

# AWAVA

Australian Women Against Violence Alliance

Joint Select Committee on Australia's Family Law System

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## Submission to Joint Select Committee on Australia's Family Law System

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## About Australian Women Against Violence Alliance

Australian Women Against Violence Alliance (AWAVA) is one of the six National Women's Alliances funded by the Australian Government to bring together women's organisations and individuals across Australia to share information, identify issues and contribute to solutions.

AWAVA's focus is on responding to and preventing violence against women and their children. AWAVA's role is to ensure that women's voices and particularly marginalised women's voices are heard by Government, and to amplify the work of its member organisations and Friends and Supporters. AWAVA's members include organisations from every State and Territory in Australia, representing domestic and family violence services, sexual assault services, services for women in the sex industry and women's legal services, as well as organisations representing Aboriginal and Torres Strait Islander women, young women, women educators and other groups. AWAVA's contract manager is the Women's Services Network (WESNET).

Currently, AWAVA's membership includes 24 organisations in the Advisory group and 445<sup>1</sup> individual and organisational members.

AWAVA would like to indicate our availability to appear before the Committee hearings.

AWAVA consents for this submission to be made public.

This submission has been endorsed by Harmony Alliance: Migrant and Refugee Women for Change, National Aboriginal and Torres Strait Islander Women's Alliance and Equality Rights Alliance.

## List of acronyms

ACCSA	Australian Children's Contact Services Association
AIFS	Australian Institute of Family Studies
ALRC	Australian Law Reform Commission
ANROWS	Australian National Research Organisation for Women's Safety
AWAVA	Australian Women Against Violence Alliance
CALD	People who are from culturally and linguistically diverse backgrounds
CCS	Children's Contact Services
CSMC	Council for Single Mothers and their Children
DFV	Domestic and family violence
DV NSW	Domestic Violence NSW
DV VIC	Domestic Violence Victoria
FASS	Family Advocacy Support Services
FDR	Family Dispute Resolution
ICL	Independent Children's Lawyer
JCCD	Judicial Council on Cultural Diversity
LGBTIQ+	People who are lesbian, gay, bisexual, transgender, intersex or queer
NCSMC	National Council for Single Mothers and their Children
SACP	Sexual Assault Communications Privilege
VAW	Violence against women
WLSA	Women's Legal Service Australia

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<sup>1</sup> Data is valid for January 2020.

## Summary of recommendations

Australian Women Against Violence Alliance recommends that the Australian Government implements the following recommendations:

### a. Information sharing

1. Ensure 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.
2. Recognise that records from frontline state and territory domestic violence interagency responses form a crucial missing component of relevant information for matters involving family violence and abuse.

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

3. Include the 'use of systems or processes to cause harm, distress or financial loss' in the definition of family violence.<sup>2</sup>
4. Adopt a broader responsibility for victims/survivors by ensuring that records of supportive and therapeutic services are shielded from the perpetrator so that victims can focus on recovery and their capacity to care for their children.<sup>3</sup>

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

5. Abandon the merger of the Family Law Court and the Federal Circuit Court of Australia.
6. Strengthen the family violence response through a specialist family violence pathway or specialist family violence family law courts.
7. Introduce effective ongoing court based family violence risk assessment practices.
8. 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>4</sup>
9. Remove the presumption of equal shared parenting responsibility from the Family Law Act to shift culture and practice towards a greater focus on safety and risks to children.
10. Appoint more judges, registrars, family consultants, Aboriginal and Torres Strait Islander Liaison Officers and Multicultural Liaison Officers in family courts.
11. Establish Cultural Diversity Committees, introduce multicultural plans, and actively recruit employees from migrant and refugee backgrounds.
12. Increase funding to the Family Court and Federal Circuit Court to strengthen their response to matters involving domestic and family violence.

### d. Financial costs and property disputes

13. Review the costs of court proceedings.
14. Expand the eligibility criteria for fee concessions.

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<sup>2</sup> ALRC Final Report proposal 8-3.

<sup>3</sup> WLSA (2016) Sense and Sensitivity: Family Law, Family Violence and Confidentiality <http://www.wlsnsw.org.au/wp-content/uploads/WLS-NSW-Sense-and-Sensitivity-web.pdf>

<sup>4</sup> Women's Legal Services Australia 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)

15. 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.

16. Create a specialised legal aid grant pathway for victims/survivors of domestic violence.

17. Establish a legislative requirement for the court to consider the impact of domestic and family violence when determining a property division as consistent with the Family Law Council's 2001 advice to the Attorney General.<sup>5</sup>

18. Implement recommendations of 'Stepping Stones: Legal barriers to Economic Equality After Family Violence' report (Women's Legal Service Victoria)<sup>6</sup> and 'Small Claims, Large Battles: Achieving Economic Equality in the Family Law System' report (Women's Legal Service Victoria).<sup>7</sup>

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

19. 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.

20. Incorporate a case management approach across all FASSs.

21. Prioritise the involvement of specialist women's services including women's legal services in the design and delivery of an expanded FASS.

22. Incorporate specialist women's services into family law systems and adequately fund 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's domestic violence court advocacy services within local and district courts.
- 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

#### g. Grandparents as carers

23. 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

24. Ensure comprehensive training for all professionals within the family law system on the following:

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<sup>5</sup> WLSA (2016) Safety First in family law: Five steps to creating a family law system that keeps women and children safe 4b.

<sup>6</sup> Smallwood, E. (2015) Stepping Stones: Legal barriers to economic equality after family violence, Women's Legal Service Victoria, Melbourne; available at <https://www.womenslegal.org.au/files/file/1.%20Final%20-%20Stepping%20Stones%20Report.pdf>

<sup>7</sup> Women's Legal Service Victoria (2018) Small Claims, Large Battles: Achieving economic equality in the family law system; available at <https://womenslegal.org.au/files/file/WLSV%20SCLB%20Briefing%20Paper.pdf>

- the nature and dynamics of family violence;
- working with vulnerable clients;
- 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;
- the intersection of family violence and family law in property determinations that includes the financial impacts of family violence and the nature and impacts of economic abuse;<sup>8</sup>
- understanding and working with influencing systems including child support and child protection; and
- working with interpreters

25. 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.

26. Ensure the accessibility of safe, high-quality children's contact services.

27. Family Dispute Resolution practitioners and judges should be referring families to children's contact service that are accredited.

28. 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

29. Family courts should consider payment of child support as being in the best interests of the child.

30. Non-payment of child support should be recognised as potentially constituting financial abuse.

31. 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

32. 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

33. Ensure that Australian courts are supported and resourced to implement Judicial Council on Cultural Diversity National framework to improve accessibility to Australian courts for Aboriginal and Torres

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<sup>8</sup> Smallwood, E. (2015) Stepping Stones: Legal barriers to economic equality after family violence, Women's Legal Service Victoria, Melbourne; available at <https://www.womenslegal.org.au/files/file/1.%20Final%20-%20Stepping%20Stones%20Report.pdf>

Strait Islander women and migrant and refugee women and National Standards for Working with Interpreters in Courts and Tribunals.

34. Provide court documents including forms in plain (Easy Read) English.

35. Create resources in a variety of mediums not limited to written text to explain court processes.

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

37. 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>9</sup>

#### **Ensure consistent use of interpreters during family law proceedings**

38. Work with the National Accreditation Authority for Translators and Interpreters Ltd 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.<sup>10</sup>

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

40. 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.

41. 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.

#### **Improve accessibility of family courts for families in their diversity**

42. Ensure dedicated court staff available to answer questions from the public.

43. Hold 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;

44. Develop and maintain partnerships with key organisations and services e.g. police multicultural liaison and domestic violence officers;

45. Enabling women to visit safe rooms for education on court processes.

46. Provide 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.

47. Employ at least one Aboriginal and Torres Strait Islander liaison officer in every Family Law Court.

48. 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.

49. Increase the number of trained Aboriginal and Torres Strait Islander mediators who are available to conduct mediations.

50. Employ more Aboriginal and Torres Strait Islander report writers in the family courts.

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<sup>9</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>10</sup> Recommendation 160 of the Victorian Royal Commission into Family Violence



51. Make it compulsory for Independent Children Lawyers and Legal Aid Grant Officers to be trained in cultural competency.
52. Courts and tribunals should engage Cultural Liaison Officers, establish Cultural Diversity Committees, introduce multicultural plans, and actively recruit employees from migrant and refugee backgrounds.
53. 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.
54. Women from culturally and linguistically diverse backgrounds should be consulted meaningfully when developing products and procedures designed for and about them.
55. 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.
56. Court staff should receive compulsory cultural capability training.
57. 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.
58. Alternatives to questioning in courtrooms be offered, in order to provide contextual safety and enable women to feel more comfortable in disclosing information.
59. Ensure that the family law system (its forms and processes) are inclusive of and recognise the diversity of families in Australia.
60. Ensure that all family court professionals are trained on questions of disability to ensure that parents with disability do not have unjust court outcomes.

#### **Improve physical safety in courts**

61. 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.
62. Ensure remote witness video links are available for every court, for use in cases of family violence.

#### **Turn existing pilots into ongoing programs**

63. Ensure that effective pilots within the family law system are turned into ongoing programs once their evaluations are completed and effectiveness established.

## Introduction

“The prevalence of family violence claims in post separation parenting matters have led to family violence being described as the core business of the family court.”<sup>11</sup>

“It’s like you completely disappear [within the system]. (Ameera, a lesbian woman with a disability, a survivor, a mother of three)”

Nearly 70% of cases brought before the family courts involves family violence, yet the family law system fails victim/survivors of domestic and family violence.<sup>12</sup> For the family law system to be safe, we need urgent reforms as sufficient evidence has been put before the government what needs to change.

Since 2009, twelve major reports on the operation and improvements of the family law system have been released outlining a set of necessary reforms to be implemented. This includes:

- 2019 Australian Law Reform Commission Family Law for the Future — An Inquiry into the Family Law System;<sup>13</sup>
- 2018 Law Council of Australia, The Justice Project, People who Experience Family Violence.<sup>14</sup>
- 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;<sup>15</sup>
- 2016 Family Law Council Final Report on Families with Complex Needs and the Intersection of Family Law and Child Protection;<sup>16</sup>
- 2015 Family Law Council Interim Report on Families with Complex Needs and the Intersection of Family Law and Child Protection;<sup>17</sup>
- 2016 Victorian Royal Commission into Family Violence Report;<sup>18</sup>
- 2015 Australian Institute of Family Studies evaluation of the 2012 Family Law Act amendments;<sup>19</sup>
- 2015 Federal Senate Finance and Public Administration References Committee inquiry report titled Domestic violence in Australia;<sup>20</sup>
- 2014 Productivity Commission Access to Justice Arrangements Inquiry Report;<sup>21</sup>

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<sup>11</sup> Easteal, P., Young, L., & Carline, A. (2018). Domestic violence, property and family law in Australia. *International Journal of Law, Policy and The Family*, 32, 204–229. doi:10.1093/lawfam/eby005

<sup>12</sup> WLSA Media Release (23 Oct 2019) Rosie Batty urges Government to adopt new reform plan for family law system to keep women and children safe. Online at: [http://www.wlsa.org.au/uploads/campaign-resources/Media\\_Release\\_231019.pdf](http://www.wlsa.org.au/uploads/campaign-resources/Media_Release_231019.pdf)

<sup>13</sup> Available online at: <https://www.alrc.gov.au/publication/family-law-report/>

<sup>14</sup> Available online at: <https://www.lawcouncil.asn.au/justice-project/final-report>

<sup>15</sup> Available online at:

[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)

<sup>16</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>17</sup> Available online at: <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>18</sup> Available online at: <http://files.rcfv.com.au/Reports/Final/RCFV-All-Volumes.pdf>

<sup>19</sup> Available online at: <https://aifs.gov.au/publications/evaluation-2012-family-violence-amendments/export>

<sup>20</sup> Available online at:

[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)

<sup>21</sup> Available online at: <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;<sup>22</sup>
- 2009 report of Professor Richard Chisholm titled Family Courts Violence Review report;<sup>23</sup>
- 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.<sup>24</sup>

AWAVA’s position has always been consistent that the redevelopment of the family law system should be underpinned by the following principles:

1. Safety for victims/survivors and their children;
2. Accessibility of the system;
3. Fairness and responsiveness; and
4. Recognition of diversity.

We strongly believe that the principle of safety and wellbeing for victims/survivors of violence and children should be a paramount consideration in any reforms to the family law system.

The current inquiry was set up in a way that disregarded gendered dynamics of domestic and family violence and cast doubt on the legitimacy of personal experiences of domestic and family violence within the family law system. The inquiry was set up to give a platform for those who seek to discredit victims/survivors and prioritise “parents’ rights” to have access to children over safety. On the 18<sup>th</sup> of October in partnership with Fair Agenda, AWAVA issued a [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 109 organisations across Australia.

We also bring your attention to the “Safety First in Family Law”, a policy platform that has been developed by the Women’s Legal Services Australia and outlines five steps to creating a family law system that keeps women and children safe.<sup>25</sup>

We strongly believe that the government has enough evidence and reports to make necessary changes in the family law system and that additional inquiries will only put victims/survivors in a harm’s way by delaying the change. AWAVA as a national women’s alliance makes this submission to once again raise those concern, provide expert evidence and advice on the current gaps and necessary improvements to be made in the family law system, and support those victims/survivors and organisations who also choose to make submissions.

## Prevalence of violence against women in Australia

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 recognised that **domestic and family violence is a gendered crime** with the vast majority of domestic and family violence perpetrated against women, usually by men.<sup>26</sup> For the

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<sup>22</sup> Available online at: <http://www.alrc.gov.au/publications/family-violence-national-legal-response-alrc-report-114>

<sup>23</sup> Available online at: <https://www.ag.gov.au/FamiliesAndMarriage/Families/FamilyViolence/Documents/Family%20Courts%20Violence%20Review.doc>

<sup>24</sup> Available online at: <https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Documents/Improving%20responses%20to%20family%20violence.pdf>

<sup>25</sup> Women’s Legal Services Australia 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>26</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

purposes of this submission we are focusing on women predominantly as being at risk and vulnerable within the system, yet at the same time recognising that men can be victims too.

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>27</sup>
- **Women are more likely to experience violence from a known perpetrator**, while men are more likely to experience violence from strangers.<sup>28</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>29</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>30</sup>
- In 2018 a report was published analysing 152 domestic and family violence related **homicides** (between 01/07/10 and 30/06/14), the large majority of which were **perpetrated by men against women**.<sup>31</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>32</sup>
- Australian police deal with **5,000 family violence matters on average every week**, which averages to one matter every two minutes.<sup>33</sup>

Understanding of 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 DFV and sexual violence 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 as described above 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:

- Between 34 and 80 times more likely to experience DFV than non-Indigenous women;<sup>34</sup>
- 32 times more likely to be hospitalised as a result of DFV;<sup>35</sup> and
- up to 3.7 times more likely than other women to be victims of sexual violence;<sup>36</sup>

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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>27</sup> Australian Institute of Health and Welfare (2018) Family, Domestic and Sexual Violence in Australia, p. ix

<sup>28</sup> Ibid.

<sup>29</sup> ABS 2017b. Personal Safety Survey 2016. ABS cat. no. 4906.0. Canberra: ABS.

<sup>30</sup> Ibid.

<sup>31</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>32</sup> ABS 2017b. Personal Safety Survey 2016. ABS cat. no. 4906.0. Canberra: ABS.

<sup>33</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>34</sup> Angela Spinney, ‘FactCheck Q&A – Are Indigenous Women 34–80 times more likely than average to experience violence?’ The Conversation, 4 July 2016 <https://theconversation.com/factcheck-ganda-are-indigenous-women-34-80-times-more-likely-than-average-to-experience-violence-61809>

<sup>35</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>36</sup> Australian Institute of Health and Welfare (2006) Family Violence Among Aboriginal and Torres Strait Islander Peoples.

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.

**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>37</sup> Women with disabilities in Australia are targeted because of systems and structures that put them at greater risk of violence and encounter more barriers when they try to protect themselves and seek justice due to inaccessible systems.<sup>38</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>39</sup>
- Women with disability are also 40% more likely to be the victims of domestic and family violence than women without disability.<sup>40</sup> Evidence indicates that every week in Australia, three women are hospitalised with a brain injury as a direct result of DFV.<sup>41</sup>
- More than 70% of women with disability having been victims of violent sexual encounters at some time in their lives.<sup>42</sup>
- 20% of women with disability report a history of unwanted sex compared to 8.2% of women without disability,<sup>43</sup> and the rates of sexual victimisation of women with disability range from four to 10 times higher than for other women.<sup>44</sup>
- More than a quarter of rape cases reported by females in Australia are perpetrated against women with disability.<sup>45</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 domestic and 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>46;47</sup> Women on temporary visas including those seeking asylum are ineligible

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<sup>37</sup> State of Victoria, Royal Commission into Family Violence: Report and recommendations, Vol V, Parl Paper No 132 (2014–16).

<sup>38</sup> Women with Disabilities Australia (2011) Submission to the UN Analytical Study on Violence Against Women with Disabilities.

<sup>39</sup> National CRPD Survey (2019) Findings.

<sup>40</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>41</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>42</sup> Women With Disabilities Australia '[WWDA Position Statement 1: The Right to Freedom From All Forms of Violence](#)'. WWDA, September 2016, Hobart, Tasmania.

<sup>43</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>44</sup> Ibid.

<sup>45</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>46</sup> AWAVA, Submission into the Public Consultation on Visa Simplification, available at [https://awava.org.au/2017/10/12/submissions/submission-department-immigration-border-protection-visa-simplification?doing\\_wp\\_cron=1579747672.7909080982208251953125](https://awava.org.au/2017/10/12/submissions/submission-department-immigration-border-protection-visa-simplification?doing_wp_cron=1579747672.7909080982208251953125)

<sup>47</sup> Vaugn et al., The ASPIRE Project: Research report.

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 are **lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ)** and experiencing domestic and family violence often too remain invisible. The domestic and family violence experiences of LGBTIQ people and the barriers they face in obtaining services are distinct from those of other victims/survivors of domestic and family violence.<sup>48</sup>

The existing evidence suggests that same sex couples experience the same or similar levels of domestic and family violence and intimate partner violence as heterosexual couples.<sup>49</sup>

- 32.7% of LGBTI Australians have reported experiences of being in a relationship where their partner was abusive.<sup>50</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>51</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 taken to understand the complexity of experiences, highlight systems' gaps and find relevant solutions.

## Responses to terms of reference

We note that identified terms of reference replicate some of the previous TORs in consultations we highlighted in the introduction to this submission. We also note that terms of references do not engage with 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 an intersectional lens in understanding how both experiences of domestic and family violence and experiences within the family law system will differ for diverse groups of women. Such a lens must be applied throughout the review understanding the inherent biases and systemic gaps. It must not, however, be applied in a tokenistic way by simply mentioning diverse groups of women.

We wish to reiterate our position on the urgent reform necessary to make family law safe for victims/survivors of domestic and family violence. This includes:

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<sup>48</sup> 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 (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>49</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>50</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>51</sup> Scottish Transgender Alliance (2010) Out of sight, out of mind? Transgender people's experiences of domestic abuse, Scotland

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.

We reiterate our support for WLSA's Safety First in Family Law plan, which includes the following steps:<sup>52</sup>

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 CEDAW Concluding observations on Australia, and in particular the recommendation to ensure “gender-sensitive approaches to the family violence” in the family law system.<sup>53</sup>

There needs to be an acknowledgement that for proposed reforms to be fully implemented and effective better funding and resourcing of the family law system is required. 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 reducing of budgets.

We also note a very short timeframe allocated to make submissions. In the context of under-resourcing of the specialist women's and community legal sectors, submission to yet another inquiry detracts from the core business of those organisations – direct support to victims/survivors of family and domestic violence. Such a short timeframe also potentially limits the ability of victims/survivors to properly engage with the inquiry.

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<sup>52</sup> Women's Legal Services Australia 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>53</sup> Committee on the Elimination of Discrimination against Women (2018) Concluding observations on the eights periodic report of Australia, para 28(e).

## 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 between child protection and family law systems

The child protection and family law systems often do not work in a synchronised manner. Several researchers have pointed out a lack of collaboration between systems where families are affected by domestic and family violence.<sup>54</sup> In prioritising the safety and well-being of children, child protection systems may neglect the needs of a victim/survivor. The family law system, in turn, may not have sufficient resources targeted at children and youth. Furthermore, there is a reluctance to engage with child protection services that may place the responsibility on the victim/survivor to protect children from the perpetrator, while not taking the bigger picture and impact of domestic and family violence into account.

At the same time, compliance with child protection services may increase the risk of further violence. In 2018, research was conducted for AWAVA on the interaction with child protection services in situations of domestic and family violence. One of the interviewed experts noted:

*“Mums often report feeling torn between having to do what FACS [Family and Community Services] tells them but also knowing that may put them further at risk. [For example], FACS might tell her [that] she is not to allow the children to speak with the POI [person of interest], however, he might call, and she feels that it is safer for her to hand the phone over [to the children], otherwise he will show up”.*<sup>55</sup>

Current gaps between the two systems may result in children being returned to a perpetrator.<sup>56</sup> This is exacerbated by the fact that many child protection workers remained untrained in the issues of domestic and family violence.<sup>57</sup> Humphreys and Healey also note that child protection workers often do not properly document the impact of violence and abuse on children. There are tendencies to

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<sup>54</sup> 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.

<sup>55</sup> Zhdanova T. (2018) The Intervention of child protection services in cases where children are living with domestic and family violence. Internship report for AWAVA. Available at [https://awava.org.au/2018/12/21/research-and-reports/intervention-of-child-protection-services-in-cases-where-children-are-living-with-domestic-and-family-violence?doing\\_wp\\_cron=1579559824.0878350734710693359375](https://awava.org.au/2018/12/21/research-and-reports/intervention-of-child-protection-services-in-cases-where-children-are-living-with-domestic-and-family-violence?doing_wp_cron=1579559824.0878350734710693359375)

<sup>56</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>57</sup> 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.



minimise the potential impact of DFV on children, through the use of language that framed recorded incidents as an issue between parents only.<sup>58</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 a child where safety of the child is 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 the panacea”.<sup>59</sup> We share the concerns expressed by Women’s Legal Services Australia in relation to the ability to analyse and interpret the data in (presumably created) shared database, privacy of sensitive and personal records as well as access to the records when parties do not have legal representation.

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 need to consent to sharing this information.

## Recommendations

We recommend that the Australian Government:

1. Ensure 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.
2. Recognise that records from frontline state and territory domestic violence interagency responses form a crucial missing component of relevant information for matters involving family violence and abuse.

## 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

Overall despite the high prevalence of domestic and family violence, some damaging narratives around disbelief to victims/survivors permeate discourses. We note the very establishment of this inquiry was rooted in a publicly casted doubt on the validity of victims/survivors experiences within the family law system. 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

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<sup>58</sup> Ibid.

<sup>59</sup> Women’s Legal Service Australia (2018) Submission to the Australian Law Reform Commission’s Issues Paper on Review of the Family Law System

the behaviour as abusive.<sup>60</sup> The most recent National Communities Attitudes Survey run by ANROWS states that despite the majority of Australians rejecting attitudes supportive of violence against women, 2 in 5 Australians believe that women make up false reports of sexual assault in order to punish men; 1 in 3 Australians believe that if a woman does not leave her abusive partner then she is responsible for the violence continuing and nearly 1 in 5 Australians do not believe financial control is a serious problem.<sup>61</sup> Such damaging narratives make their way into systemic issues and contribute to unjust court outcomes for victims/survivors of violence.

Analysis of cases before the Federal Circuit Court conducted by Harmon<sup>62</sup> showed that 76.12% cases before the court involved allegations of family violence. Despite high prevalence of DFV and such matters in family courts, the 2006 study<sup>63</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>64</sup>

Women who have had violence perpetrated against them become particularly vulnerable within the family law system for a number of reasons: lack of consideration of domestic and family violence and its impact on the ability of a woman to equally participate financially and acquire property<sup>65</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 (we expand more on this in the next section).

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>66</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>67</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 experiences of domestic and 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 the violent father to have contact with his children as opposed to prioritising safety of children. Such situations are further intensified in contexts where a mother has a disability. We expand more on this in the section highlighting how even in the context of DFV, disability is equated with a lack of parental capacity and children are still left in the care of a violent father.

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<sup>60</sup> [https://www.theguardian.com/australia-news/2019/oct/10/essential-poll-young-men-least-likely-to-identify-abusive-domestic-behaviour?fbclid=IwAR1Rth7S4SoY1AWyOXFI04sOY4u\\_V9R4TvtZe9EcbWSOORYLfbR3RXSdPOHY](https://www.theguardian.com/australia-news/2019/oct/10/essential-poll-young-men-least-likely-to-identify-abusive-domestic-behaviour?fbclid=IwAR1Rth7S4SoY1AWyOXFI04sOY4u_V9R4TvtZe9EcbWSOORYLfbR3RXSdPOHY)

<sup>61</sup> For full report visit <https://ncas.anrows.org.au/findings/4-attitudes-to-violence-against-women/>

<sup>62</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>63</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>64</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.

<sup>65</sup> Ibid.

<sup>66</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>67</sup> Women’s Legal Services Australia 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)

There has been much evidence produced to support this claim. The most recent study<sup>68</sup> conducted by Francia, Millear 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 et al 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>69</sup>

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>70</sup> Similarly, Zita Adut Deng Ngor, CEO of the Women’s Legal Services South Australia reported in the interview to AWAVA:

*“So, it is always a delicate balancing act in terms of how far you push the issue of domestic and family violence. It can actually harm your client, if you push too hard with the wrong judicial officer. [...] And sometimes the other party may get more time with the child than they otherwise would have, if the same matter was put before another judicial officer”.*<sup>71</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>72</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>73</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>74</sup> All of these findings shared another commonality in 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 this context, we strongly believe that early risk assessment needs to be in place alongside better safeguards where domestic and family violence was not identified early. This requires sufficient training and resourcing for courts. It is, thus, important that reforms in the family law system start from the premises of safety of women and their children and account for the possibility of domestic and family violence. Judiciary and all other relevant professions needs to be trained in the nature and dynamics of domestic and family violence to be able to apply that lens and identify potential violence to support disclosure. We elaborate on this more further in the submission in response to the [TOR C](#).

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<sup>68</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

<sup>69</sup> Ibid., 221.

<sup>70</sup> Ibid., 223.

<sup>71</sup> Zhdanova T. (2018) The Intervention of child protection services in cases where children are living with domestic and family violence. Internship report for AWAVA. Available at [https://awava.org.au/2018/12/21/research-and-reports/intervention-of-child-protection-services-in-cases-where-children-are-living-with-domestic-and-family-violence?doing\\_wp\\_cron=1579559824.0878350734710693359375](https://awava.org.au/2018/12/21/research-and-reports/intervention-of-child-protection-services-in-cases-where-children-are-living-with-domestic-and-family-violence?doing_wp_cron=1579559824.0878350734710693359375)

<sup>72</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%3Ahein.journals/lieq35&div%21&id%21&page%21>

<sup>73</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>74</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

### Anna's Story<sup>75</sup>

Anna was married to Graham for 18 years and they had 2 children together. In 2015 after years of ongoing physical and emotional abuse, Anna left Graham. Being aware of the repercussions that would follow, Anna sought help from the local police, asking for an ADVO. However, she was denied and was told that she should have reported abuse when it was happening.

Deciding on parenting arrangements, after a psychiatrist report concluded that her ex-partner was neither suicidal nor homicidal, the Family Court issued an order for parents to share custody on alternating weeks and for children to remain in the family home. While this was meant to ensure that Graham could only enter their property when Anna was not there, Anna was fearful that the abuse would continue. The court did not take these risks into consideration.

On the first night after the hearing, Graham broke in at night and threatened Anna. Anna was finally able to take an ADVO, but Graham broke its conditions on multiple occasions and assaulted Anna. In totally it took three years to finalise custody. Anna continues to live in fear of violence from her ex-partner.

### Misuse of systems and processes as family violence

Misuses 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 drag out the length of the process, which significantly and unnecessarily increases its costs for victims/survivors.

Systems abuse has been consistently identified throughout the Australian and international literature and evidence as being used in the 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>76</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>77</sup>
- 2017 ANROWS research<sup>78</sup> has found that systems abuse type behaviours of perpetrators included: exploiting the intersection between family law, child protection and criminal legal systems to their advantage, raising counter-allegations and unjustifiable applications 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>79</sup> in her study reports that women’s engagement with the legal systems is experienced as an extension of coercive control (p.88). This included frequent requests for adjournments, making counter allegations, calling irrelevant witnesses and initiating excessive litigation in the Family court.

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<sup>75</sup> The name and some details have been changed to protect privacy. This case study has been provided directly to AWAVA by a victim/survivor.

<sup>76</sup> Australian Law Reform Commission and New South Wales Law Reform Commission (2010) Family Violence – A National Legal Response, Report 114.

<sup>77</sup> Cameron, Prue, [‘Relationship Problems and Money: Women Talk about Financial Abuse’](#) (Research Report, Wire Women’s Information, 2014).

<sup>78</sup> Kaspiew, 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>79</sup> Douglas, Heather, ‘Legal Systems Abuse and Coercive Control’ (2018) 18(1) Criminology & Criminal Justice 84-99.

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>80</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.

We thus reiterate the need for a better training of family law professionals and better procedures to prevent systems abuse and hold perpetrators to account. We note that the final ALRC report has recommended to include the ‘use of systems or processes to cause harm, distress or financial loss’ into the definition of family violence.<sup>81</sup>

In summary, throughout the submission we are highlighting legal and societal (attitudes towards VAW) barriers that prevent victims/survivors from reporting their experiences. Such barriers are compounded by the ongoing abuse that perpetrators are able to inflict on them through systems and a systemic disbelief in their experiences. A study by Laing<sup>82</sup> reported that in such settings 63% of women 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>83</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 impedes their journey to recovery.

#### **Anna’s Story<sup>84</sup>**

Anna was married to Graham for 18 years and they had 2 children together. In 2015 after years of ongoing physical and emotional abuse, Anna left Graham.

<sup>80</sup> National Domestic and Family Violence Bench book, Systems Abuse <https://dfvbenchbook.aija.org.au/understanding-domestic-and-family-violence/systems-abuse/kl?highlight=WyJtaXN1c2UiXQ==>

<sup>81</sup> ALRC Final Report proposal 8-3.

<sup>82</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>83</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>84</sup> The name has been changed to protect the privacy. This case study has been provided directly to AWAVA by a victim/survivor.

During several years of family court proceedings over children’s custody, Graham lodged appeals on every decision handed down. This was done deliberately to delay proceedings, thereby increasing Anna’s legal fees.

## Protection of Sexual Assault Communications

Sexual assault communications are communications made in the course of a confidential relationship between a counsellor and a person who has had sexual assault perpetrated against them.<sup>85</sup> These communications can include a broad range of counselling and therapeutic records such as, for example, sexual assault counselling notes, case notes or medical files in sexual assault trials. The disclosure of such information can be extremely traumatic and harmful for victims of sexual assault in sexual assault legal proceedings; not only can it undermine the integrity of counselling and therapeutic relationship and have long-term implications for the survivor/victim, it also has the potential to lead to deductions and assumptions about the “moral worthiness” of sexual assault survivors/victims in reports of sexual assault.<sup>86</sup> This can lead to the unnecessary withdrawal of sexual assault complaints and discourage sexual assault survivors/victims from reporting sexual offence. The potential outcomes of disclosing such information in court proceedings is recognised as being contrary to public interest<sup>87</sup> with advocates highlighting that counselling is not designed to investigate allegations of crime or produce evidence as it does not have an investigative or forensic purpose; it is therefore not relevant to a sexual offence trial.<sup>88</sup>

In response to the growing practice of subpoenas for sexual assault communications, on-going reform of sexual assault laws has included legislation to protect sexual assault communications of sexual assault complainants by limiting access to, and use of such communications. Every state and territory now has specific legislation protecting counselling communications in sexual violence proceedings, with some variations.<sup>89</sup> While models of such legislation differ across jurisdictions they are commonly referred to as the Sexual Assault Communications Privilege (SACP).<sup>90</sup> SACP has been considered by a number of law reform bodies, which have generally reaffirmed that the privilege is in the public’s interest.<sup>91</sup> In some jurisdictions such as NSW, there are services that support sexual assault victims to claim the privilege when their confidential records are subpoenaed.<sup>92</sup> Nevertheless, there are serious shortcomings nation-wide in terms of the operation of the privilege in practice.

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<sup>85</sup> ALRC (2010), Family Violence – A National Legal Response, p. 1257

<sup>86</sup> Heath, M. (2005) The law and sexual offences against adults in Australia, ACSSA Issues No. 4, <https://aifs.gov.au/publications/law-and-sexual-offences-against-adults-australia>

<sup>87</sup> Hon Jeff Shaw MLC, Second Reading Speech, Evidence Amendment (Confidential Communications) Bill 1997 (NSW) Hansard, Legislative Council, 22 May 1997, pp. 1120-1121  
<http://23.101.218.132/prod/parlament/hansart.nsf/V3Key/LC19971022003?open&refNavID=>

<sup>88</sup> Heath, M. (2005) The law and sexual offences against adults in Australia. See section on Protection of counselling communications, <https://aifs.gov.au/publications/law-and-sexual-offences-against-adults-australia/protection-counselling-communications>

<sup>89</sup> Evidence (Miscellaneous Provisions) Act 1991 (ACT) s54; Criminal Procedure Act 1986 (NSW), s296–396; Evidence Act 1939 (NT) s56; Evidence Act 1929 (SA) s67D–67F; Evidence Act 2001 (Tas) s 127B; Evidence Act 1958 (Vic) Division 2A s32B–32G; Evidence Act 1906 (WA) s 19A–19L; Victims of Crime Assistance and Other Legislation Amendment Act. 2017 (Qld). On variations between the State and Territory laws (to 2012) see Jilliard, A., Loughman, J. and MacDonald, E. (2012), ‘From Pilot Project to Systemic Reform: Keeping sexual assault victims’ counselling records confidential’, *Alternative Law Journal*, 37(4), pp. 254-258.

<sup>90</sup> For an outline of these models, see Heath, M. (2005) The law and sexual offences against adults in Australia, section on Protection of counselling communications, <https://aifs.gov.au/publications/law-and-sexual-offences-against-adults-australia/protection-counselling-communications>

<sup>91</sup> Australian Law Reform Commission [ALRC] (2009), Making Inquiries: A New Statutory Framework, Report 111, section 3.20  
<http://www.alrc.gov.au/report-111>

<sup>92</sup> Sexual Assault Communications Privilege Service NSW website <http://www.legalaid.nsw.gov.au/what-we-do/civil-law/sexual-assault-communications-privilege-service>

There are two major challenges that hinder the enforcement of the privilege. The first challenge is that those who may be affected by the disclosure of the communication in sexual assault trials often need information and legal representation to enable them to claim or seek to enforce this privilege; without representation in criminal proceedings, people may not be in a position to do this.<sup>93</sup>

The second challenge arises from the privilege not being respected in practice. For instance, the Victorian Law Reform Commission (2004) found that the legislation has not prevented subpoenas being issued and, in most jurisdictions, defence lawyers are still able to issue a subpoena requiring a person to produce counselling communications. Rather, the onus of the protection of privileged material lies on the recipient of a subpoena that seeks counselling records, such as, for example, a private counsellor who has to oppose the subpoena. In some instances, such as those highlighted by the Centres against Sexual Assault, a private counsellor may be compelled to pay lawyers to oppose subpoenas requesting their files at considerable expense; a burden which private counsellors may simply not be able to meet.<sup>94</sup>

In its report *Sense and Sensitivity: Family Law, Family Violence, and Confidentiality* Women's Legal Service NSW has found that "many sexual assault services, women's health centres and other counsellors rarely object to the production of sensitive counselling and therapeutic records despite a desire by the client and/or the service provider to do so." The report further stated that this is largely due to a lack of knowledge or fear of the legal process and limited resources to attend court events to speak to the objection. For example, a private counsellor or therapist would have to give up at least part of a day of work to attend court. This is compounded if the service is not located near the relevant court registry.<sup>95</sup> As a result, subpoenas are frequently used to "require counsellors to attend and give evidence or produce notes" and "[p]rivate counsellors who are unaware that the law protects confidential counselling communications may produce records, rather than appearing in court to resist a subpoena".<sup>96</sup>

Furthermore, the fact that complainants frequently do not receive notice that a subpoena has been issued or that a party seeks to use evidence of their counselling records until it is too late raises further concerns about the level of awareness of the legislation among private counsellors who may be unaware of the provisions and the protection they provide. Western Australia is the only jurisdiction to bring in legislative changes that would prevent the burden of responding to a subpoena from resting on the service or counsellor, in which a person can only be required to produce a document with the court's agreement.

In 2009 WLS NSW initiated and co-ordinated the SACP Pilot project in with the Office of the Director of Public Prosecutions, law firms Ashurst, Clayton Utz and Freehills, and the NSW Bar Association.<sup>97</sup> The project aimed to: provide a temporary measure to meet the legal service needs of some complainants; demonstrate how a victim's advocate model of legal service delivery could work in Australia; identify the extent and nature of legal need in relation to privilege claims; and gather information about the day-to-day operation of the privilege which we could use as evidence for the need to change.<sup>98</sup> Representation through the project successfully resulted in preventing or limiting access to victims' confidential records in 91 per cent of subpoenas.<sup>99</sup> Reports from the Office of the Director of Public Prosecutions, NSW (ODPP) stated that complainants involved in the SACP Pilot gave 'very positive'

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<sup>93</sup> ALRC (2010) *Family Violence – A National Legal Response*, p. 1257

<sup>94</sup> Heath, M. (2005) *The law and sexual offences against adults in Australia*, section on Protection of counselling communications.

<sup>95</sup> Women's Legal Service NSW (2016), *Sense and Sensitivity: Family Law, Family Violence, and Confidentiality* <http://www.wlsnsw.org.au/wp-content/uploads/WLS-NSW-Sense-and-Sensitivity-web.pdf>

<sup>96</sup> Victorian Law Reform Commission (2004) *Sexual Offences: Final Report*, section 4.74 [http://www.lawreform.vic.gov.au/sites/default/files/FinalReport\\_0.pdf](http://www.lawreform.vic.gov.au/sites/default/files/FinalReport_0.pdf)

<sup>97</sup> Jilliard, A., Loughman, J. and MacDonald, E. (2012), 'From Pilot Project to Systemic Reform: Keeping sexual assault victims' counselling records confidential', *Alternative Law Journal*, 37(4), pp. 254-258.

<sup>98</sup> ALRC (2010), *Family Violence – A National Legal Response*, p. 1257

<sup>99</sup> Jilliard, Loughman and MacDonald (2012), 'From Pilot Project to Systemic Reform'.

feedback about the assistance they had received and acknowledged that that the SACP Pilot increased awareness of the privilege and the complainant's rights. As well as amendments to the Criminal Procedure Act, the SACP Pilot resulted in the establishment of the Sexual Assault Communications Privilege Service (SACP Service) within Legal Aid NSW in 2012. The SACP Service continues to provide legal advice and representation to victims of sexual assault and other "protected confiders" who want to prevent or restrict the disclosure of sensitive sexual assault communications in court, as well as assisting complainants who wish to consent to the release of private documents in an informed way.<sup>100</sup> The service also provides education and training to the legal profession, police, sexual assault counsellors, medical records staff and other health professionals to promote awareness of the privilege.<sup>101</sup>

WLS NSW advocates for the establishment of a service, similar to the SACP Service, to provide advice and representation in family law and child protection matters for individuals and services wishing to object to subpoenas of sensitive records.<sup>102</sup> Other organisations have also expressed views about how to improve the operation of the privilege in practice for sexual assault complainants. For example, Women's Legal Service Queensland, in their submission to the ALRC Family Violence – A National Legal Response, supported the development of processes to better enable unrepresented people to assert the privilege. The Canberra Rape Crisis Centre supported absolute protection of communications unless the complainant consents to their production and NASASV suggested that measures should target third parties who hold confidential records to ensure that they are informed about the communications privilege.<sup>103</sup>

Efforts to improve information-sharing in relation to family law and domestic and family violence should be pursued within a framework that is victim-centric, supports informed consent and is more responsive to disclosures of violence, as detailed in WLS NSW's 2016 report *Sense and Sensitivity: Family Law, Family Violence, and Confidentiality*.<sup>104</sup>

## Recommendations

We recommend that the Australian Government:

3. Include the 'use of systems or processes to cause harm, distress or financial loss' in the definition of family violence.<sup>105</sup>
4. Adopt a broader responsibility for victims/survivors by ensuring that records of supportive and therapeutic services are shielded from the perpetrator so that victims can focus on recovery and their capacity to care for their children.<sup>106</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>100</sup> Sexual Assault Communications Privilege Service NSW website <http://www.legalaid.nsw.gov.au/what-we-do/civil-law/sexual-assault-communications-privilege-service>

<sup>101</sup> *Ibid.*

<sup>102</sup> *Ibid.*

<sup>103</sup> ALRC (2010), Family Violence – A National Legal Response, p. 1257

<sup>104</sup> WLSA (2016) *Sense and Sensitivity: Family Law, Family Violence and Confidentiality* <http://www.wlsnsw.org.au/wp-content/uploads/WLS-NSW-Sense-and-Sensitivity-web.pdf>

<sup>105</sup> ALRC Final Report proposal 8-3.

<sup>106</sup> WLSA (2016) *Sense and Sensitivity: Family Law, Family Violence and Confidentiality* <http://www.wlsnsw.org.au/wp-content/uploads/WLS-NSW-Sense-and-Sensitivity-web.pdf>



## Position on the merger of the Family Court and the Federal Circuit Court

We note that AWAVA has opposed the proposed court merger reforms.<sup>107</sup> These reforms prioritise budget savings over safety and court specialisation. AWAVA has also signed the Open Letter to the Attorney General on the concerns about proposed family court merger.<sup>108</sup> We expressed our position that we prefer a model that retains a stand-alone specialist superior family court and increases family law and family violence specialisation. The safety of children and adult victims-survivors of family violence requires increased specialisation. While we recognise that there may be benefits from a well-resourced and properly-equipped system in which victims/survivors only need to navigate a single court, the merger as proposed is not that. The proposed merger is not designed to serve the needs of victims/survivors and the concerns raised should be heeded.

Action can also be taken now to further increase family violence specialisation in the family law system through:

- Introducing effective ongoing court-based family violence risk assessment practices
- Early determination of family violence, and
- Increasing family violence competency of all professionals in the family law system.<sup>109</sup>

## Strengthen family violence response in the family law system

It is imperative that families are supported within the family law system to reduce family violence and other safety risks. WLSA identifies that the identification of risks associated with family violence and other safety concerns is the first step toward supporting families to reduce or at least manage these risks. Upon filing of any family law application, the following risk assessment process should be undertaken as soon as practicable:

- 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>110</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 Safety Assessment Tool (DVSAT) could be used during the design of the national risks assessment framework. We also note that in 2018 ANROWS conducted a research project

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<sup>107</sup> See AWAVA (2018) Submission to the Inquiry into the Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Bill 2018 and Federal Circuit and Family Court of Australia Bill 2018 <https://s3-ap-southeast-2.amazonaws.com/awava-cdn/awava/wp-content/uploads/2018/11/16133315/AWAVA-Submission-Family-Courts-restructure.pdf>

<sup>108</sup> Women's Legal Services Australia (2019) Open Letter: Concerns about proposed family court merger. [http://www.wlsa.org.au/submissions/open\\_letter\\_-\\_concerns\\_about\\_proposed\\_family\\_court\\_merger](http://www.wlsa.org.au/submissions/open_letter_-_concerns_about_proposed_family_court_merger)

<sup>109</sup> Ibid.

<sup>110</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)

and developed National Risk Assessment Principles for Domestic and Family Violence.<sup>111</sup> While different states and territories utilise different tools, there is need to move to a consistent approach Australia-wide.

Without an 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 who 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>112</sup>

The 2015 evaluation by the Australian Institute of Family Studies finds 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>113</sup> It has also found that for parents who experienced DFV only 41% agreed that the court order protected the safety of their children.

The most recent report by the AIFS has found that about 3% of separated parents will use the courts to make their parenting arrangements.<sup>114</sup> Most of these families are affected by family violence. Despite complex case where children are survivors of violence too or have witnesses their fathers being violent, only 3% of all court cases resulted in the no contact with one parent.

Another report by AIFS notes that:

- nearly half had safety concerns for themselves and/or their children,
- 85% reported a history of family violence involving emotional abuse, and
- more than half reported physical violence.<sup>115</sup>

The same report also states that family violence is “the most commonly raised factual issue in litigated proceedings”.<sup>116</sup> The amount of cases before the court that involve family violence are increasing.<sup>117</sup> With this information it becomes 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 law system, yet it is not dealt with like one.

There is an urgent need to:

1. Strengthen family violence response through a specialist family violence pathway or specialist family violence family law courts
2. Introduce effective ongoing court based family violence risk assessment practices
3. 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>118</sup>

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<sup>111</sup> See: <https://www.anrows.org.au/research-program/national-risk-assessment-principles/>

<sup>112</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>113</sup> Rae Kaspiew et al, ‘Evaluation of the 2012 Family Violence Amendments: Synthesis Report’ (Australian Institute of Family Studies, 2015), p. 182.

<sup>114</sup> AIFS (2019) Parenting arrangements after separation. Evidence summary.

<sup>115</sup> Rae Kaspiew et al, ‘Evaluation of the 2012 Family Violence Amendments: Synthesis Report’ (Australian Institute of Family Studies, 2015) 16.

<sup>116</sup> Ibid., 49

<sup>117</sup> <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/news/mr200616>

<sup>118</sup> WLSA (2019) Safety First in family law. Five steps to creating a family law system that keeps women and children safe.

## Removal of a presumption of equal shared parental responsibility

Following on the subsection above, 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>119</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.

We note that the 2019 ALRC family law review recommended replacement of the shared parental responsibility by the decision making on long-term issues affecting the child. The outlined proposals are in line with AWAVA's position on prioritising the best interests of the child. We also commend the proposed language of 'safety and best interest of the child' as well as the recognition that family violence and abuse as impeding safety. Yet, we think that the text of the proposal may potentially open a loophole for perpetrators to obtain custody or other parenting arrangements. It can be particularly evident in cases where a mother 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>120</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>121</sup> Discriminatory practices, misconceptions, lack of awareness and training on disability create significant disadvantages for people with disability in the justice system.<sup>122</sup> The disadvantage is further exacerbated by people's limited understanding of their rights within the legal system, poor economic position, communications difficulties or other personal barriers.<sup>123</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>124</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,

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<sup>119</sup> Family Law Act 1975 (Cth) s 61DA

<sup>120</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>121</sup> Robyn Mildon et al, Understanding and Supporting Parents with Learning Difficulties (Victorian Parenting Centre, 2003) 4.

<sup>122</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').

<sup>123</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>124</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.

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>125</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 relationships 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>126</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>127</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. We also stress the importance of supporting women with disabilities in their parenting by referring them to relevant organisations rather than removing their children as the only resort.

It is clear that 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.

### Appoint more judges, registrars and family consultants

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>128</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).

### Employing Aboriginal and Torres Strait Islander Liaison Officers in Family 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>129</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>130</sup>

The Family Law Council’s Interim Report on Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems<sup>131</sup> highlighted the need for the government to provide funding for the employment of Aboriginal and Torres Strait Islander family liaison officers.

### Employing Multicultural Liaison Officers in family 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.

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<sup>125</sup> Ibid.

<sup>126</sup> Ibid.

<sup>127</sup> Ibid

<sup>128</sup> Law Council of Australia (2017) Parliamentary inquiry into a better family law system to support and protect those affected by family violence.

<sup>129</sup> Family Court of Australia, 2016-2017 Annual Report. We note that the most recent reports do not provide such disaggregation of employees.

<sup>130</sup> Federal Circuit Court of Australia, 2016-2017 Annual Report. We note that the most recent reports do not provide such disaggregation of employees.

<sup>131</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>

## Recommendations

We recommend that the Australian Government:

5. Abandon the merger of the Family Law Court and the Federal Circuit Court of Australia.
6. Strengthen the family violence response through a specialist family violence pathway or specialist family violence family law courts.
7. Introduce effective ongoing court based family violence risk assessment practices.
8. 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>132</sup>
9. Remove the presumption of equal shared parenting responsibility from the Family Law Act to shift culture and practice towards a greater focus on safety and risks to children.
10. Appoint more judges, registrars, family consultants, Aboriginal and Torres Strait Islander Liaison Officers and Multicultural Liaison Officers in family courts.
11. Establish Cultural Diversity Committees, introduce multicultural plans, and actively recruit employees from migrant and refugee backgrounds.
12. Increase funding to the Family Court and Federal Circuit Court to strengthen their response to matters involving domestic and family violence.

### 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;

### Concession fee in courts

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>133</sup> Legal Aid's eligibility criteria excludes the majority of people who are on the margin of the required earning.<sup>134</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 filing an Application for Divorce in the Federal Circuit Court is \$865; initiating

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<sup>132</sup> Women's Legal Services Australia 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>133</sup> Productivity Commission (2014) Access to Justice Arrangements: Productivity Commission Inquiry Report, No. 72, Volume 2, pp. 1021-1022.

<sup>134</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.

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>135</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.

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 apply 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<sup>136</sup> and the Blueprint for Reform<sup>137</sup> providing a more detailed analysis of the issue 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>138</sup>

It is also 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>139</sup>

All of the above highlights the need to review the costs of court proceedings, expand the eligibility criteria for fee concessions, increase funding to the Family Court and Federal Circuit Court and increase funding to Legal Aid, Community Legal Centres, Family Violence Prevention Legal Services and

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<sup>135</sup> See: <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/forms-and-fees/fees-and-costs/fees>

<sup>136</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>137</sup> National Advocacy Group on Women on Temporary Visas Experiencing Violence (2019) Blueprint for Reform: Removing Barriers to Safety for Victims/Survivors of Domestic and Family Violence who are on Temporary Visas; available at [https://s3-ap-southeast-2.amazonaws.com/awava-cdn/awava/wp-content/uploads/2019/10/21130646/Blueprint-for-Reform\\_web\\_version.pdf](https://s3-ap-southeast-2.amazonaws.com/awava-cdn/awava/wp-content/uploads/2019/10/21130646/Blueprint-for-Reform_web_version.pdf)

<sup>138</sup> Law Council of Australia (2017) The Justice Project. People who Experience Family Violence. Consultation Paper. Law Council of Australia

<sup>139</sup> Smallwood, E. (2015) Stepping Stones: Legal barriers to economic equality after family violence, Women's Legal Service Victoria, Melbourne. available at <https://www.womenslegal.org.au/files/file/1.%20Final%20-%20Stepping%20Stones%20Report.pdf>

Aboriginal and Torres Strait Islander Legal Services in order to increase representation of financially disadvantaged people. We elaborate further on Legal Aids' funding below.

### Need for a specialised legal aid grants pathway in family law for victims/survivors of family violence

The lack of a specialised legal aid grant pathway for victims/survivors of domestic violence, particularly in family law matters, is a major concern because of the existing gender bias.<sup>140</sup> When viewed as a whole, funding allocated to legal assistance services favours criminal law matters.<sup>141</sup> As men have significantly higher rates of being charged with criminal offences that could result in imprisonment, they are more likely than women to seek assistance in criminal law matters and, as a result, there are more male legal aid applicants.<sup>142</sup> In 2013, a study found 75% of the highest users of Legal Aid in NSW were men and all participants in the study had accessed criminal law services.<sup>143</sup> On the other hand, women are more likely to require assistance in relation to being a victim/survivor of domestic and family violence, particularly in the family law system and/or civil law system, which typically affect female legal aid applicants. And while the high number of women killed in the context of domestic violence provides a strong case that loss of liberty and life arguments apply, which can be as pertinent in family law matters as they are in criminal law matters, their gender-specific legal needs are not prioritised and are therefore not met.

Challenges for women in obtaining legal aid are also evident in the application of Legal Aid Commissions' family law policies and guidelines. For example, some women's legal services have reported cases of legal aid grants being terminated if a party does not agree with the recommendations made by a family report writer who has been appointed to comment on the care, welfare and development of a child in a family law matter.<sup>144</sup>

*"To get the full representation in court, that substantial dispute has to exist. But if you get legal aid at the beginning of proceedings, that may, it's tenuous, it may be lost at certain stages throughout. So, let's say a family report comes in that is not supportive of the woman who's got legal aid. [The] Legal Aid [Commission] might actually cut legal aid, because they don't think she's got a good chance of winning. We've also seen cases where there is a positive family report that says, "She's doing everything right", says, "she should get what she wants". We've seen legal aid cut in those situations because they say, "Well, we've got an independent children's lawyer here, the family report says it's all good". But then it gets to the final hearing and because she doesn't have someone to speak up for her, it's just completely crumbled. And that's counter-intuitive to me; I don't understand it but, you know, legal aid, they've got funding issues as well, and they make their policy decisions based on that, I guess so (Rachel Neil, Women's Legal Services Queensland)."*<sup>145</sup>

In addition, the provision of legal aid is dependent on the stringent guidelines of each state and territory that may fail to take into account the nuances of a woman in cases of violence. For example, the provision of legal aid is often based upon a client meeting a requisite means test<sup>146</sup>, precluding women who have a small level of financial support from family members or charities from receiving legal aid.

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<sup>140</sup> WLSA submission to senate inquiry – Domestic Violence and gender inequality 12 April 2016, pg 7

<sup>141</sup> Productivity Commission, Access to Justice Arrangements – Productivity Commission Draft Report, April 2014, pg 627.

<sup>142</sup> WLSA submission to senate inquiry – Domestic Violence and gender inequality 12 April 2016.

<sup>143</sup> Ibid.

<sup>144</sup> WLSA submission to the Productivity Commission's Access to Justice Inquiry, 4 November 2013, p.18.

<sup>145</sup> Zhdanova T. (2018) The Intervention of child protection services in cases where children are living with domestic and family violence. Internship report for AWAVA. Available at [https://awava.org.au/2018/12/21/research-and-reports/intervention-of-child-protection-services-in-cases-where-children-are-living-with-domestic-and-family-violence?doing\\_wp\\_cron=1579559824.0878350734710693359375](https://awava.org.au/2018/12/21/research-and-reports/intervention-of-child-protection-services-in-cases-where-children-are-living-with-domestic-and-family-violence?doing_wp_cron=1579559824.0878350734710693359375)

<sup>146</sup> Legal Aid New South Wales. Criminal Law Matters: when legal aid is available: Apprehended Domestic Violence Orders: <http://www.legalaid.nsw.gov.au/for-lawyers/policyonline/policies/4.-criminal-law-matters-when-legal-aid-is-available/4.4.-apprehended-domestic-violence-orders#4.4.1%20Applicants%20in%20Apprehended%20Domestic%20Violence%20Orders>

There should be a separate and additional specialised domestic violence pathway for legal aid grants, particularly for family law and care and protection matters. Such a pathway could make the legal aid application process more effective and could have public interest benefits in having legal aid policies and guidelines that work best to eliminate violence against women. Currently, women’s legal services and other community legal services spend a considerable amount of time advising and advocating for women who have been refused legal aid, including helping them to appeal such decisions.

*“If a woman is trying to navigate the family law system without legal representation, it is a major disadvantage for anyone really, but particularly for women who are victims of domestic and family violence. The system is complicated, it is obviously emotional, when you’ve got the dynamic of DV as well, it is often very fearful. And you either end up in the situation where one party might be lawyered up, and so has the benefit of, you know, the legal knowledge and representation and can absolutely slam the non-represented party in, you know, every area basically. On the flip side though as well, if you end up with both parties unrepresented or self-representing, you then have got the dynamic of the perpetrator (Hayley Grainger, Principal Solicitor, North Queensland Women’s Legal Services).”<sup>147</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>148</sup>

## 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>149</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>150</sup>

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<sup>147</sup> Zhdanova T. (2018) The Intervention of child protection services in cases where children are living with domestic and family violence. Internship report for AWAVA. Available at [https://awava.org.au/2018/12/21/research-and-reports/intervention-of-child-protection-services-in-cases-where-children-are-living-with-domestic-and-family-violence?doing\\_wp\\_cron=1579559824.0878350734710693359375](https://awava.org.au/2018/12/21/research-and-reports/intervention-of-child-protection-services-in-cases-where-children-are-living-with-domestic-and-family-violence?doing_wp_cron=1579559824.0878350734710693359375)

<sup>148</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.

<sup>149</sup> Family Law Act 1975 s79(4)

<sup>150</sup> WLSA. 2016. Safety First in family law: Five steps to creating a family law system that keeps women and children safe 4b.



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>151</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>152</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>153</sup>

We also refer you to the Stepping Stones: Legal barriers to economic equality after family violence (Women’s Legal Service Victoria)<sup>154</sup> report, Small Claims, Large Battles: Achieving economic equality in the family law system (Women’s Legal Service Victoria)<sup>155</sup> and the Economic Security for Survivors of Domestic and Family Violence: Understanding and measuring the impact (Good Shepherd Australia New Zealand)<sup>156</sup> report.

#### Anna’s Story<sup>157</sup>

Anna was married to Graham for 18 years and they had 2 children together. In 2015 after years of ongoing physical and emotional abuse, Anna left Graham.

For Anna it took 3 years and 3 months to finalise custody and property settlements. She was able to receive a small property settlement of \$40000. Anna told us: “Financial costs have been substantial because of the delays. I would not have coped had it not been for the financial support of my parents. I receive no child support as my ex-husband has successfully rearranged his life to avoid paying maintenance which I see as another form of system abuse. I was also left in the position of having to repay jointly accumulated debts and being continually harassed by creditors.”

### Recommendations

We recommend that the Australian Government:

13. Review the costs of court proceedings.
14. Expand the eligibility criteria for fee concessions.
15. 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.
16. Create a specialised legal aid grant pathway for victims/survivors of domestic violence.

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<sup>151</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>152</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>153</sup> Ibid.,10

<sup>154</sup> Smallwood, E. (2015) Stepping Stones: Legal barriers to economic equality after family violence, Women’s Legal Service Victoria, Melbourne; available at <https://www.womenslegal.org.au/files/file/1.%20Final%20-%20Stepping%20Stones%20Report.pdf>

<sup>155</sup> Women’s Legal Service Victoria (2018) Small Claims, Large Battles: Achieving economic equality in the family law system; available at <https://womenslegal.org.au/files/file/WLSV%20SCLB%20Briefing%20Paper.pdf>

<sup>156</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)

<sup>157</sup> The name and some details have been changed to protect privacy. This case study has been provided directly to AWAVA by a victim/survivor.

17. Establish a legislative requirement for the court to consider the impact of domestic and family violence when determining a property division as consistent with the Family Law Council's 2001 advice to the Attorney General.<sup>158</sup>
18. Implement recommendations of 'Stepping Stones: Legal barriers to Economic Equality After Family Violence' report (Women's Legal Service Victoria)<sup>159</sup> and 'Small Claims, Large Battles: Achieving Economic Equality in the Family Law System' report (Women's Legal Service Victoria).<sup>160</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)

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 (a duty lawyer and a social worker) for people affected by family violence to navigate the family law system. Four locations have been piloted.<sup>161</sup> The evaluation of the service has proven its effectiveness.

AWAVA has welcomed an additional investment into FASS for dedicated men's support workers. We also reiterate the need to ensure availability of FASS across regional and remote locations where access to service is very limited.

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

AWAVA 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>162</sup> The work of specialist women's services, including women's legal services, is underpinned by a gendered understanding of violence<sup>163</sup>. They are focused on women and children's safety<sup>164</sup>, providing gender and cultural safety, working from a client-centred, trauma-based,

<sup>158</sup> WLSA (2016) Safety First in family law: Five steps to creating a family law system that keeps women and children safe 4b.

<sup>159</sup> Smallwood, E. (2015) Stepping Stones: Legal barriers to economic equality after family violence, Women's Legal Service Victoria, Melbourne; available at <https://www.womenslegal.org.au/files/file/1.%20Final%20-%20Stepping%20Stones%20Report.pdf>

<sup>160</sup> Women's Legal Service Victoria (2018) Small Claims, Large Battles: Achieving economic equality in the family law system; available at <https://womenslegal.org.au/files/file/WLSV%20SCLB%20Briefing%20Paper.pdf>

<sup>161</sup> <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/news/mr170517>

<sup>162</sup> AWAVA (2016) Policy Brief on the role of specialist women's services in Australia's response to violence against women and their children <https://awava.org.au/2016/04/07/research/role-specialist-womens-services-australias-response-violence-women-children>

<sup>163</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', *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>164</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)

empowering framework<sup>165</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>166</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>167</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>168</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>169</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>170</sup>. It is also difficult for women to obtain pro bono assistance, as it is not a particularly attractive area for lawyers working in family law<sup>171</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.

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<sup>165</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>166</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>167</sup> AWAVA (2016) Policy Brief on the role of specialist women's services in Australia's response to violence against women and their children <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>168</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>169</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>170</sup> Domestic Violence NSW Practitioner Survey Respondent – Parliamentary inquiry into a better family law system.

<sup>171</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

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’s domestic violence court advocacy services within local and district courts.

## Recommendations

We recommend that the Australian Government:

19. 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.
20. Incorporate a case management approach across all FASSs.
21. Prioritise the involvement of specialist women’s services including women’s legal services in the design and delivery of an expanded FASS.
22. Incorporate specialist women’s services into family law systems and adequately fund 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’s domestic violence court advocacy services within local and district courts.
  - 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

## 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 use violence

Overall the impact of domestic and family violence is severe and long-lasting. For victims/survivors of domestic and family violence 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>172</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>173</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.

### 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>174</sup> and (7) Migration matters, for example applying for family violence provisions to secure permanent residency after relationships breakdown.

### 3. Compounded **impact of family law proceedings**

- There is a lack of recognition by the courts why victims/survivors are reluctant to raise domestic and family violence experiences out of fear that this may further escalate violence, fear of retaliation and impacts of trauma.<sup>175</sup>
- Field and Carpenter argue that the court settings must be equipped to ensure safety of victims/survivors (we also refer you to the section of this submission on the physical safety in courts).<sup>176</sup> At present women may be at risk of further violence and abuse when, for instance, there is only one waiting room or only one entrance to the court building.
- Lengthy court processes combined with systems misuse by perpetrators and extensive legal costs drive victims/survivors into poverty.
- Unjust family law outcomes that order sharing parenting arrangements with ex-partners who use violence compound trauma, impede healing process, create safety risks for both children and victims/survivors and invalidate their experiences of violence.

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<sup>172</sup> <http://media.aomx.com/anrows.org.au/s3fs-public/28%2010%2016%20BOD%20Compass.pdf>

<sup>173</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>

<sup>174</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>175</sup> Field, R., & Carpenter, B. J. (2003). Issues relating to Queensland magistrates understanding of domestic violence. Paper presented at the Domestic Violence Court Assistance Network (DVCAN) conference 17-19 June 2003, Queensland University of Technology, Brisbane

<sup>176</sup> Ibid.

#### 4. Homelessness

- Domestic and family violence is the single largest reason for people to seek homelessness services.<sup>177</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>178</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>179</sup>

#### 5. 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>180</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>181</sup>
- It takes an average of six years for women to recover financially from a divorce.<sup>182</sup>
- Separation for victim/survivors of domestic and family violence results in significantly reduced assets.<sup>183</sup>
- Perpetrators of domestic and family violence leave victim/survivors responsible for repaying jointly accumulated debts.<sup>184</sup>

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<sup>177</sup> Australian Institute of Health and Welfare (2015) Specialist Homelessness Services 2014-15: Clients, Services and Outcomes, Australian Government, Canberra

<sup>178</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>179</sup> NSW Government, Program Guidelines for Staying Home Leaving Violence Program.

<sup>180</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>181</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>182</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>183</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>184</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)

Francia at all in their study<sup>185</sup> report that the family law system disregarding 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.

### Impact of domestic and family violence on children

Children are impacted by domestic and family violence through an exposure to violence as well as child abuse.<sup>186</sup> A report by VIC Health estimated that in 2017 there were 128,500 women who have experienced violence by a current cohabiting partner and had children in their care during the violence. For 58% of those women, their children witnessed violence.<sup>187</sup> According to the study by Cox, in 2015 there were 733,900 women in Australia who have experienced violence by a *previous* cohabiting partner and had children in their care during the violence. For 77% of those women, their children witnessed violence.<sup>188</sup> Children can also be targets of violence when they intervene to protect a parent.<sup>189</sup>

*“They may actually see their parent being assaulted or they see the parent afterwards with injuries bleeding and bruising. They may witness property damage or see the mess afterwards. This all counts as witnessing family and domestic violence. We see matters where the children try to intervene to protect their parent and are shoved out of the way (Tameka Brown, solicitor at Djinda Services, Women’s Law Centre of Western Australia).”<sup>190</sup>*

The impacts of domestic and family violence for children are severe and long-lasting, including health, development and social issues in childhood and later in life.<sup>191</sup> However, children’s exposure to domestic and family violence is not a factor in future perpetration.<sup>192</sup>

Similarly, as for women who are victims/survivors of domestic and family violence, DFV is the leading cause of homelessness in children. Compounded by other impacts of domestic and family violence, homelessness disrupts schooling, links with friends, communities and culture.<sup>193</sup> Research has also shown poor educational outcomes, behavioural issues as well as social and learning difficulties.<sup>194</sup>

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<sup>185</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

<sup>186</sup> Australian Institute of Family Studies, Child Family Community Australia. Children’s exposure to domestic and family violence <https://aifs.gov.au/cfca/publications/childrens-exposure-domestic-and-family-violence>

<sup>187</sup> Violence against women in Australia (2017) An overview of research and approaches to primary prevention, Victorian Health Promotion Foundation, Melbourne, Australia.

<sup>188</sup> 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.

<sup>189</sup> Flood, M & Fergus, L (2008) An assault on our future: The impact of violence on young people and their relationships, White Ribbon Foundation, Sydney.

<sup>190</sup> Zhdanova T. (2018) The Intervention of child protection services in cases where children are living with domestic and family violence. Internship report for AWAVA. Available at [https://awava.org.au/2018/12/21/research-and-reports/intervention-of-child-protection-services-in-cases-where-children-are-living-with-domestic-and-family-violence?doing\\_wp\\_cron=1579559824.0878350734710693359375](https://awava.org.au/2018/12/21/research-and-reports/intervention-of-child-protection-services-in-cases-where-children-are-living-with-domestic-and-family-violence?doing_wp_cron=1579559824.0878350734710693359375)

<sup>191</sup> Ayre, J, Lum On, M, Webster, K, Gourley, M & Moon, L (2016) Examination of the burden of disease of intimate partner violence against women in 2011: Final report, ANROWS, Sydney.

<sup>192</sup> Australian Institute of Family Studies, Child Family Community Australia. Children’s exposure to domestic and family violence <https://aifs.gov.au/cfca/publications/childrens-exposure-domestic-and-family-violence>.

<sup>193</sup> Bland, D., & Shallcross, L. (2015). Children who are homeless with their family: A literature review for the Queensland Commissioner for Children and Young People. Brisbane: Queensland University of Technology, Children and Youth Resource Centre.; Spinney, A., & Harper, A. (2013). Domestic violence and preventing homelessness: Legislative development and policy change. *Parity*, 26(2), 12-13.

<sup>194</sup> Kitzmann, K. M. N, Gaylord, K., Holt, A. R, & Kenny, A. D. (2003). Child witnesses to domestic violence: A meta-analytic review. *Journal of Consulting and Clinical Psychology*, 71(2), 339- 352.

In 2013 AIFS conducted a study on the relationship between child wellbeing and family violence among a sample of 6119 recently separated parents. They found that:

- “Higher levels of reported behavioural problems in children aged between 1 and 3 years who had witnessed physical violence compared to children who had never witnessed violence.
- Higher levels of reported behavioural problems in children who had been exposed to emotional violence.
- Children aged 5 to 17 years who had experienced violence over an extended period (before/during and since separation) were faring worse in terms of schoolwork, peer relationships and overall wellbeing than children who had never witnessed violence.”<sup>195</sup>

For children who were exposed to domestic and family violence over a prolonged period of time, health outcomes were worsened. This included depression, anxiety, eating disorders, self-harm and suicidal thoughts.<sup>196</sup>

AWAVA’s 2018 Child Protection and Family Violence Internship report found that “evidence of a child witnessing D&FV tends to be given little weight by courts in determining the outcomes for the child” after interviewing representatives from 6 women’s legal services. Interviewed experts agreed that “not much consideration is given to psychological or emotional harm that could be done to children, and even direct verbal or psychological abuse towards children by a perpetrator often does not affect custody arrangements”.<sup>197</sup>

Often mothers who have been subjected to domestic and family violence are being blamed for their inability to protect their children from both experiences of violence and exposure to it. We have already mentioned in this submission how mothers are advised not to disclose domestic and family violence in courts because of the possibility they will be portrayed as an alienating parent. Blame of mothers rather than abusive father disregards and tolerates abuse perpetuated by fathers, and further reinforces victim-blaming attitudes towards victims/survivors. Fathers who choose to use violence are not held accountable for their actions, their abuse (direct or indirect) of children is discounted. Often fathers use mothers’ inability to protect their children as another tactic of control and abuse.<sup>198</sup>

*“[The system] kind of requires, in situations of domestic and family violence, those seen to be victims and caregivers to protect the children from further harm by essentially cutting off all forms of contact, not engaging with that individual, and if necessary not engaging with that individual’s family, extended family. But if you did that in the family law setting, you would be accused of undermining that child relationships with the other party and with the other party’s family. And that would be one of the considerations of the family law court with them taking into account in*

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<sup>195</sup> De Maio, J., Kaspiew, R., Smart, D., Dunstan, J., & Moore, S. (2013). Survey of recently separated parents: A study of parents who separated prior to the implementation of the Family Law Amendment (Family Violence and Other Matters) Act 2011. Melbourne : Australian Institute of Family Studies.

<sup>196</sup> Jaffe, P. G., Wolfe, D., & Campbell, M. (2012). Growing up with domestic violence: Assessment, intervention, and prevention strategies for children and adolescents. Cambridge: Hogrefe Publishing.

<sup>197</sup> Zhdanova T. (2018) The Intervention of child protection services in cases where children are living with domestic and family violence. Internship report for AWAVA. Available at [https://awava.org.au/2018/12/21/research-and-reports/intervention-of-child-protection-services-in-cases-where-children-are-living-with-domestic-and-family-violence?doing\\_wp\\_cron=1579559824.0878350734710693359375](https://awava.org.au/2018/12/21/research-and-reports/intervention-of-child-protection-services-in-cases-where-children-are-living-with-domestic-and-family-violence?doing_wp_cron=1579559824.0878350734710693359375)

<sup>198</sup> Morris, A., Humphreys, C., & Hegarty, K. (2015). Children's view of safety and adversity when living with domestic violence. In N. Stanley, & C. Humphreys (Eds.), Domestic violence and protecting children: New thinking and approaches (pp. 18-33). London: Jessica Kingsley Publishers.; Mullender, A. (2002). The influence of domestic violence on relationships between children and their mothers. In A. Mullender, G. Hague, F. I. Imam, L. Kelly, E. Malos, & L. Regan (Eds.), Children's perspectives on domestic violence. London: Sage Publications.; Thiara, R. K., & Humphreys, C. (2015). Absent presence: The ongoing impact of men's violence on the mother-child relationship. Child and Family Social Work. doi:10.1111/cfs.12210.



*terms of whether the child should still continue [living] with you, your ability to facilitate [the] relationship (Zita Ngor, CEO of the Women’s Legal Services South Australia).”<sup>199</sup>*

This may also influence the outcomes of parenting orders where abusive fathers are still given the right to see children. In such cases fathers’ parental rights trump children’s safety. The most recent AIFS Evidence summary on parenting arrangements after separation estimates that among 3% of parents “who went to court for parenting arrangements”, most of them experiences family violence.<sup>200</sup> despite the fact that 50% reported concerns for their safety, non-contact orders with the father constituted only 3%. Shared parental responsibility was the most common outcome and was granted in 39.8% of cases. Kaspiew has found that children will continue to be affected by DFV after parents’ separation through ongoing contact with both parents.<sup>201</sup>

### Georgie’s Story<sup>202</sup>

Georgie and John were together for 10 years and have 4 children together. John has been emotionally abusive towards Georgie and also owned all family assets including cars and properties. His name was listed on all bills and documents. When they split up and Georgie applied to get legal aid she was denied. Without her knowing John transferred money into her savings account that made her financial assets to appear to be more, when in reality it was another tactic of his control to prevent her seeking justice and help.

As it was unsafe for Georgie to remain in the family home, she was now homeless, separated from her children and forced to accumulate debt paying for a private lawyer.

“There is no space within the family law to address the impact of family violence on you. If I cry in front of my children because of what he’s done to me, the court will consider this as my children witnessing family violence and that I am not protecting them.” Georgie told us.

Georgie also witnessed during the court process how she was treated unfairly because she was a woman of colour.

“When you go to the [family] court, they think that the system will treat you equally. But no one in the court even pays attention to the power imbalance between us. If you pretend that power imbalance does not exist, it’s not equal”.

## 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 must be consulted with and lead the design of care arrangements responsive to their needs, as they family structures may differ.

<sup>199</sup> Zhdanova T. (2018) The Intervention of child protection services in cases where children are living with domestic and family violence. Internship report for AWAVA. Available at [https://awava.org.au/2018/12/21/research-and-reports/intervention-of-child-protection-services-in-cases-where-children-are-living-with-domestic-and-family-violence?doing\\_wp\\_cron=1579559824.0878350734710693359375](https://awava.org.au/2018/12/21/research-and-reports/intervention-of-child-protection-services-in-cases-where-children-are-living-with-domestic-and-family-violence?doing_wp_cron=1579559824.0878350734710693359375)

<sup>200</sup> Australian Institute of Family Studies (2009) Evidence Summary. Parenting arrangements after separation.

<sup>201</sup> Kaspiew, R., Horsfall, B., Qu, L., Nicholson, J. M., Humphreys, C., Diemer, K., ... Dunstan, J. (2017). Domestic and family violence and parenting: Mixed method insights into impact and support needs: Final report (ANROWS Horizons 04/2017). Sydney, NSW: ANROWS. 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.

<sup>202</sup> The name has been changed to protect the privacy. This case study has been provided directly to AWAVA by a victim/survivor.

## Recommendations

We recommend that the Australian Government:

23. 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 decision making, triaging and case management of domestic violence cases in the family courts<sup>203</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>204</sup>. Successive Action Plans of the National Plan to Reduce Violence against Women and their Children have indicated a commitment to responding to the needs of women from culturally and linguistically diverse backgrounds and Aboriginal and Torres Strait Islander women. This includes the Third Action Plan's commitment to improving the quality and accessibility of services, but there has not yet been reporting of progress on this measure. In the family law system, there is a need to extend this commitment to people who identify as LGBTIQ as well.

We note that the 2018-2019 Annual Report of the Family Court of Australia states that "the judges of the Court underwent extensive training in the complex issues of family violence as part of the National Judicial College of Australia's government-supported training for judges."<sup>205</sup> We also note that training was provided to all staff of the court. Such training must be provided on an ongoing basis.

Yet, we reiterate that there should be a particular focus placed on training programs developed and delivered for 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

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<sup>203</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>204</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>.

<sup>205</sup> Commonwealth of Australia (2019) Family Court of Australia. Annual report 2018-2019. Available at:

<http://www.familycourt.gov.au/wps/wcm/connect/291d785a-91aa-474f-b7b2-092b4315e7aa/19376+Family+Court+of+Australia+Annual+Report+2018-19-low-res.pdf?MOD=AJPERES&CVID=>

competency in relation to working with Aboriginal and Torres Strait Islander clients, clients of a culturally and linguistically diverse background (including working with interpreters), working with vulnerable clients, trauma-informed practices and working with clients from LGBTIQ communities.

Results from the DVNSW Practitioners' Survey<sup>206</sup> indicated that in many cases there is a 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>207</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>208</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>209</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>210</sup>

We recommend that the training includes the following topics:

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

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<sup>206</sup> Domestic Violence NSW Practitioner Survey Respondent – Parliamentary inquiry into a better family law system.

<sup>207</sup> Ibid.

<sup>208</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>209</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; available at [https://jccd.org.au/wp-content/uploads/2016/04/JCCD\\_Consultation\\_Report\\_-\\_Aboriginal\\_and\\_Torres\\_Strait\\_Islander\\_Women.pdf](https://jccd.org.au/wp-content/uploads/2016/04/JCCD_Consultation_Report_-_Aboriginal_and_Torres_Strait_Islander_Women.pdf)

<sup>210</sup> Judicial Council of Cultural Diversity (2016) The Path to Justice: Migrant and Refugee Women's Experience of the Courts., p 31; available [https://jccd.org.au/wp-content/uploads/2016/04/JCCD\\_Consultation\\_Report\\_-\\_Migrant\\_and\\_Refugee\\_Women.pdf](https://jccd.org.au/wp-content/uploads/2016/04/JCCD_Consultation_Report_-_Migrant_and_Refugee_Women.pdf)

- 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>211</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>212</sup> and can influence whether or not legal aid funding for a parent should be continued.<sup>213</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>214</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>215</sup> Poor practices have resulted, for example, in joint interviews with child victims and perpetrators of domestic and family 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 domestic and family violence.<sup>216</sup> This may also have devastating implications for court outcomes, putting women and children at unnecessary risk.

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<sup>211</sup> Smallwood, E. (2015) Stepping Stones: Legal barriers to economic equality after family violence, Women’s Legal Service Victoria, Melbourne; available at <https://www.womenslegal.org.au/files/file/1.%20Final%20-%20Stepping%20Stones%20Report.pdf>

<sup>212</sup> WLSA (2016) submission to senate inquiry – Domestic Violence and gender inequality, p. 19-20

<sup>213</sup> Ibid.

<sup>214</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

<sup>215</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.

<sup>216</sup> Ibid.

As recommended by the final report of the 2015 Senate Inquiry into Domestic Violence in Australia<sup>217</sup> and in the final report of the COAG Advisory Panel on Reducing Violence against Women and their Children,<sup>218</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>219</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.

### 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>220</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 the 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>221</sup>

There has been a set of baseline practice and administrative<sup>222</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;

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<sup>217</sup> Senate Standing Committees in Finance and Public Administration, Domestic Violence in Australia, 20 August 2015, Recommendation 17.

<sup>218</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>219</sup> Ibid.

<sup>220</sup> Domestic Violence Victoria (2018) Submission to the Review of the Family Law System: Issues Paper.

<sup>221</sup> Australian Children's Contact Services Association (2018) Submission to the Review of the Family Law System: Issues Paper

<sup>222</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>

- 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.

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.

We are supporting ACCSA in their recommendations that FDR practitioners and judges should be referring families to CCSs that are accredited. We also support a broader roll-out of the accreditation system for CCSs.

## Recommendations

We recommend that the Australian Government:

- 24.** Ensure comprehensive training for all professionals within the family law system on the following:
- the nature and dynamics of family violence;
  - working with vulnerable clients;
  - 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;
  - the intersection of family violence and family law in property determinations that includes the financial impacts of family violence and the nature and impacts of economic abuse;<sup>223</sup>

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<sup>223</sup> Smallwood, E. (2015) Stepping Stones: Legal barriers to economic equality after family violence, Women's Legal Service Victoria, Melbourne; available at <https://www.womenslegal.org.au/files/file/1.%20Final%20-%20Stepping%20Stones%20Report.pdf>

- understanding and working with influencing systems including child support and child protection; and
  - working with interpreters
25. 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.
  26. Ensure the accessibility of safe, high-quality children’s contact services.
  27. Family Dispute Resolution practitioners and judges should be referring families to children’s contact service that are accredited.
  28. 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;

AWAVA’s Advisory group member Council for Single Mothers and their Children (CSMC) has produced extensive evidence on the interaction between the family law system and the child support system.<sup>224</sup>

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, abusive ex-partners’ control of victims/survivors’ income through child support<sup>225</sup> 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>226</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 CSMC in respect of child support that include:

- The national unpaid child support debt currently sits at around \$1.5billion 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;
- Domestic and 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.

<sup>224</sup> Cook, Kay, Zoë Goodall, Juanita McLaren and Terese Edwards. 2019. Debts and Disappointment: Mothers’ Experiences of the Child Support System. Melbourne: Swinburne University of Technology, available at <https://apo.org.au/sites/default/files/resource-files/2019/12/apo-nid268591-1400911.pdf>

<sup>225</sup> Ibid., 19.

<sup>226</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>

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>227</sup> Through these dynamics, single parents’ poverty is reinforced and systems abuse rewarded.

We have highlighted in this submission that perpetrators are hiding their assets to avoid paying child support. We note a new initiative where the family court will have direct access to superannuation information during separation that will mitigate the possibility for an alleged perpetrator to hide their assets. In the 2018 Women’s Economic Security Package the government committed to better visibility over superannuation assets by developing an electronic information sharing mechanism between the Australian Taxation Office (ATO) and the Family Law Courts to allow the superannuation assets held by relevant parties during family law proceedings to be identified swiftly and more accurately.<sup>228</sup>

## Recommendations

We recommend that:

29. Family courts should consider payment of child support as being in the best interests of the child.
30. Non-payment of child support should be recognised as potentially constituting financial abuse.
31. 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;**

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.<sup>229</sup> In the absence of such a provision, there is high risk that outcomes will place women in poverty and reward perpetrators of violence.

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<sup>227</sup> Cook, Kay, Zoë Goodall, Juanita McLaren and Terese Edwards. 2019. Debts and Disappointment: Mothers' Experiences of the Child Support System. Melbourne: Swinburne University of Technology, available at <https://apo.org.au/sites/default/files/resource-files/2019/12/apo-nid268591-1400911.pdf>

<sup>228</sup> Commonwealth of Australia (2018) Women’s Economic Security Package, p. 40; available at

<https://www.pmc.gov.au/sites/default/files/publications/womens-economic-security-statement-2018.pdf>

<sup>229</sup> AWAVA evidence to Senate Legal and Constitutional Affairs Committee Inquiry into Family Law (Financial Agreements and other matters) Bill 2015



## Recommendations

We recommend that the Australian Government:

32. 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

k. any related matters.

### 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>230</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.

### 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>231</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>232</sup>, which allows searches of the key terminology used in courts only in Arabic, Simplified Chinese, Traditional Chinese, Korean, Spanish, and Vietnamese.<sup>233</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

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[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Family\\_Law\\_Bill/~/\\_media/Committees/legcon\\_ctte/Family\\_Law\\_Bill/c02.pdf](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Family_Law_Bill/~/_media/Committees/legcon_ctte/Family_Law_Bill/c02.pdf)

<sup>230</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)

<sup>231</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>232</sup> See <http://lawtermfinder.mq.edu.au/>

<sup>233</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.

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>234</sup>

### 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 (JCCD) has developed Recommended National Standards for Working with Interpreters in Courts and Tribunals<sup>235</sup>, and the NSW Education Centre Against Violence is running training courses for interpreters on interpreting for people who have experienced sexual<sup>236</sup> and family violence.<sup>237</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.

We support recommendation 160 of the Victorian Royal Commission into Family Violence 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. Furthermore, we recommend that 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. This resource needs to be available in all major languages spoken in Australia.<sup>238</sup>

### Working with Interpreters

We refer you to the Recommended National Standards for Working with Interpreters in Courts and Tribunals developed by JCCD.<sup>239</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>240</sup> have noted that female victims/survivors need to have a choice of having female interpreters in matters involving

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<sup>234</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>235</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>236</sup> For the course description visit: <https://swecav.hss.health.nsw.gov.au/ECAVWebsite/Home/Details/159>

<sup>237</sup> For the course description visit: <https://swecav.hss.health.nsw.gov.au/ECAVWebsite/Home/Details/180>

<sup>238</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>239</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>240</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) ;

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>241</sup> We believe that the Recommended National Standards for Working with Interpreters in Courts and Tribunals should be listed there as best practice.

### Accessibility of courts

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>242</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.

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Standing Committee on Social Policy and Legal Affairs (2017) A better family law system to support and protect those affected by family violence.

<sup>241</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>

<sup>242</sup> Law Council of Australia. The Justice Project (2017) People who Experience Family Violence. Consultation Paper.

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.

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

Accessibility of the family law system for Aboriginal and Torres Strait Islander people can be difficult and complex. 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 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 needs 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>243</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

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<sup>243</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>

lack of cultural awareness and sensitivity, and misinformation, or the view of the 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 awareness. 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>244</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>245</sup>

### 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 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.

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<sup>244</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>245</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; available at [https://jccd.org.au/wp-content/uploads/2017/09/JCCD\\_National\\_Framework.pdf](https://jccd.org.au/wp-content/uploads/2017/09/JCCD_National_Framework.pdf)

We also 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>246</sup> and recommendations made by the Judicial Council on Cultural Diversity in the National framework to improve accessibility to Australian courts for Aboriginal and Torres Strait Islander women and migrant and refugee women.<sup>247</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 the submission to ALRC family review,<sup>248</sup> 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 identify and remove barriers for LGBTIQ+ people and families. We support WLSA's proposals "that an audit is undertaken by the courts

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<sup>246</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>247</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; available at [https://jccd.org.au/wp-content/uploads/2017/09/JCCD\\_National\\_Framework.pdf](https://jccd.org.au/wp-content/uploads/2017/09/JCCD_National_Framework.pdf)

<sup>248</sup> Available at <http://www.wlsnsw.org.au/wp-content/uploads/WLSA-submission-to-ALRC-Review-of-the-Family-Law-System-fa.pdf>

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”.<sup>249</sup>

### 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 where a parent has a disability in this [section](#).

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”.<sup>250</sup>

#### Ameera’s Story<sup>251</sup>

Ameera was in a relationship with Janice for over a decade and they have 3 children together. During the course of their relationships Janice was controlling and emotionally abusive towards Ameera. Ameera reported this to her GP but believed that Janice could change. Most recently, when Janice was abusive and Ameera stood up for herself, Janice called the police to allege that it was Ameera who was abusive.

Eventually the couple split up. They first entered into mediation with the aim to avoid deciding on parenting arrangements through the family court. However, in the meantime Janice got a lawyer and prepared to start family law proceedings. Ameera neither had a lawyer at that point, nor was aware that the family law proceedings were about to start.

During the meeting with the family report writer Ameera could not raise family violence, as she did not have enough evidence to support her claim. In addition, Ameera faced barriers communicating her story because of her developmental disability. This meant that some crucial pieces of information were missed. Neither the family report writer nor the whole system were equipped and trained to adequately respond to Ameera’s needs. Unfortunately, even Ameera’s lawyer blamed her for not being able “communicate properly”. “It’s like you completely disappear [within the system]”, Ameera told us.

### Turn existing pilots into ongoing programs

Over the recent years, several pilots were trialed within the family law system that provided more assistance to victims/survivors of domestic and family violence. This included:

- **Specialist Domestic Violence Units and Health Justice Partnerships** (\$31.8 million over three years from 2019-20)<sup>252</sup>

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<sup>249</sup> Ibid.

<sup>250</sup> Ibid.

<sup>251</sup> The name has been changed to protect the privacy. This case study has been provided directly to AWAVA by a victim/survivor.

<sup>252</sup> See: <https://www.ag.gov.au/FamiliesAndMarriage/Families/Documents/WESP-factsheet-specialist-domestic-violence-units.PDF>

- [Family Advocacy Support Services](#)<sup>253</sup> (\$18.2 million between 2016 and 2019. ALRC Family law review and independent government commissioned evaluation have recommended a roll out.);<sup>254</sup>
- **Coordinated Family Dispute Resolution**,<sup>255</sup>
- **Small claims property pilots** (\$5.9m to the federal family courts and the Attorney-General’s Department to conduct a two-year trial of a simpler and faster process for dividing property between separated couples. The pilot runs until 2021);<sup>256</sup>
- **Co-location Child Protection in Family Law Registries** (\$11 million between 2019–20 and 2021–22 to fund this pilot program co-locating state and territory child protection and other officials in family law court registries. The funding for this initiative will cease on 30 June 2022.);<sup>257</sup>

We note that while DV units have been turned into an ongoing program, they are not consistently present in all location especially in rural, regional or remote areas. The FASS trial evaluation has found the program to be an “effective and important [one] that fills a gap in legal and social service provision to family law clients with family violence matters”.<sup>258</sup> Small Claims Property Pilot was also welcomed by the sector. It essential that trialled pilots once evaluated as effective are rolled out nationally especially with the focus on their availability in regional, rural and remote areas. This ensures consistency of achieved improvements in the family law system.

## Recommendations

We recommend that the Australian Government:

### Improve and simplify information about family law proceedings

33. Ensure that Australian courts are supported and resourced to implement Judicial Council on Cultural Diversity National framework to improve accessibility to Australian courts for Aboriginal and Torres Strait Islander women and migrant and refugee women and National Standards for Working with Interpreters in Courts and Tribunals.
34. Provide court documents including forms in plain (Easy Read) English.
35. Create resources in a variety of mediums not limited to written text to explain court processes.
36. Provide family law information in a range of languages reflecting the languages spoken in Australia, in both online and print formats.
37. 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,

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<sup>253</sup> The Family Advocacy and Support Service (FASS) program 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 (a duty lawyer and a social worker) for people affected by family violence to navigate the family law system.

<sup>254</sup> AWAVA 2018-2019 Federal Budget analysis [https://awava.org.au/2018/06/08/media-release/awavas-2018-19-federal-budget-analysis?doing\\_wp\\_cron=1579558054.9587628841400146484375](https://awava.org.au/2018/06/08/media-release/awavas-2018-19-federal-budget-analysis?doing_wp_cron=1579558054.9587628841400146484375)

<sup>255</sup> Coordinated Family Dispute Resolution (CFDR) was a pilot program applied in parenting cases where there was a history of family violence.

<sup>256</sup> Small property claims pilot is a measure of the 2018 Women’s Economic Security Package <https://www.ag.gov.au/FamiliesAndMarriage/Families/Documents/WESP-factsheet-small-claims-court-pilots.PDF>

<sup>257</sup> This is a measure introduced in the Fourth Action Plan of the National Plan to Reduce Violence Against Women and Their Children <https://plan4womenssafety.dss.gov.au/initiative/co-location-of-state-and-territory-child-protection-and-other-officials-in-family-law-court-registries/>.

<sup>258</sup> Inside Policy (2018) An Evaluation of the Family Advocacy and Support Services. Final Report. <https://www.ag.gov.au/Publications/Documents/fass-final-evaluation-report.pdf>



sexual assault, family law and child protection, translated into all major languages spoken in Australia.<sup>259</sup>

#### **Ensure consistent use of interpreters during family law proceedings**

38. Work with the National Accreditation Authority for Translators and Interpreters Ltd 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.<sup>260</sup>
39. Female victims/survivors should be routinely and explicitly presented with the option of having a female interpreter in matters involving family violence.
40. 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.
41. 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.

#### **Improve accessibility of family courts for families in their diversity**

42. Ensure dedicated court staff available to answer questions from the public.
43. Hold 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.
44. Develop and maintain partnerships with key organisations and services e.g. police multicultural liaison and domestic violence officers.
45. Enabling women to visit safe rooms for education on court processes.
46. Provide 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.
47. Employ at least one Aboriginal and Torres Strait Islander liaison officer in every Family Law Court.
48. 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.
49. Increase the number of trained Aboriginal and Torres Strait Islander mediators who are available to conduct mediations.
50. Employ more Aboriginal and Torres Strait Islander report writers in the family courts.
51. Make it compulsory for Independent Children Lawyers and Legal Aid Grant Officers to be trained in cultural competency.
52. Courts and tribunals should engage Cultural Liaison Officers, establish Cultural Diversity Committees, introduce multicultural plans, and actively recruit employees from migrant and refugee backgrounds.
53. 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.

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<sup>259</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>260</sup> Recommendation 160 of the Victorian Royal Commission into Family Violence

54. Women from culturally and linguistically diverse backgrounds should be consulted meaningfully when developing products and procedures designed for and about them.
55. 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.
56. Court staff should receive compulsory cultural capability training.
57. 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.
58. Alternatives to questioning in courtrooms be offered, in order to provide contextual safety and enable women to feel more comfortable in disclosing information.
59. Ensure that the family law system (its forms and processes) are inclusive of and recognise the diversity of families in Australia.
60. Ensure that all family court professionals are trained on questions of disability to ensure that parents with disability do not have unjust court outcomes.

#### **Improve physical safety in courts**

61. 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.
62. Ensure remote witness video links are available for every court, for use in cases of family violence.

#### **Turn existing pilots into ongoing programs**

63. Ensure that effective pilots within the family law system are turned into ongoing programs once their evaluations are completed and effectiveness established.

If you would like to discuss the contents of the submission further, please contact Dr Merrindahl Andrew, AWAVA Program Manager, using the details below.

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