;
- repeated engagement with parenting orders programs over issues that have been dealt with in other services over a number of years;
- protracted negotiations and litigation where one party has greater capacity to pay for legal assistance and intimidation through legal correspondence;
- refusal to participate in FDR to delay resolution or force the other party to self-represent in court and to make notifications to child protection agencies in relation to trivial matters;
- repeated applications to court in the same matter, including in relation to recovery orders; and
- frequent applications for variation in child support assessments.

### Recommendations

- We reiterate the need for a better training of family law professionals and better procedures to prevent systems abuse and hold perpetrators to account.
- We support the recommendation of the final ALRC report to include the ‘use of systems or processes to cause harm, distress or financial loss’ in the definition of family violence.<sup>55</sup>

### c. Reforms in the family law system (beyond court restructure)

**c. beyond the proposed merger of the Family Court and the Federal Circuit Court any other reform that may be needed to the family law and the current structure of the Family Court and the Federal Circuit Court;**

<sup>52</sup> Kaspiw, Rae, et al., *Domestic and family violence and parenting: Mixed method insights into impact and support needs – Key findings and future directions* (ANROWS, 2017).

<sup>53</sup> Douglas, Heather, ‘Legal Systems Abuse and Coercive Control’ (2018) 18(1) *Criminology & Criminal Justice* 84-99.

<sup>54</sup> National Domestic and Family Violence Benchbook, Systems Abuse <https://dfvbenchbook.aija.org.au/understanding-domestic-and-family-violence/systems-abuse/kl?highlight=WyJtaXN1c2UiXQ==>

<sup>55</sup> ALRC Final Report proposal 8-3.

## Strengthen family violence response in the family law system

The safety of children and adult victims-survivors of family violence requires increased specialisation in the family law system. Action can be taken now to increase family violence specialisation by:

- Introducing effective ongoing court-based family violence risk assessment practices
- Introducing early determination of family violence, and
- Increasing family violence competency of all professionals in the family law system.<sup>56</sup>

It is imperative that families are supported within the family law system to reduce family violence and other safety risks. The following risk assessment processes should be established as soon as possible:

- That in all cases involving dependent children, a family consultant with specified family violence training who is embedded within the court registry undertake a risk assessment with respect to child safety and provide recommendations in relation to interim care arrangements for children.
- Where family violence is alleged or identified, that a referral of any adult affected family member be made to an embedded family violence support worker within the court registry.
- Where the affected member is Aboriginal and/or Torres Strait Islander, a referral should be made to a specialised and culturally safe legal service such as a Family Violence Prevention Legal Service (FVPLS).
- That following receipt of such a referral, the family violence support worker undertakes a risk assessment in relation to the adult affected family member(s), assisting her in preparing a safety plan, and making further referrals as necessary.<sup>57</sup>

The risk assessment should be consistent across Australia, be multi-method, multi-informant, while placing particular emphasis on the victim's own assessment of risk, be culturally sensitive and supported by appropriate training. The Victorian Common Risk Assessment Framework (CRAF) or the NSW Domestic Violence Assessment Tool could be used during the design of the national risk assessment framework.

Without early risk identification, safety risks for women and their children are not managed from the onset as well as unjust outcomes are more likely to occur. It is common that women are subjected to coercive controlling violence feel pressure to agree to parenting arrangements and consent orders that are not in the best interest of their children and do not take the experiences of family violence into account.<sup>58</sup>

The 2015 evaluation by the Australian Institute of Family Studies found that 48% of family law professionals surveyed disagreed with the proposition that the legal system has the capacity to screen adequately for family violence and child abuse. Put in another way, "41% of parents [surveyed] indicated they had not been asked about family violence and 38% indicated they had not been asked about safety concerns."<sup>59</sup> It also found that for parents who experienced DFV only 41% agreed that the court order protected the safety of their children.

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<sup>56</sup> Ibid (Open letter).

<sup>57</sup> WLSA Submission to ALRC Review of the Family Law System (May 2018)

[http://www.wlsa.org.au/submissions/alrc\\_review\\_of\\_the\\_family\\_law\\_system\\_may\\_2018](http://www.wlsa.org.au/submissions/alrc_review_of_the_family_law_system_may_2018)

<sup>58</sup> WLSA (2019) Safety First in family law. Five steps to creating a family law system that keeps women and children safe.

WLSA (2017) Submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs. Submission to the parliamentary inquiry into a better family law system to support and protect those affected by family violence.

<sup>59</sup> Rae Kaspiew et al, 'Evaluation of the 2012 Family Violence Amendments: Synthesis Report' (Australian Institute of Family Studies, 2015), p. 182.

## Recommendations

There is an urgent need to:

- Strengthen family violence response through a specialist family violence pathway or specialist family violence family law courts
- Introduce effective ongoing family violence risk assessment practices
- Promote and resource the early determination of family violence, through a family violence informed case management process and the early testing of evidence of family violence.<sup>60</sup>

## Removal of a presumption of equal shared parental responsibility

There is an urgent need to remove the presumption of equal shared parental responsibility. The most damaging misconception is that both parents have equal rights to children even in situations where one parent is violent.

The presumption of equal shared parental responsibility remains and The Family Law Act 1975 (Cth) states that when making a Parenting Order, the Court must apply a presumption that it is in the best interests of the child for the child's parents to have equal shared parental responsibility for the child.<sup>61</sup> This means that parents must consult with each other and share responsibility for decisions about major long term issues in regard to the children. Although the presumption is not meant to apply in cases of domestic and family violence, women and children are still negatively impacted by the presumption because it is often hard to identify or prove this violence to the standard required by the Courts. This is problematic particularly in situations where domestic and/or family violence may not be properly identified, for example where a victim/survivor of violence is unrepresented.

As each family is unique, rather than focusing on presumptions, decisions about children should be made on a case-by case basis in the best interest of the child and placing a greater focus on safety and risks to children, and not on parental rights.

## Recommendation

- The presumption of equal shared parenting responsibility needs to be removed from the Family Law Act to shift culture and practice towards a greater focus on safety and risks to children.

## Parents with disability

The negative impact of the presumption of equal shared parenting responsibility can be particularly evident in cases where a parent has a disability.

The interim report of the Justice Project undertaken by the Law Council of Australia states that while there is no evidence that intellectual disability causes parental inadequacy<sup>62</sup>, in reality, parents with an intellectual disability are 'disproportionately represented in child protection services and care proceedings', and have high rates of child removal.<sup>63</sup> Discriminatory practices, misconceptions, lack of the awareness and training on disability create significant disadvantages for people with disability in the justice system.<sup>64</sup> The disadvantage is further exacerbated by people's limited understanding of

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<sup>60</sup> WLSA (2019) Safety First in family law. Five steps to creating a family law system that keeps women and children safe.

<sup>61</sup> Family Law Act 1975 (Cth) s 61DA

<sup>62</sup> Law Council of Australia (2017) The Justice Project. Consultation Paper 'People with Disability'; Law Council of Australia (2017) The Justice Project. Consultation Paper 'People Who Experience Family Violence'.

<sup>63</sup> Robyn Mildon et al, Understanding and Supporting Parents with Learning Difficulties (Victorian Parenting Centre, 2003) 4.

<sup>64</sup> Intellectual Disability Rights Service, 'Final grant report: Making Sense Website' (Report, Law and Justice Foundation of New South Wales, 28 May 2015) 1 ('Final grant report').

their rights within the legal system, poor economic position, communications difficulties or other personal barriers.<sup>65</sup>

During separation, parental disability may negatively affect the orders made under the Family Law Act. A report by the Office of the Public Advocate states that “the disability of one parent can be used by the parent without a disability to argue that the child’s residence and contact with the disabled parent should be changed or limited.”<sup>66</sup>

During family law court proceedings, family report writers play a big role in making recommendations on what is in the best interests of the child. As identified by Women’s Legal Services Australia, there is a need for better understanding of the dynamics of family violence by family report writers and better training. While some additional funding has been provided for appropriately skilled family consultants, there are additional and concerning problems in the area of disability. The Office of the Public Advocate argues that family report writers have limited or no expertise in disability and “are not aware of best practice in assessing the parental capacity of people with disabilities”.<sup>67</sup>

Another significant issue is the overrepresentation of mothers with disability in courts where member of their extended family are applying for a parenting order. Guided by the best interests of the child, under the Act once the relationship between a child and an adult is established, “a natural parent is not given preference over a person with a more remote relationship with the child”.<sup>68</sup> The Office of the Public Advocate argues that unless a natural parent is unable to adequately care for the child, the preference should be given to her.<sup>69</sup> We stress the importance of the training for all professionals in the family law system on the nature and dynamics of family violence as well as disability.

#### **Appoint more judges, registrars, family consultants and liaison officers**

Another important aspect of reforms is the resourcing of the family law system. Lack of sufficient funding creates pressure on judges and delays in courts. The Law Council of Australia reports that “it is not uncommon for there be 30 or more cases before a judge on the first hearing date, which gives each case about 10 minutes.”<sup>70</sup> Appointing more judges will improve the early identification of risks. Increase in appointments should be accompanied by sufficient training to judges (outlined in the TOR on core competencies).

There is also a need to employ staff from diverse backgrounds and who are tasked with responding appropriately to the diversity of people coming before the courts. Out of the total number of 95 employees in the Family Court of Australia, only one employee is identified as Aboriginal and/or Torres Strait Islander.<sup>71</sup> The situation in the Federal Circuit Court is similar. There are only 7 Aboriginal and/or Torres Strait Islander staff members among 560 employees.<sup>72</sup>

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<sup>65</sup> Law Council of Australia (2017) The Justice Project. Consultation Paper ‘People with Disability’; Law Council of Australia (2017) The Justice Project. Consultation Paper ‘People Who Experience Family Violence’

<sup>66</sup> Office of the Public Advocate (2013) What happened to the village? The removal of children from parents with a disability. Report 1: Family law – the hidden issues.

<sup>67</sup> Ibid.

<sup>68</sup> Office of the Public Advocate (2013) What happened to the village? The removal of children from parents with a disability. Report 1: Family law – the hidden issues.

<sup>69</sup> Ibid.

<sup>70</sup> Law Council of Australia (2017) Parliamentary inquiry into a better family law system to support and protect those affected by family violence.

<sup>71</sup> Family Court of Australia, 2016-2017 Annual Report.

<sup>72</sup> Federal Circuit Court of Australia, 2016-2017 Annual Report

The Family Law Council's Interim Report on Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems<sup>73</sup> has highlighted the need for the government to provide funding for the employment of Aboriginal and Torres Strait Islander family liaison officers. Courts and tribunals should also engage Cultural Liaison Officers, establish Cultural Diversity Committees, introduce multicultural plans, and actively recruit employees from migrant and refugee backgrounds.

#### Recommendations

- Appoint more judges, registrars, family consultants, Aboriginal and Torres Strait Islander Liaison Officers and Multicultural Liaison Officers in family courts.
- Establish Cultural Diversity Committees, introduce multicultural plans, and actively recruit employees from migrant and refugee backgrounds

#### d. Financial costs and property disputes

**d. the financial costs to families of family law proceedings, and options to reduce the financial impact, with particular focus on those instances where legal fees incurred by parties are disproportionate to the total property pool in dispute or are disproportionate to the objective level of complexity of parenting issues, and with consideration being given amongst other things to banning 'disappointment fees', and:**

- capping total fees by reference to the total pool of assets in dispute, or any other regulatory option to prevent disproportionate legal fees being charged in family law matters, and
- any mechanisms to improve the timely, efficient and effective resolution of property disputes in family law proceedings;

#### The costs of family law and access to legal assistance

Access to free legal advice and representation is limited. The Productivity Commission's 2014 report on access to justice stated that "there are more people living in poverty (14 per cent) than are financially eligible for legal aid (8 per cent)".<sup>74</sup> Legal Aid's eligibility criteria excludes the majority of people who are on the margin of the required earning.<sup>75</sup>

The costs of the family law system are prohibitive for those who do not qualify for free legal help. For example, the costs of filling an Application for Divorce in the Federal Circuit Court is \$865; initiating application for parenting and financial orders is \$660. The daily hearing fee excluding the first hearing (which is \$605 non-refundable) is \$605. No concessions are available unless an applicant is a recipient of a number of payments from Centrelink. To be able to pay a concession fee in the application for divorce, both parties must be eligible for concession. There are no compassionate grounds for concession in the fee such as family violence.<sup>76</sup> This is particularly problematic in the context of family violence as many victims/survivors may, on one hand, experience financial abuse and, on the other hand, have no finances of their own and/or be ineligible for Centrelink payments because of their partner's earnings or assets.

<sup>73</sup> Family Law Council (2015) Families with Complex Needs and the Intersection of Family Law and Child Protection Systems, Interim report. <https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Documents/Families-with-Complex-Needs-Intersection-of-Family-Law-and-Child-Protection-Systems%E2%80%93Interim-Report-Terms-1-and-2.pdf>

<sup>74</sup> Productivity Commission, Access to Justice Arrangements: Productivity Commission Inquiry Report, No. 72, 2014, Volume 2, pp. 1021-1022.

<sup>75</sup> Women's Legal Services Australia (2017) Submission to the Parliamentary Inquiry into the better family law system to support and protect those affected by family violence; Standing Committee on Social Policy and Legal Affairs (2017) A better family law system to support and protect those affected by family violence. Report.

<sup>76</sup> See: <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/forms-and-fees/fees-and-costs/fees>

In instances where a victim/survivor has to navigate the family law and migration systems simultaneously, the costs are increased. Women on partner visas and a small number of others, in situations when their relationships break down due to family violence, are eligible to stay permanently in Australia by accessing family violence provisions through the Department of Home Affairs. We refer you to AWAVA's submission to the Department of Immigration and Border Protection providing a more detailed analysis of the issue<sup>77</sup> but for the purposes of this submission we will highlight one issue.

One of the major issues in applying for family violence provisions is that the assessment of genuineness of relationships precedes assessment of family violence allegations. Often in this process, absence of joint finances or the 'failure' to present socially as a couple is seen as evidence that the relationship is non-genuine, when in fact these may be manifestations of violence, coercion and control. If the Department is not satisfied that relationships are genuine, family violence allegations are not considered. Women are able to appeal that decision in the Administrative Appeals Tribunal (AAT). While there are no costs to apply for family violence provisions under the Migration Act (directly to the Department of Home Affairs), the application for an appeal in the AAT costs around \$1700. This does not include the cost of migration advice which cannot be provided by the same family lawyer. Compounding these cost issues are the costs of family lawyers (some charge up to \$600 per hour), family court, and migration costs. Combined with the other barriers that women from culturally and linguistically backgrounds face, it can become impossible to leave violent relationships.

Women in regional, rural and remote areas face even more financial barriers due to the need to travel long distances to attend court hearings.<sup>78</sup>

It is important to note that women already are entering the family law system with financial debts. The Stepping Stones report highlights that among women assisted by Women's Legal Service Victoria, "43% were dealing with joint debts, and 85% were dealing with debts in their sole name. Of these women, 25% had a debt that was accrued by an abusive partner against their wishes, without their knowledge, without understanding or under duress".<sup>79</sup>

It is also important to note that not having legal representation means more expensive and longer proceedings. The Law Council of Australia states, "that court delays and the number of court appearances 'significantly drives' up the cost of legal representation for parties in family law proceedings: 'people spend less when they are in the system for less time'".<sup>80</sup>

### **Recommendations**

- review the costs of court proceedings
- expand the eligibility criteria for fee concessions
- increase funding to the Family Court and Federal Circuit Court
- increase funding to community legal services, Aboriginal and Torres Strait Islander Legal Services, Family Violence Prevention Legal Services and Legal Aid in order to increase representation of people who are financially disadvantaged

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<sup>77</sup> Australian Women Against Violence Alliance (2017) Submission to the Department of Immigration and Border Protection in response to the public consultation on visa simplification <https://awava.org.au/2017/10/12/submissions/submission-department-immigration-border-protection-visa-simplification>

<sup>78</sup> Law Council of Australia (2017) The Justice Project. People who Experience Family Violence. Consultation Paper. Law Council of Australia

<sup>79</sup> Smallwood, E. (2015) Stepping Stones: Legal barriers to economic equality after family violence, Women's Legal Service Victoria, Melbourne.

<sup>80</sup> Ms Wendy Kayler-Thomson, Chair, Family Law Section, Law Council of Australia, Committee Hansard, Canberra, 30 May 2017, p. 10. – in the report on the better family law system.

- create a specialised legal aid grant pathway for victims/survivors of domestic violence

## Property Settlements

In a determination of a property settlement under the Family Law Act 1975 the court must take into account each party's net assets and the financial and non-financial contributions of each party to the asset pool.<sup>81</sup> Future needs are also considered by the Court in their decisions. Women are currently disadvantaged in three key ways in obtaining a fair property settlement.

Firstly, the family law system is lengthy and legalistic for women with low income or assets – particularly where they have been victims of family violence. This results in many women walking away from a property settlement entirely. This contributes to the financial hardship that disproportionately impacts women following relationship breakdown.

Secondly, the impacts of family violence are not adequately taken into account in property settlements. Family violence is not specifically identified as a relevant consideration in property matters in the Family Law Act. While case law exists, this is not always considered in determining the adjustment in a negotiation, which is the way most matters are finalised. As a result, women who have been subjected to domestic violence may have their actual contributions reflected unfairly. The court must take into account additional factors based on the future needs of the parties, including their age, health, income, property, financial resources, and capacity for gainful employment and having care of children. There should be a legislative requirement for the court to consider the impact of family violence when determining a property division as consistent with the Family Law Council's 2001 advice to the Attorney General.<sup>82</sup>

Thirdly, abusive men are frequently reported as engaging in protracted litigation and in some cases vexatious or abusive behaviour. An example of this type of systems abuse is failure to disclose relevant financial documents during the discovery stages of family law proceedings. The Family Law Rules 2004<sup>83</sup> require parties to make full and frank disclosure of their financial circumstances. However, perpetrators frequently engage in deceitful and controlling behaviours, avoiding disclosure obligations. For example, a common behaviour reported by women is an ex-partner hiding their income due to their self-employment<sup>84</sup> or withholding other financial information in order to lessen the property settlement or spousal maintenance their ex-partner would otherwise be entitled to.<sup>85</sup>

We also refer you to the Stepping Stones: Legal barriers to economic equality after family violence (Women's Legal Service Victoria)<sup>86</sup> report, Small Claims, Large Battles: Achieving economic equality in the family law system (Women's Legal Service Victoria)<sup>87</sup> and the Economic Security for Survivors of Domestic and Family Violence: Understanding and measuring the impact (Good Shepherd Australia New Zealand)<sup>88</sup> report.

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<sup>81</sup> Family Law Act 1975 s79(4)

<sup>82</sup> WLSA. 2016. Safety First in family law: Five steps to creating a family law system that keeps women and children safe 4b.

<sup>83</sup> Family law Rules 2004 Rule 13.04. See: [http://www.austlii.edu.au/au/legis/cth/consol\\_reg/flr2004163/s13.04.html](http://www.austlii.edu.au/au/legis/cth/consol_reg/flr2004163/s13.04.html)

<sup>84</sup> Women's Legal Services Australia (WLSA) Submission to House of Representatives Standing Committee on Social Policy and Legal Affairs on Child Support. 2014, p 12. See: [http://www.wlsa.org.au/uploads/submission-resources/WLSA\\_Child\\_Support\\_Submission.pdf](http://www.wlsa.org.au/uploads/submission-resources/WLSA_Child_Support_Submission.pdf)

<sup>85</sup> Ibid page 10

<sup>86</sup> Smallwood, E. (2015) Stepping Stones: Legal barriers to economic equality after family violence, Women's Legal Service Victoria, Melbourne

<sup>87</sup> Women's Legal Service Victoria (2018) Small Claims, Large Battles: Achieving economic equality in the family law system

<sup>88</sup> Tanya Corrie (2016) Economic Security for Survivors of Domestic and Family Violence: Understanding and measuring the impact. Good Shepherd Australia New Zealand [https://www.goodshep.org.au/media/1421/financial-security-for-survivors-of-domestic-and-family-violence\\_march2016.pdf](https://www.goodshep.org.au/media/1421/financial-security-for-survivors-of-domestic-and-family-violence_march2016.pdf)

## Recommendation

- Establish a legislative requirement for the court to consider the impact of family violence when determining a property division as consistent with the Family Law Council's 2001 advice to the Attorney General.<sup>89</sup>

## e. Family law support services and family dispute resolution

### e. the effectiveness of the delivery of family law support services and family dispute resolution processes;

#### Support for the roll out of the Family Advocacy and Support Service (FASS)

The Family Advocacy and Support Service (FASS) has been funded under the Third Action Plan of the National Plan to Reduce Violence Against Women and their Children to provide a holistic service (an integrated duty lawyer and social worker service) for people affected by family violence to navigate the family law system. Sixteen Family Court registries were selected for the program, excluding smaller registries such as, in NSW for example, Lismore, Coffs Harbour, Albury and Dubbo. While implementation varies across jurisdiction, the evaluation of the service found that overall it is “an effective and important program that fills a gap in legal and social service provision to family law clients with family violence matters”.<sup>90</sup> We welcome the additional investment into FASS for dedicated men's support workers.

Full access to justice requires legal representation for all parties, which is best achieved through increased and sustainable funding to community legal services, especially women's legal services and Aboriginal and Torres Strait Islander legal services. In the context of a severely under-resourced system, we reiterate the need to ensure availability of FASS across regional and remote locations where access to services is very limited, and to incorporate case management within the FASS model.

#### Recommendations:

- Roll out the Family Advocacy and Support Service (FASS) so that all people engaging with the family law system have access to it, including people in remote and rural areas
- Incorporate a case management approach across all FASSs
- Prioritise the involvement of specialist women's services including women's legal services in the design and delivery of an expanded FASS.

#### The role of specialist women's service in the family law system

As led by Australian Women Against Violence Alliance, the women's safety sector continues to advocate for substantial increases in funding and greater safeguards for the role of the specialist women's services, which are at the forefront of the efforts to respond to and eliminate violence against women.<sup>91</sup> The work of specialist women's services, including women's legal services, is underpinned by a gendered understanding of violence<sup>92</sup>. They are focused on women and children's

<sup>89</sup> WLSA. 2016. Safety First in family law: Five steps to creating a family law system that keeps women and children safe 4b.

<sup>90</sup> <https://www.ag.gov.au/Publications/Documents/fass-final-evaluation-report.pdf> p4.

<sup>91</sup> AWAVA Policy Brief on the role of specialist women's services in Australia's response to violence against women and their children 2016 <https://awava.org.au/2016/04/07/research/role-specialist-womens-services-australias-response-violence-women-children>

<sup>92</sup> Queensland sexual assault services (2010) The Right to Choose Enhancing best practice in responding to sexual assault in Queensland

<http://www.communitydoor.org.au/sites/default/files/Right%20to%20choose%20final%20pdf%20with%20covers.pdf>;

Nichols, A. (2011) 'Gendered Organizations: Challenges for Domestic Violence Victim Advocates and Feminist Advocacy',

safety<sup>93</sup>, providing gender and cultural safety, working from a client-centred, trauma-based, empowering framework<sup>94</sup>, supporting women to navigate complex systems, recognising children as clients in their own right, and working towards greater gender equality recognising the complexity of intersectionality and that women are best qualified to decide their pathway to recovery from violence and trauma<sup>95</sup>.

Across the full range of services responding to violence against women, there is increasing demand, in part because of increased community awareness and condemnation of this violence.<sup>96</sup> While immediate increases to services is required, international and Australian evidence is clear that not just 'any old service' will do: ill-equipped services that lack well-trained staff discourage help-seeking, prevent disclosure of abuse and may inadvertently increase the risks for victims/survivors or lead them to return to abusive situations<sup>97</sup>.

Lack of funding to specialist women's and community legal services creates additional barriers for women subjected to violence. Women often have limited capacity to obtain access to justice because of financial barriers, and are often unable to access legal information, advice and/or representation due to the high cost of private legal representation<sup>98</sup>. Domestic Violence NSW's Practitioners' Survey indicates that often, women who are working casually or part-time, and where there is property to the relationship, do not meet financial eligibility criteria to access free legal assistance from Legal Aid<sup>99</sup>. It is also difficult for women to obtain pro bono assistance, as it is not a

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Feminist Criminology, 6(2), 111-113. The United Nations General Assembly (1993) 'Declaration on the Elimination of Violence Against Women' recognises that violence against women is a cause and consequence of gender inequality and states that services should be delivered based on this understanding. G.A. res 48/104, 1993 (DEVAW) <http://www.un.org/documents/ga/res/48/a48r104.htm> article 4 (g).

<sup>93</sup> Victorian Government Department of Human Services (2012) Family Violence Risk Assessment and Risk Management Framework and Practice Guides 1-3, Edition 2

[http://www.dhs.vic.gov.au/\\_data/assets/pdf\\_file/0010/718858/1\\_family\\_violence\\_risk-assessment\\_risk\\_management\\_framework\\_manual\\_010612.PDF](http://www.dhs.vic.gov.au/_data/assets/pdf_file/0010/718858/1_family_violence_risk-assessment_risk_management_framework_manual_010612.PDF); Domestic Violence Victoria (2006) Code of Practice for Specialist Family Violence Services for Women and Children: Enhancing the safety of women and children in Victoria, [http://www.dhs.vic.gov.au/\\_data/assets/pdf\\_file/0003/580908/code-of-practice-domestic-violence-vic-2006.pdf](http://www.dhs.vic.gov.au/_data/assets/pdf_file/0003/580908/code-of-practice-domestic-violence-vic-2006.pdf)

<sup>94</sup> Allen, N., Larsen, S., Trotter, J. and Sullivan, C. M. (2012) 'Exploring the Core Service Delivery Processes of an evidence-based community advocacy program for women with abusive partners', Journal of Community Psychology 14(1), 1-18.

<sup>95</sup> Zweig, J.M. and Burt, M.R. (2007) 'Predicting women's perceptions of domestic violence and sexual assault agency helpfulness: What matters to program clients?' Violence against Women, 13, 1149-1178; Council of Europe, Combating violence against women: minimum standards for support services (2008) [http://www.coe.int/t/dg2/equality/domesticviolencecampaign/Source/EG-VAW-CONF\(2007\)Study%20rev.en.pdf](http://www.coe.int/t/dg2/equality/domesticviolencecampaign/Source/EG-VAW-CONF(2007)Study%20rev.en.pdf) See also existing Australian standards documents (notes 40 to 43).

<sup>96</sup> AWAVA Policy Brief on the role of specialist women's services in Australia's response to violence against women and their children 2016 <https://awava.org.au/2016/04/07/research/role-specialist-womens-services-australias-response-violence-women-children/>; ACOSS (2012) Australian Community Sector Survey 2012,

[http://www.sectorconnect.org.au/assets/pdf/resources/resourcepg/advocacy/ACOSS\\_Community\\_Sector\\_Report\\_2012.pdf](http://www.sectorconnect.org.au/assets/pdf/resources/resourcepg/advocacy/ACOSS_Community_Sector_Report_2012.pdf)

<sup>97</sup> Zweig, J.M. and Burt, M.R. (2007) 'Predicting women's perceptions of domestic violence and sexual assault agency helpfulness: What matters to program clients?' Violence against Women, 13, 1149-1178; Stone, J. and Clifton, B. (2005) 'Sexual Assault Resource Centre: Client mental health survey', ACSSA Newsletter, No.9 November 2005, p 15; Women's Resource Centre (2007) Why Women Only? The value and benefits of by women, for women, services, London, UK <http://thewomensresourcecentre.org.uk/wp-content/uploads/whywomenonly.pdf>; Chung, D., Colley, D. and Zannettino, L. (2004) Effective Integrated Approaches in the Delivery of Services and Responses for Women Experiencing Domestic Violence, Research and Education Unit on Gendered Violence, University of South Australia, Adelaide and Partnerships Against Domestic Violence, Canberra; Zannettino, L. (2006) Better Outcomes for the Protection of Children Affected by Domestic Violence: Developing Interagency Collaboration between Child Protection and Domestic Violence Services: A Research Report, Research and Education Unit on Gendered Violence in partnership with the Department for Families and Communities, South Australia; Irwin, J., Waugh, F. and Bonner, M. (2006) 'The inclusion of children and young people in research on domestic violence', Communities, Children and Families in Australia, 1(1), pp.17-23.

<sup>98</sup> Women's Legal Services Victoria Submission Domestic Violence in Australia pg 5, Productivity Commission, Access to Justice Arrangements – Inquiry report No. 72, 3 December 2014

<sup>99</sup> Domestic Violence NSW Practitioner Survey Respondent – Parliamentary inquiry into a better family law system.

particularly attractive area for lawyers working in family law<sup>100</sup>. Given the lack of access to free specialist and/or legal services, when self-representing in family courts, women are at risk of unsuccessful settlements as well as further re-traumatisation and abuse.

Women's legal services, specialist Aboriginal and Torres Strait Islander and multicultural legal services have the skills and knowledge to work effectively with victims/survivors, but need to be resourced to scale up their work in response to demand. This scaling-up needs to occur in the context of broader funding and capacity increases across the legal assistance sector and specialist domestic and family violence services sector, together with other related services (such as sexual assault services) that support victims/survivors in the family law system.

### **Recommendations**

We recommend that the Australian Government incorporates specialist women's services into family law systems, and adequately funds these services, by:

- prioritising the engagement with specialist women's services in responses to family violence;
- funding specialist women's services that provide embedded services in state and territory courts to continue to support clients with family violence issues when they move to the family law system to seek parenting or other orders;
- embedding workers from specialist women's services in the family courts and Family Relationship Centres; and
- rolling out and better resourcing of Family Advocacy and Support Services within the family law system and Women Domestic Violence Court Advocacy Service within local and district courts.

### **f. Impact of family law proceedings**

**f. the impacts of family law proceedings on the health, safety and wellbeing of children and families involved in those proceedings;**

### **Impact of domestic and family violence and cost of leaving partners who are use violence**

Overall the impact of domestic and family violence is severe and long-lasting. This includes, but not limited to the following:

#### **1. Worsened health outcomes:**

- Intimate partner violence is the leading contributor to death, disability illness and injury among women aged 18 to 44.<sup>101</sup>
- Mental health conditions were the largest contributor to the burden due to physical/sexual intimate partner violence, with anxiety disorders making up the greatest proportion (35%), followed by depressive disorders (32%).<sup>102</sup>
- Other diseases linked to physical/sexual intimate partner violence are early pregnancy loss, homicide and violence, suicide and self-inflicted injuries, pre-term and low birth weight, and alcohol use disorders.
- A consequent need to attend a range of medical and counselling appointments increases the costs.

<sup>100</sup> National Pro Bono Resource Centre, Pro bono legal services in family law and family violence, Understanding the limitations and opportunities (Final Report) October 2013

<sup>101</sup> <http://media.aomx.com/anrows.org.au/s3fs-public/28%2010%2016%20BOD%20Compass.pdf>

<sup>102</sup> Julie Ayre, Miriam Lum On, Kim Webster, Michelle Gourley and Lynelle Moon (2016) Examination of the burden of disease of intimate partner violence against women in 2011: Final report, Sydney: ANROWS  
<https://dh2wpaq0gtxwe.cloudfront.net/s3fs-public/BoD%20Horizons.pdf>

**2. A need to navigate multiple legal systems** that not only result in loss of time but also incur high fees:

- A victim/survivor may be simultaneously navigating seven different legal processes. This includes: “(1) Children and property matters in the Federal Circuit Court, as well as, urgent interim applications in relation to the same proceedings; (2) Divorce proceedings in the Federal Circuit Court or Family Court; (3) Intervention order proceedings in the Magistrates Court; (4) Criminal proceedings; (5) Victim of Crime assistance proceedings; and (6) Debt issues that require resolution through the relevant agencies;”<sup>103</sup> and (7) Migration matters, for example applying for family violence provisions to secure permanent residency after relationships breakdown.

**3. Homelessness**

- Domestic and family violence is the single largest reason for people to seek homelessness services.<sup>104</sup>
- More females than males presented to agencies homeless in 2017–18; the number of females presenting homeless in 2017–18 (57,000) has overtaken the number of males (52,100), up from 41,900 for females and 41,100 for males in 2013–14.<sup>105</sup>
- Homelessness may also increase risk of gender-based violence in particular sexual violence. In addition, when intertwined with poverty and lack of social security support, many women are forced to engage in survival sex to obtain any accommodation or general ‘protection’.
- A general lack of affordable housing and social and public housing may push women to stay with a violent partner. In addition, in most states of Australia only Australian citizens and permanent residents are able to access social and public housing, further excluding women who are on temporary visas and are experiencing domestic and family violence.
- Available government programs designed to support women to stay in their homes post separation are not able to support all women in this need. For example, in NSW there are capped amounts of places that can be supported given the requirement of case management.<sup>106</sup>

**4. Economic cost**

- Price Waterhouse Coopers has estimated that violence against women in Australia imposes a financial cost of \$21.7 billion a year, with victims/survivors bearing the main burden of this cost.<sup>107</sup> If appropriate action is not taken, this toll could rise to \$323.4 billion by 2045.
- It costs \$18000 for a victim/survivor to leave violent relationship and establish safety. This would include costs associated with reallocation, safety upgrades, legal costs and medical costs.<sup>108</sup>

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<sup>103</sup> Australian Council of Trade Unions submission on the Family and Domestic Violence Leave to the Fair Work Commission. <https://www.actu.org.au/media/886617/actu-submission-to-fwc-family-and-domestic-violence-leave.pdf>

<sup>104</sup> Australian Institute of Health and Welfare 2015, Specialist Homelessness Services 2014-15: Clients, Services and Outcomes, Australian Government, Canberra

<http://www.aihw.gov.au/homelessness/specialist-homelessness-services-2014-15/clients-services-outcomes/>  
<sup>105</sup> Australian Institute of Health and Welfare (2018) Specialist Homelessness Services Annual Report 2017-2018 <https://www.aihw.gov.au/reports/homelessness-services/specialist-homelessness-services-2017-18/contents/clients-services-and-outcomes>

<sup>106</sup> NSW Government, Program Guidelines for Staying Home Leaving Violence Program.

<sup>107</sup> PWC (2015) Economic case for preventing violence against women. A high price to pay. <https://www.pwc.com.au/pdf/a-high-price-to-pay.pdf>

<sup>108</sup> Australian Council of Trade Unions submission on the Family and Domestic Violence Leave to the Fair Work Commission. <https://www.actu.org.au/media/886617/actu-submission-to-fwc-family-and-domestic-violence-leave.pdf>

- It takes an average of six years for women to recover financially from a divorce.<sup>109</sup>
- Separation for victim/survivors of domestic and family violence results in significantly reduced assets.<sup>110</sup>
- Perpetrators of domestic and family violence leave victim/survivors responsible for repaying jointly accumulated debts.<sup>111</sup>

Francia et al in their study<sup>112</sup> report that the family law system that disregards the experiences of family violence causes significant trauma for parents who have already experienced family violence. The protracted court hearings had negative impacts on their health, personal relationships, their ability to parent and protect children. Unless the reforms are implemented within the family law system that prioritise safety of victims/survivors, both the experiences and impact of family violence will remain ongoing.

[Further text to be added on impact on children: possible references follow –

Flood, M & Fergus, L 2008, *An assault on our future: The impact of violence on young people and their relationships*, White Ribbon Foundation, Sydney, .

Cox, P 2015, *Violence against women in Australia: Additional analysis of the Australian Bureau of Statistics' Personal Safety Survey*, Australia's National Research Organisation for Women's Safety (ANROWS), Sydney,

Humphreys, C., & Healey, L. (2017). *PATHways and Research into Collaborative Inter-Agency practice: Collaborative work across the child protection and specialist domestic and family violence interface: Final report (ANROWS Horizons 03/2017)*. Sydney, NSW: ANROWS.

Kaspiew, R., Horsfall, B., Qu, L., Nicholson, J. M., Humphreys, C., Diemer, K., ... Dunstan, J. (2017a). *Domestic and family violence and parenting: Mixed method insights into impact and support needs: Final report (ANROWS Horizons 04/2017)*. Sydney, NSW: ANROWS.

Kaspiew, R., Horsfall, B., Qu, L., Nicholson, J. M., Humphreys, C., Diemer, K., ... Dunstan, J. (2017b). *Domestic and family violence and parenting: Mixed method insights into impact and support needs: Key findings and future directions (ANROWS Compass, 04/2017)*. Sydney, NSW: ANROWS.]

### **Recommendation**

- Resource the family law system to reduce the costs to victims/survivors of violence
- Reform the family law system so that it prioritises the safety of children and adult victims/survivors of family violence

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<sup>109</sup> De Vaus, D., Gray, M., & Stanton, D. (2014). The Economic Consequences of Divorce in Australia. *International Journal of Law, Policy and Family* 28(1), 26-47.

<sup>110</sup> Braff, R. & Myering, I. B. (2011). *Seeking security: Promoting women's economic wellbeing following domestic violence*. Department of Families, housing, Community services and Indigenous Affairs, University of New South Wales. Australian Domestic and Family Violence Clearinghouse.

<sup>111</sup> Corrie, T. & McGuire, M. (2013). *Economic abuse: Searching for solutions. A Spotlight on Economic Abuse research report*. Collingwood: Good Shepherd Youth & Family Service. Retrieved from [https://www.goodshep.org.au/media/1223/economic-abuse\\_final-report.pdf](https://www.goodshep.org.au/media/1223/economic-abuse_final-report.pdf)

<sup>112</sup> Leanne Francia, Prudence Millear & Rachael Sharman (2019) *Addressing family violence post separation – mothers and fathers' experiences from Australia*, *Journal of Child Custody*, 16:3, 211-235, DOI: 10.1080/15379418.2019.1583151

## g. Grandparents as carers

### g. any issues arising for grandparent carers in family law matters and family law court proceedings;

We believe that in the process of formulating care arrangements for children after the separation, it is essential that representatives from Aboriginal and Torres Strait Islander and culturally and linguistically diverse organisations and communities must be consulted with and lead the design of care arrangements responsive to their needs, as their family structures may differ.

#### Recommendation:

- Consult with Aboriginal and Torres Strait Islander and culturally and linguistically diverse organisations and communities about issues arising for grandparent carers in the family law system.

## h. Core competencies of family law practitioners

### h. any further avenues to improve the performance and monitoring of professionals involved in family law proceedings and the resolution of disputes, including agencies, family law practitioners, family law experts and report writers, the staff and judicial officers of the courts, and family dispute resolution practitioners;

#### Core competencies of professionals and judicial officers in the family law system

Given the complexity of the family law system and the diversity of people interacting with it, there needs to be an emphasis on early determination (court decisions), triaging and case management of domestic violence cases in the family courts<sup>113</sup>. The Family Law Court has found that Aboriginal and Torres Strait Islander people and people from culturally and linguistically diverse backgrounds face a range of additional barriers when accessing legal, counselling and family dispute resolution services<sup>114</sup>. The Third Action Plan of the National Plan to Reduce Violence against Women and their Children has also indicated a commitment to improving the quality and accessibility of services for women from culturally and linguistically diverse backgrounds and for Aboriginal and Torres Strait Islander women. There has not yet been reporting on the progress of this measure. Responding to the diversity of women and children facing violence is also listed as a priority in the Fourth Action Plan. In the family law system, there is a need to extend this commitment to people who identify as LGBTIQ as well.

Thus, there should be a particular focus placed on training programs developed and delivered for judicial officers, court staff and family lawyers including Independent Children Lawyers (ICLs) and Family Dispute Resolution (FDR) practitioners in the areas of intersection of family law and family violence, cultural competency in relation to working with Aboriginal and Torres Strait Islander clients, clients of a culturally and linguistically diverse background (including working with

<sup>113</sup> WLSA. 2016. Safety First in family law: Five steps to creating a family law system that keeps women and children safe 1a (Policy flier). See:

[http://www.womenslegal.org.au/files/file/SAFETY%20FIRST%20POLICY%20PLATFORM.MAY%202016\\_FINAL.pdf](http://www.womenslegal.org.au/files/file/SAFETY%20FIRST%20POLICY%20PLATFORM.MAY%202016_FINAL.pdf) See also Family Court of Australia and Federal Circuit Court of Australia, Family law system needs more resources to deal with an increasing number of cases involving family violence, 20 June 2016 at:

[http://www.federalcircuitcourt.gov.au/wps/wcm/connect/84136241-45e6-4cbe-8e48-9274daa0c2d3/mr200616.pdf?MOD=AJPERES&CONVERT\\_TO=url&CACHEID=ROOTWORKSPACE-84136241-45e6-4cbe-8e48-9274daa0c2d3-lmuDF38](http://www.federalcircuitcourt.gov.au/wps/wcm/connect/84136241-45e6-4cbe-8e48-9274daa0c2d3/mr200616.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ROOTWORKSPACE-84136241-45e6-4cbe-8e48-9274daa0c2d3-lmuDF38)

<sup>114</sup> Family Law Council 2012, Improving the family law system for Aboriginal and Torres Strait Islander clients, Family Law Council. Accessed:

<https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Documents/Improving%20the%20Family%20Law%20System%20for%20Aboriginal%20and%20Torres%20Strait%20Islander%20Clients.pdf>. Family Law Council 2012, Improving the family law system for clients from culturally and linguistically diverse backgrounds, Family Law Council. Accessed: <https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Pages/FamilyLawCouncilpublishedreports.aspx>.

interpreters), working with vulnerable clients, trauma-informed practices and working with clients from LGBTIQ communities.

Results from the DVNSW Practitioners' Survey<sup>115</sup> indicated that in many cases there is lack of acknowledgement of domestic or family violence history. One of the respondents suggested:

*Rulings are made based on an assumption of equal power between the parties rather than the fixed imbalance of power that pre-dates and persists through the court process. This leaves victims further vulnerable to system abuse by wealthy and highly educated perpetrators. Victims are judged on their emotional presentation at court, ignorant of the impact of domestic violence.*

*The same applies to property settlement matters, where often the history of domestic violence is not taken into account as a major factor influencing woman's ability to equally participate and acquire property. Where DV is ignored, as an aspect in property matters, women may be forced into settlements regarding property that will leave them at a significant disadvantage, compared to the offender.<sup>116</sup>*

All participants in court processes, judges, lawyers and court staff should have a thorough understanding of the nature and dynamics of domestic and family violence, such as an understanding of the tactics a perpetrator may utilise within the court system to perpetuate a pattern of dominance and control. Increased knowledge regarding gender bias and the nature of family violence amongst staff in the judicial system can assist in holding perpetrators to account, and, ensure that victims are treated in a consistent manner<sup>117</sup>.

Further, the training of staff within the judicial system should account for the specific needs of Aboriginal and Torres Strait Islander and CALD women that have been subjected to domestic violence. A consultation report prepared by the Judicial Council on Cultural Diversity (JCCD) identified a need for cultural competency training for staff who interact with Aboriginal and Torres Strait Islander women who have been subjected to domestic violence, in order to improve their understanding of the dynamics of family violence within Aboriginal and Torres Strait Islander communities.<sup>118</sup> Similarly, a second report prepared by JCCD identified that CALD women who experience family violence may have different experiences to non-CALD women which require comprehensive cultural competency training for court staff that interact with them, for example instances of dowry-related violence, forced marriage and female genital mutilation.<sup>119</sup>

### **Recommendations:**

We recommend comprehensive training of staff within the judicial system to include the following topics:

- the nature and dynamics of family violence;
- working with vulnerable clients;

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<sup>115</sup> Domestic Violence NSW Practitioner Survey Respondent – Parliamentary inquiry into a better family law system.

<sup>116</sup> Ibid.

<sup>117</sup> Wakefield S & Taylor A (2015) Judicial education for domestic and family violence. ANROWS Landscapes 02/2015. At: [anrows.org.au/publications/landscapes/judicial-education-for-domestic-and-family-violence-state-knowledge-paper](http://anrows.org.au/publications/landscapes/judicial-education-for-domestic-and-family-violence-state-knowledge-paper) (see footnote 155 of the COAG advisory panel report below)

<sup>118</sup> Judicial Council of Cultural Diversity (2016) The Path to Justice: Aboriginal and Torres Strait Islander Women's Experience of the Courts., page p 41

<sup>119</sup> Judicial Council of Cultural Diversity (2016) The Path to Justice: Migrant and Refugee Women's Experience of the Courts., p 31

- cultural competency and safety (working with Aboriginal and Torres Strait Islander people and people from culturally and linguistically diverse backgrounds);
- working with people who identify as LGBTIQ;
- disability awareness and accessibility;
- intersectionality of clients' needs that includes recognition of structural inequalities arising from the interconnectedness of gender, age, sexuality, disability, culture, religion, race and/or other experiences;
- trauma- informed practice;
- the intersection of family law, child protection and family violence;
- the intersection of family law, family violence and migration status;
- technology facilitated abuse; and
- the intersection of family violence and family law in property determinations that includes:
  - the financial impacts of family violence
  - the nature and impacts of economic abuse;<sup>120</sup>
- understanding and working with influencing systems including child support and child protection;
- working with interpreters

Additional resources, such as videos, factsheets and toolkits regarding these topics could also be provided to support judicial officers better understand the barriers to justice, and to access information and resources of relevance to the context of their work.

### Accreditation of Family Report Writers and Independent Single experts

A family report writer may be appointed in family law proceedings to provide a report about the family, key issues and make recommendations about arrangements for the children. These reports are written by family consultants who are qualified social workers or psychologists; family reports can also be commissioned privately. These assessments play a critical role in the decision-making process of the court<sup>121</sup> and can influence whether or not legal aid funding for a parent should be continued.<sup>122</sup>

Francia et al also argue the report by family report writers are foundational in family law cases. They also show disturbing statistics where “there are a high number of complaints, being 39% of cases, made against psychologists who practice in this area in Australia.”<sup>123</sup>

Although only one piece of evidence, family reports are influential and can be determinative in cases involving allegations of abuse, where there may not be any other independent evidence or verification of allegations in dispute. While family consultants are qualified social workers or psychologists, there is no requirement for clinical experience in or a thorough understanding of the nature and dynamics of domestic and family violence.<sup>124</sup> Poor practices have resulted, for example, in joint interviews with child victims and perpetrators of domestic violence. A lack of expertise in the nature and understanding of domestic and family violence can lead to the making of unsafe decisions by the report writer and misunderstandings of the concerns raised by victims of past

<sup>120</sup> Smallwood, E. (2015) Stepping Stones: Legal barriers to economic equality after family violence, Women’s Legal Service Victoria, Melbourne.

<sup>121</sup> WLSA submission to senate inquiry – Domestic Violence and gender inequality 12 April 2016, p. 19-20

<sup>122</sup> Ibid

<sup>123</sup> Leanne Francia, Prudence Milliar & Rachael Sharman (2019) Addressing family violence post separation – mothers and fathers’ experiences from Australia, *Journal of Child Custody*, 16:3, 211-235, DOI: 10.1080/15379418.2019.1583151

<sup>124</sup> The publication of the Australian Standards of Practice for Family Assessments and Reporting by the Family Court of Australia, the Federal Circuit Court of Australia and the Family Court of Western Australia in 2014, which provides guidance on the expected levels of knowledge and understanding of family violence for family assessors is noted.

domestic violence.<sup>125</sup> This may also have devastating implications for court outcomes, putting women and children at unnecessary risk.

As recommended by the final report of the 2015 Senate Inquiry into Domestic Violence in Australia<sup>126</sup> and in the final report of the COAG Advisory Panel on Reducing Violence against Women and their Children,<sup>127</sup> the introduction of a formal accreditation scheme, equipping family report writers with appropriate, mandatory training would help support report writers to better understand and work with victims of violence and trauma, ensuring decisions are better informed, safer and more appropriate.<sup>128</sup>

Accreditation for single experts in family law proceedings commissioned privately is also required. In addition to accreditation with respect to a thorough understanding of the nature and dynamics of domestic and family violence, both family report writers and single experts should be accredited with respect to cultural competency in working with Aboriginal and Torres Strait Islander families, refugee and migrant families and LGBTIQ families.

#### **Recommendation**

- Urgently introduce mandatory training and accreditation for all report writers and experts in the family law system who are not already subject to these requirements.

#### **Improving Accessibility of Children's Contact Services**

Children's Contact Services (CCS) were introduced to provide safe, impartial environments and services to separating, high conflict families where issues such as family violence, child abuse, sexual abuse allegations, substance abuse, mental health issues and parenting capacity are of concern.

Domestic Violence Victoria (DV Vic) raises concerns in relations to the quality, accessibility and availability of contact centres for supervised contact. In their submission they state that their clients "experience prolonged waiting times for contact services of five months or more, and that the expense of private contact centres make them inaccessible."<sup>129</sup> This may result in further risks for the safety of mothers and children when they have to arrange contact with fathers outside of contact services, especially when they have parenting orders requiring that contact. These issues have been also raised by others within AWAVA's membership network.

We support DV Vic's position that children's contact services need to be included in any broader review of the family law system.

#### **Accreditation of Children's Contact Services**

Additionally, the Australian Children's Contact Services Association (ACCSA) in their submission has raised a number of concerns in relation to the operation of private children's contact services.<sup>130</sup>

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<sup>125</sup> Ibid

<sup>126</sup> Senate Standing Committees in Finance and Public Administration, Domestic Violence in Australia, 20 August 2015, Recommendation 17.

<sup>127</sup> Council of Australian Governments Advisory Panel on Reducing Violence against Women and their Children (COAG Advisory Panel), Final Report. 2016. Recommendation 1.4 See: <https://www.coag.gov.au/sites/default/files/files/COAGAdvisoryPanelonReducingViolenceagainstWomenandtheirChildren-FinalReport.pdf>

<sup>128</sup> Ibid

<sup>129</sup> Domestic Violence Victoria (2018) Submission to the Review of the Family Law System: Issues Paper.

<sup>130</sup> Australian Children's Contact Services Association (2018) Submission to the Review of the Family Law System: Issues Paper

There has been a set of baseline practice and administrative<sup>131</sup> standards developed for CCSs that underline the operation for 65 funded service around Australia. These include:

- requirements in relation to governance;
- management of data and confidentiality;
- qualification entry expectations for staff;
- training and development of staff requirements;
- supervision of staff;
- thorough intake and assessment procedures;
- child focused practices including familiarisation sessions;
- safe dedicated supervision sites;
- critical incident procedures;
- an understanding of contemporaneous note-taking; and
- client access to a complaints procedure.

In the last few years a large number of privately operated businesses have opened that function without any regulation, accreditation or accountability.

The Australian Children's Contact Services Association (ACCSA) has raised a number of concerns in relation to the operation of private CCSs. The list below is not exhaustive:

- Supervision being conducted in crowded public domains such as shopping centres, parks and/or commercial play centres where there is no capacity to monitor conversations, possibility of abduction or provide privacy and confidentiality. In the context of family violence this provides further opportunities for perpetrators to exercise power, control and abuse victims/survivors or children themselves.
- No intake and assessment processes, no risk management and no assessment of a services' ability to safely supervise the situation presented
- Inadequate number of staff to family member ratios.
- Instances of private CCSs staff attending supervised contacts with no identification provided to parents.

Such practices create further risks for the safety of families and contributes to the traumatisation through their processes. Additionally, there are no avenues to lodge a complaint about those services.

### **Recommendations**

- Ensure the accessibility of safe, high-quality children's contact services
- As per Australian Children's Contact Services Association's recommendations, we recommend that Family Dispute Resolution practitioners and judges should be referring families to children's contact service that are accredited.
- Roll-out a consistent, rigorous, safety-centred accreditation system for all CCSs including those not currently covered by any accreditation.

### **i. Interaction between the family law system and the child support system**

#### **i. any improvements to the interaction between the family law system and the child support system;**

The National Council for Single Mothers and their Children (NCSMC) has produced extensive evidence on the interaction between the family law system and the child support system.

<sup>131</sup> See <https://www.dss.gov.au/our-responsibilities/families-and-children/programs-services/family-support-program/family-and-children-s-services/program-guidelines-and-related-information/fsp-administrative-approval-requirements?HTML>

Women who have experienced domestic and family violence are more likely to experience financial abuse and child support non-compliance. The violence continues through financial abuse and protracted proceedings in the Family Court that impede the mothers' ability to work and find stable housing and prolongs the burden of costs and emotional investment.<sup>132</sup>

Evidence demonstrates that significant numbers of fathers are not paying reasonable child support, and that where mothers have to seek an exemption from securing child support payments in order to ensure the safety of themselves and their children, they are further financially disadvantaged.

We echo the concerns expressed by NCSMC in respect of child support that include:

- The national unpaid child support debt currently sits at around \$1.5 billion without accounting for unpaid money in private collection arrangements;
- Current assessments do not reflect the real costs of raising a child [food, clothing, housing, education and social inclusion activities (such as sport)], and loopholes allow self-employed parents to minimise income and reduce their child support;
- Late payment and non-payment of child support penalise the carer parent receiving Centrelink payments more than they penalise the paying parent;
- Failure of non-custodial parents to financially support their children pushes single parent families into poverty;
- Family violence increases the risk of poverty for women and their children.

It is essential in this context that the family courts consider payment of child support as being in the best interest of the child.

We note that single parents with children in their care are generally required to seek child support from the non-resident parent as a condition of accessing government payments including Family Tax Benefit. In recognition of the fact that seeking child support can lead to further abuse in cases of domestic and family violence, there is a rule that exempts single parents in situations of violence from the requirement to seek child support as a condition of receiving government payments. However, as NCSMC and Swinburne University (2019) notes, "when violent ex-partners are exempt from paying child support, they are financially rewarded as they are not required to make contributions towards their children's upbringing."<sup>133</sup> Through these dynamics, single parents' poverty is reinforced and systems abuse rewarded.

#### **Recommendations**

- Family courts should consider payment of child support as being in the best interests of the child
- Non-payment of child support should be recognised as potentially constituting financial abuse
- The child support system should be recognised as one of the avenues through which systems abuse is perpetrated by violent ex-partners

#### **j. Pre-nuptial agreements**

**j. the potential usage of pre-nuptial agreements and their enforceability to minimise future property disputes;**

<sup>132</sup> Council for Single Mothers and Their Children (2018) Submission to the Australian Law Reform Commission on the review of the family law system, available at: <https://www.csmc.org.au/wp-content/uploads/2018/05/CSMC-Family-Law-System-Review.pdf>

<sup>133</sup> <https://apo.org.au/sites/default/files/resource-files/2019/12/apo-nid268591-1400911.pdf>

We understand the benefits to individuals and to government of people being able to resolve their own disputes without going to court, and we acknowledge that there are some women with assets who may benefit from entering these agreements. However, Binding Financial Agreements do not properly account for the erosion of self-esteem and the lack of consent that are key to the dynamics of violence.

While the legislation assumes equal contracting parties, we know that for a very large number of women, their choices are interwoven with their need to limit the risk of harm to themselves and their children, by appeasing their partner. In these cases there is a very high risk that women will sign agreements even if their legal advice cautions against it. These women understandably see the alternative as worse. For this reason, we believe the legislation should adopt a specific setting aside provision for circumstances where there is family violence. In the absence of such a provision, there is high risk that outcomes will place women in poverty and reward perpetrators of violence.

#### **Recommendation**

- Amend the Family Law Act to adopt a specific setting aside provision for circumstances where there is family violence, to help prevent Binding Financial Agreements from being used to perpetrate financial abuse

#### **k. Other related matters**

<b>k. any related matters.</b>
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#### **Materials in plain English**

The complexity of the family law system makes it difficult to navigate for anyone who is not legally represented. One of the ways to improve the accessibility of information in courts is to produce resources (including visual flowcharts), outlining step-by-step guidelines about what to expect in court. These resources should cover court processes from the initial filing through to receiving a decision and should be published in plain English. This is particularly important when litigants have to deal with multiple systems concurrently like family law and child protection, or family law and migration law.

Forms used in courts need to be written in plain text to ensure that people who do not have English as their first language and people with low literacy skills are able to fill them out by themselves especially when they are self-represented. For example, the wording of question 56 in the Initiating Application form<sup>134</sup> reads, "If relying on a cross-vesting law, specify the Territory law relied on." Questions such as this can be challenging to understand and answer correctly for unrepresented litigants, especially from culturally and linguistically diverse backgrounds.

Courts could also use creative and accessible ways of conveying information such as audio-visual material, radio, etc.

#### **Recommendations**

- Provide court documents including forms in plain (Easy Read) English
- Create resources in a variety of mediums not limited to written text to explain court processes

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<sup>134</sup> Access the form here: [http://www.federalcircuitcourt.gov.au/wps/wcm/connect/328454a4-ab15-4eac-8b43-af333d0db0f4/Initiating\\_App\\_FORM\\_1115V2.pdf?MOD=AJPERES&CONVERT\\_TO=url&CACHEID=ROOTWORKSPACE-328454a4-ab15-4eac-8b43-af333d0db0f4-lZTKhrp](http://www.federalcircuitcourt.gov.au/wps/wcm/connect/328454a4-ab15-4eac-8b43-af333d0db0f4/Initiating_App_FORM_1115V2.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ROOTWORKSPACE-328454a4-ab15-4eac-8b43-af333d0db0f4-lZTKhrp)

## Availability of information about court processes in different languages

The Senate report on support and protection of people affected by family violence confirms “inadequate provision of information in languages other than English in legal and non-legal services, police stations, online application lodgement systems, and at courts”.<sup>135</sup> The Family Court or Federal Circuit Courts do not offer any fact sheets or publications in other languages than English. They do, however, offer to use LawTermFinder<sup>136</sup>, which allows searches of the key terminology used in courts only in Arabic, Simplified Chinese, Traditional Chinese, Korean, Spanish, and Vietnamese.<sup>137</sup>

The 2016 Census found that about 21% of Australians reported speaking a language other than English at home. Among other most common languages (varying by states and territories) are Hindi, Punjabi, Sinhalese, Thai, Urdu, Nepali, Bengali, Tamil, Persian and others. Given the complexity of the family law system especially for self-represented litigants, it is necessary to ensure that court resources are translated into different languages. It is also important that court resources in different languages are available both online and in printed version. Resources both in English and other languages need to take into account the various degrees of literacy of court users, and be written in a simple and understandable way for people to navigate the family law system.<sup>138</sup>

### Recommendation

- Provide family law information in a range of languages reflecting the languages spoken in Australia, in both online and print formats

## Standards for translators

There have been some positive changes at the policy level in regard to standards for engaging interpreters in courts and tribunals. For instance, the Judicial Council on Cultural Diversity has developed Recommended National Standards for Working with Interpreters in Courts and Tribunals<sup>139</sup>, and the NSW Education Centre Against Violence is running training courses for interpreters on interpreting for people who have experienced sexual<sup>140</sup> and family violence.<sup>141</sup>

Little attention, however, has been paid to standards for written translations. There is no consistency into which languages information is translated. Anecdotal evidence suggests that the quality of translations varies sometimes due to difficulties in explaining some legal terms or the general lack of standards for translation in the realm of family violence, family law, and child protection.

There is little awareness that resources to be translated from English to other languages need to be written specifically for translation. This includes using plain English, avoiding jargon or providing more detailed explanations for concepts that potentially may not be in use in other languages.

### Recommendations

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<sup>135</sup> Standing Committee on Social Policy and Legal Affairs (2017) A better family law system to support and protect those affected by family violence. Submissions by Access Community Services, InTouch, The Humanitarian Group

<sup>136</sup> See <http://lawtermfinder.mq.edu.au/>

<sup>137</sup> For example: <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/forms-and-fees/court-forms/form-topics/family+violence/form-nchild-abuse> see the bottom of the page.

<sup>138</sup> See the National Domestic and Family Violence Bench Book for more: <http://dfvbenchbook.aija.org.au/fair-hearing-and-safety/interpreters-and-translators/>

<sup>139</sup> JCCD (2017) Recommended National Standards for Working with Interpreters in Courts and Tribunals. Available at: <http://jccd.org.au/wp-content/uploads/2018/02/JCCD-Interpreter-Standards.pdf>

<sup>140</sup> For the course description visit: <https://swecav.hss.health.nsw.gov.au/ECAVWebsite/Home/Details/159>

<sup>141</sup> For the course description visit: <https://swecav.hss.health.nsw.gov.au/ECAVWebsite/Home/Details/180>

- that the Australian Government together with the National Accreditation Authority for Translators and Interpreters Ltd, works to ensure that accreditation and testing processes and approval of translator and interpreter courses require an understanding of the nature and dynamics of family violence (recommendation 160 of the Victorian Royal Commission into Family Violence).
- The Attorney's General Department, in consultation with the specialist women's sector, and cultural and linguistically diverse communities develops national standards and a terminology resource containing translations and explanations of key concepts in the areas of family violence, sexual assault, family law and child protection, translated into all major languages spoken in Australia.<sup>142</sup>

### Interpreters

We refer you to the Recommended National Standards for Working with Interpreters in Courts and Tribunals developed by JCCD.<sup>143</sup> We recommend championing them in the family law system to ensure consistency. Access to interpreters is essential for access to justice.

We also would like to raise several other issues in relation to interpreters. Various reports<sup>144</sup> have noted that female victims/survivors need to have a choice of having female interpreters in matters involving family violence. This choice needs to be presented explicitly to victims/survivors, rather than being available on request. In addition, staff responsible for booking an interpreter should ensure that they are booking a female interpreter for a female client to maximise safety.

We also would like to emphasise the use of telephone interpreters especially in instances when interpreting in person is not available. Anecdotal evidence from service providers suggests that when an interpreter is not at court, especially at the time of the first court hearing/listing, the court proceeds without one. Often an interpreter is not booked for that first hearing because many parties do not attend at that point. If they do though, there needs to be an interpreter available as an option. The court needs to be equipped with a telephone to use for that purpose. Additionally, using a telephone interpreter is useful for getting an interpreter for the second party if one has not been booked.

It is noted that the Family Violence Best Principles for the Federal Circuit Court and the Family Court do not list best practice of working with interpreters among other principles when reviewing family violence matters.<sup>145</sup> We believe that the Recommended National Standards for Working with Interpreters in Courts and Tribunals should be listed there as best practice.

### Recommendations:

- Female victims/survivors should be routinely and explicitly presented with the option of having a female interpreter in matters involving family violence

<sup>142</sup> We refer you to the resource developed by the Centre for Culture, Ethnicity and Health as an example [https://www.ceh.org.au/glossary-terms-child-family-relationship-services/?sf\\_action=get\\_data&sf\\_data=all&\\_sft\\_category=multilingual-resources](https://www.ceh.org.au/glossary-terms-child-family-relationship-services/?sf_action=get_data&sf_data=all&_sft_category=multilingual-resources)

<sup>143</sup> JCCD (2017) Recommended National Standards for Working with Interpreters in Courts and Tribunals. Available at: <http://jccd.org.au/wp-content/uploads/2018/02/JCCD-Interpreter-Standards.pdf>

<sup>144</sup> Women's Legal Service Victoria Creating meaningful access to justice for Culturally and Linguistically Diverse (CALD) women: preliminary investigation into the use of interpreters in family violence matters [http://www.womenslegal.org.au/files/file/Family%20Violence%20Interpreter%20Report%20-%20Final%20draft\(1\).pdf](http://www.womenslegal.org.au/files/file/Family%20Violence%20Interpreter%20Report%20-%20Final%20draft(1).pdf); Standing Committee on Social Policy and Legal Affairs (2017) A better family law system to support and protect those affected by family violence.

<sup>145</sup> See: <http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/reports-and-publications/publications/family-law/family-violence-best-practice-principles> and <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/publications/family+violence/family-violence-best-practice-principles>

- Encourage the use of telephone interpreters in cases where in-person interpreters have not been arranged, including by ensuring courts are equipped with telephones to use for that purpose
- Include the Recommended National Standards for Working with Interpreters in Courts and Tribunals in the Family Violence Best Principles for the Federal Circuit Court and the Family Court

### Accessibility of courts

#### Recommendations:

There are a number of steps that could be taken to improve courts accessibility, including:

- Having dedicated court staff available to answer questions from the public. This requires sufficient funding and resourcing of courts, together with appropriate training for staff;
- Holding community education forums, in collaboration with relevant service providers, to increase understanding of and trust in the court system, in particular for Aboriginal and Torres Strait Islander people and people from culturally and linguistically diverse backgrounds;
- Creating partnerships with key organisations and services e.g. police multicultural liaison and domestic violence officers;
- Enabling women to visit safe rooms for education on court processes;
- Providing special training to court registries, who are the first point of contact for many women, and are therefore an important touchpoint for distributing information and setting the tone for their experience
- Noting the limitation of caseworkers' or navigators' capacity to assist individuals or families through every step of a court process.

### Physical safety in courts

There is a great need to improve physical safety in courts. Courts are often accessible through one entrance/exit, forcing victims/survivors to face perpetrators or stay with them in the same line or waiting areas. Perpetrators can often use that as an opportunity to further harass, intimate, threaten and exercise power over victims/survivors.<sup>146</sup>

Courts should be sufficiently resourced to provide separate waiting areas, separate entry and exit points, safe rooms, dedicated areas for children, separate interview rooms, and possibility of video-link attendance of hearings. The latter is particularly important for women in rural, regional and remote areas as long distances to travel to attend hearings constitute another barrier for them to access justice. Remote witness video links, for example from safe places such as women's refuges as seen in Victoria, should be a priority as this will enhance witness evidence due to feeling less intimidated and scared.

#### Recommendations:

- Improve the physical safety of courts including providing separate waiting areas, separate entry and exit points, safe rooms, dedicated areas for children, separate interview rooms, and possibility of video-link attendance of hearings so that perpetrators are not able to use court appearances as a further opportunity to intimidate victims/survivors
- Ensure remote witness video links are available for every court, for use in cases of family violence

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<sup>146</sup> Law Council of Australia. The Justice Project (2017) People who Experience Family Violence. Consultation Paper.

## Improving the accessibility of the family law system for Aboriginal and Torres Strait Islander people

Accessing the family law system can be difficult and complex for Aboriginal and Torres Strait Islander people. One of the ways to improve the accessibility is to employ at least one Aboriginal and Torres Strait Islander liaison officer in every Family Law Court. This role is needed in order to:

- address the lack of knowledge of the court process for Aboriginal and Torres Strait Islander clients;
- assist with complex issues that can arise;
- assist with cultural issues that can arise;
- assist with the understanding of the legal process;
- assist with referrals;
- mitigate the general distrust in the legal system;
- assist Aboriginal and Torres Strait Islander clients for whom English is not their first language;
- improve the court's knowledge of kinship and cultural obligations,

The forms and requirements of forms for the Family Court need to be simpler. At present if forms are not provided when going to court, it can jeopardise a case. The forms and requirements of forms can be too long and too complex to understand, especially when legal requirements are needed, for example:

- affidavits
- if there is an appeal
- financial questionnaire
- disclosures
- consent orders.

There needs to be more information and awareness of the importance of legal representation and the right to have legal advice. For example, if Aboriginal and Torres Strait Islander legal services are not able to represent a person because of conflict of interest, information needs to be provided about alternative legal services. Aboriginal and Torres Strait Islander people need to know that they can access Legal Aid and Legal Aid service providers, and a list of service providers should be presented to clients who are unrepresented, or where there is a conflict of interest in a family law matter.

The *Family Law Act 1975* (the Act) requires clients to obtain a certificate from a registered family dispute resolution practitioner before they file an application for an order in relation to a child under Part VII of the Act.<sup>147</sup> During this process there needs to be Aboriginal and Torres Strait Islander mediators trained and available to do the mediation, because if matters can be settled during mediation this will avoid the need to go to court – a course of action that may, for understandable reasons, be feared.

More Indigenous report writers need to be employed by the Family Courts, because if both parties cannot reach an agreement for a parenting order, the Courts will then make Court Orders. For the judge and parties to decide on what arrangements are best for the child/children, a Family Report document will be prepared by a Family Report writer or a Family Consultant. This involves the report writer or the consultant speaking with the parents and child/children in relation to what the parent wants and what the child/children want and why. During this process, there can be a breakdown in translation due to lack of cultural awareness and sensitivity, and misinformation, or the view of the

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<sup>147</sup> Family Law Court of Australia - <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/publications/getting-ready-for-court/compulsory-family-dispute-resolution-court-procedures-and-requirements>

non-Indigenous report writer differing from that of the client. This report is one of the most critical documents presented in the court when determining the final outcomes of where the child/children are to reside. Some Aboriginal and Torres Strait Islander parents are unaware of importance of this report.

It should be compulsory for all Independent Children Lawyers and Legal Aid Grant Officers to be trained in cultural competency. Training for Grants Officers will provide them with an understanding of some of the complex issues that the client faces when assessing a grant of aid. Independent Children's Lawyers need to have compulsory training to better understand the child/ren's cultural background and cultural needs. An individual approach needs to be considered, as not all Aboriginal and Torres Strait Islander children are the same and there can be different needs associated. Training will be able to provide Independent Children Lawyers with a better understanding on how to support and recommend outcomes for the child's best interests. Lastly, there is a need to ensure that all Family Law Courts or Circuits have security.

We also refer you to the 2016 FLC Final Report on Families with Complex Needs and the Intersection of Family Law and Child Protection<sup>148</sup> and recommendations made by the Judicial Council on Cultural Diversity (JCCD) in the National framework to improve accessibility to Australian courts for Aboriginal and Torres Strait Islander women and migrant and refugee women.<sup>149</sup>

#### Recommendations:

- Employ at least one Aboriginal and Torres Strait Islander liaison officer in every Family Law Court
- Provide more information to Aboriginal and Torres Strait Islander people in the family law system about the importance of legal representation, the right to have legal advice and options for obtaining legal advice
- Increase the number of trained Aboriginal and Torres Strait Islander mediators who are available to conduct mediations
- Employ more Aboriginal and Torres Strait Islander report writers in the family courts
- Make it compulsory for Independent Children Lawyers and Legal Aid Grant Officers to be trained in cultural competency

#### **Improving the accessibility of the family law system for people from culturally and linguistically diverse backgrounds**

The family law system must aim to strengthen its response to the needs of culturally, linguistically and religiously diverse (CALD) communities by improving its capacity as well as program design. Women from culturally and linguistically diverse backgrounds can face specific forms of violence which are directly related to their cultural practices and complex family structures, such as dowry associated violence and early and forced marriage. Financial and decision making dominance by the man/husband in strong patriarchal community hierarchies in some CALD groups, as well as community understanding of ownership of women and children by the husband, impact the woman's sense of agency and hence her ability to advocate for herself and her children. It is, however, important to recognise diversity within CALD communities, to address existing stereotypes about culture and/or religion, and prevent overgeneralisation of experiences i.e. avoid attributing particular experiences as normative to the whole community and using the language of 'all

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<sup>148</sup> Available online at: <https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Documents/Family-with-Complex-Needs-Intersection-of-Family-Law-and-Child-Protection-Systems-Final-Report-Terms-3-4-5.PDF> .

<sup>149</sup> Judicial Council on Cultural Diversity (2017) National framework to improve accessibility to Australian courts for Aboriginal and Torres Strait Islander women and migrant and refugee women

community members' or 'all women' without acknowledging diversity and complexity within the CALD community.

Building the cultural competence of family law professionals would help ease the number of barriers that women from culturally and linguistically diverse backgrounds currently face when navigating the legal system. Specific training to deliver knowledge of cultural norms and how these affect family dynamics and awareness of specific cultural practices (for example, wailing, pulling at one's own hair as part of help seeking behaviour and misinterpreting these as mental illness) are essential to develop a supportive system for victims/survivors. The need for capacity development of translators and interpreters cannot be underestimated, as well as the availability of relevant information in languages other than English.

These are essential components of the review of the family law system that will ultimately deliver an integrated, culturally-appropriate legal system for all.

**Recommendations:**

We recommend the following improvements that are necessary to ensure the accessibility of courts:

- Courts and tribunals should engage Cultural Liaison Officers, establish Cultural Diversity Committees, introduce multicultural plans, and actively recruit employees from migrant and refugee backgrounds.
- Courts and tribunals should review the appropriateness of signage, brochures, services, procedures for engagement of interpreters, and support for vulnerable witnesses, to ensure they are accessible to all.
- Women from culturally and linguistically diverse backgrounds should be consulted meaningfully when developing products and procedures designed for and about them.
- Courts and tribunals should schedule regular activities to engage women from migrant and refugee background, such as stakeholder meetings, court open days and tours, and community education forums.
- Court staff should receive compulsory cultural capability training.
- Courts work to make legal documents and support resources more approachable through the use of clear and simple language, and translation of key materials into major languages.
- Alternatives to questioning in courtrooms be offered, in order to provide contextual safety and enable women to feel more comfortable in disclosing information.

We ask that courts be supported to implement these recommendations, and note the importance of evaluation processes to test the effectiveness of such changes.

We also reiterate the points made in response to questions 3 and 4 of this submission in relation to interpreters. We strongly recommend that JCCD's Recommended National Standards for Working with Interpreters in Courts and Tribunals be adopted by the Family Court, and other relevant courts and tribunals. Judicial officers, legal practitioners, police officers, and court support staff must be trained in the appropriate skills and processes for interpreter engagement (including via telephone and videolink) and best practice use in legal proceedings.

We also refer you to the 2016 Family Law Council Final Report on Families with Complex Needs and the Intersection of Family Law and Child Protection<sup>150</sup> and recommendations made by the Judicial

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<sup>150</sup> Available online at: <https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Documents/Family-with-Complex-Needs-Intersection-of-Family-Law-and-Child-Protection-Systems-Final-Report-Terms-3-4-5.PDF> .

Council on Cultural Diversity (JCCD) in the National framework to improve accessibility to Australian courts for Aboriginal and Torres Strait Islander women and migrant and refugee women.<sup>151</sup>

### **Improving the accessibility of the family law system for LGBTIQ families**

All professionals within the family law system must be trained on how to ensure appropriate responses to family violence in the context of LGBTIQ+ relationships. In its submission to ALRC family review, WLSA states that LGBTIQ+ people often face hurdles when seeking assistance from professionals involved in the family law system. In particular, lesbian parents who are not biologically related to their children often face barriers to being fully recognised as a parent. More pro-active steps by the family law system needs to be taken to identity and remove barriers for LGBTIQ+ people and families. We support WLSA’s proposals “that an audit is undertaken by the courts and other service providers to see what changes can be implemented to ensure inclusivity; implement simple changes, such as improving forms to provide the option for a choice of preferred pronouns; and in relation to parenting matters, changes are needed to ensure that Part VII of the Family Law Act, and in particular, the parentage provisions, recognise the diversity of Australian families today”.

### **Improving the accessibility of the family law system for people with disability**

We have highlighted the need for a reform in determining best interest of the children contexts where a parent has a disability (above).

Additionally, improvements needs to be made in terms of physical accessibility of court buildings, accessibility of court information (such as having materials written in plain English); “accessibility with respect to the attitudes of those working within the family law profession which can inhibit the access of people with disability to the family law system”. (WLSA submission to ALRC inquiry)

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<sup>151</sup> Judicial Council on Cultural Diversity (2017) National framework to improve accessibility to Australian courts for Aboriginal and Torres Strait Islander women and migrant and refugee women