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Senate Legal and Constitutional Affairs Committee  
PO Box 6100 Parliament House  
Canberra ACT 2600  
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## **Submission to the Senate Legal and Constitutional Affairs Committee in response to the consultation on Federal Circuit and Family Court of Australia Bill 2019 & Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Bill 2019 [Provisions]**

Thank you for the opportunity to make a submission to the Senate Legal and Constitutional Affairs Committee in response to the consultation on the Federal Circuit and Family Court of Australia Bill 2019 & Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Bill 2019 [Provisions].

### **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).

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## Introduction

### Prevalence of violence against women in Australia

Violence against women remains endemic in Australia, 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>1</sup>
- **Women are more likely to experience violence from a known perpetrator**, while men are more likely to experience violence from strangers.<sup>2</sup>
- **Domestic and family violence (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>3</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>4</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>5</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>6</sup>
- Australian police deal with **5,000 family violence matters on average every week**, which averages to one matter every two minutes.<sup>7</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.

### Prevalence of matter in family courts involving family violence

Nearly 70% of cases brought before the family courts involves family violence. With such prevalence of family violence matters in courts, family violence can be described as “the core business of the family court.”<sup>8</sup> Yet the family law system fails victim/survivors of domestic and family violence.<sup>9</sup> For the family

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<sup>1</sup> Australian Institute of Health and Welfare (2018) Family, Domestic and Sexual Violence in Australia, p. ix

<sup>2</sup> Ibid.

<sup>3</sup> ABS 2017b. Personal Safety Survey 2016. ABS cat. no. 4906.0. Canberra: ABS.

<sup>4</sup> Ibid.

<sup>5</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>6</sup> ABS 2017b. Personal Safety Survey 2016. ABS cat. no. 4906.0. Canberra: ABS.

<sup>7</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>8</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/ebv005

<sup>9</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)

law system to be safe, we need urgent reforms. Sufficient evidence has been put before the government about what needs to change.

Since 2009 there have been twelve major reports<sup>10</sup> released on the necessary reforms and improvements with the family law system. It has been widely recommended that better training and ongoing professional development of all professionals within the system is required, as well as better responses to family violence matters including courts specialisation.

In 2018, the CEDAW Committee in its Concluding Observations on Australia recommended the Australian Government ensure “gender-sensitive approaches to the family violence” in the family law system.<sup>11</sup> In 2019 Women’s Legal Services Australia (WLSA) released their updated Safety First in Family Law Plan which includes the following steps:<sup>12</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

Also, in 2019, in response to the establishment of another parliamentary inquiry into family law system, together with over 100 peak bodies and practitioners released a statement on the urgent reforms necessary to make family law safe for victims/survivors of domestic and family violence. These reforms are:

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

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<sup>10</sup> 2019 Australian Law Reform Commission Family Law for the Future — An Inquiry into the Family Law System; 2018 Law Council of Australia, The Justice Project, People who Experience Family Violence; 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; 2016 Family Law Council Final Report on Families with Complex Needs and the Intersection of Family Law and Child Protection; 2015 Family Law Council Interim Report on Families with Complex Needs and the Intersection of Family Law and Child Protection; 2016 Victorian Royal Commission into Family Violence Report; 2015 Australian Institute of Family Studies evaluation of the 2012 Family Law Act amendments; 2015 Federal Senate Finance and Public Administration References Committee inquiry report titled Domestic violence in Australia; 2014 Productivity Commission Access to Justice Arrangements Inquiry Report; 2010 Joint report of the Australian Law Reform Commission and NSW Law Reform Commission titled Family Violence – A National Legal Response; 2009 report of Professor Richard Chisholm titled Family Courts Violence Review report; and 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>11</sup> Committee on the Elimination of Discrimination against Women (2018) Concluding observations on the eights periodic report of Australia, para 28(e).

<sup>12</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)

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.

In this submission, we reiterate our position that for the safe and just outcomes for victims/survivors of domestic and family violence, court specialisation in family violence is required. AWAVA opposes the proposed bill.

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

We note that AWAVA has previously opposed the proposed court merger reforms.<sup>13</sup> Our key concerns included the need to prioritise safety for victims/survivors in the family law system, lack of consultation with key stakeholder prior to proposing this legislations, a lack of integration of these changes with the inquiry ran by ALRC and loss of the specialisation.

AWAVA has also signed the Open Letter to the Attorney General on the concerns about proposed family court merger.<sup>14</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>15</sup>

### Risk assessment and early determination of family violence

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.

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<sup>13</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>14</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>15</sup> Ibid.

- 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>16</sup>

The risk assessment process should be consistent across Australia, and should be multi-method and 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 and developed National Risk Assessment Principles for Domestic and Family Violence.<sup>17</sup> While different states and territories utilise different tools, there is need to move to a consistent approach Australia-wide.

Without early risk identification, safety risks for women and their children are not managed from the outset, and 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>18</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>19</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>20</sup> Most of these families are affected by family violence. Despite complex case where children are survivors of violence too or have been exposed to violence by witnessing their fathers being violent, only 3% of all court cases resulted in orders for 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>21</sup>

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<sup>16</sup> WLSA Submission to ALRC Review of the Family Law System (May 2018)

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

<sup>17</sup> See: <https://www.anrows.org.au/research-program/national-risk-assessment-principles/>

<sup>18</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>19</sup> Rae Kaspiew et al, 'Evaluation of the 2012 Family Violence Amendments: Synthesis Report' (Australian Institute of Family Studies, 2015), p. 182.

<sup>20</sup> AIFS (2019) Parenting arrangements after separation. Evidence summary.

<sup>21</sup> Rae Kaspiew et al, 'Evaluation of the 2012 Family Violence Amendments: Synthesis Report' (Australian Institute of Family Studies, 2015) 16.

The same report also states that family violence is “the most commonly raised factual issue in litigated proceedings”.<sup>22</sup> The amount of cases before the court that involve family violence are increasing.<sup>23</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>24</sup>

### Improving 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>25</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>26</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>27</sup> We also note that training was provided to all staff of the court. Such training must be provided on an ongoing basis.

In addition to these existing training programs, 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

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<sup>22</sup> Ibid.,49

<sup>23</sup> <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/news/mr200616>

<sup>24</sup> WLSA (2019) Safety First in family law. Five steps to creating a family law system that keeps women and children safe.

<sup>25</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>26</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>27</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=>

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

Results from the DVNSW Practitioners' Survey<sup>28</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>29</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>30</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>31</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>32</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);

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<sup>28</sup> Domestic Violence NSW Practitioner Survey Respondent – Parliamentary inquiry into a better family law system.

<sup>29</sup> Ibid.

<sup>30</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>31</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>32</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)

- working with people who identify as LGBTIQ;
- disability awareness and accessibility;
- intersectionality of clients' needs that includes recognition of structural inequalities arising from the interconnectedness of gender, age, sexuality, disability, culture, religion, race and/or other experiences;
- trauma- informed practice;
- the intersection of family law, child protection and family violence;
- the intersection of family law, family violence and migration status;
- technology facilitated abuse; and
- the intersection of family violence and family law in property determinations that includes:
  - the financial impacts of family violence
  - the nature and impacts of economic abuse;<sup>33</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.

In addition to the above, we also recommend:

1. 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.
2. Ensure the accessibility of safe, high-quality children's contact services.
3. Family Dispute Resolution practitioners and judges should be referring families to children's contact service that are accredited.
4. Roll-out a consistent, rigorous, safety-centred accreditation system for all CCSs including those not currently covered by any accreditation.

### Increasing resourcing of the family law system

We agree that the family law court system is under pressure and reform is required so that it responds better to people in difficult situations. However, it needs to be acknowledged that the key reason why the system struggles to meet the needs of families in Australia is chronic under-funding. The proposed reforms do not allow for further resources. Merging the courts will not alleviate the current problems and may make matters worse for family violence victim-survivors.

We question the emphasis on achieving 'efficiencies' in the context of an already-very-under-funded system. Instead, the emphasis should be on achieving the structure that will best deliver safety for victims/survivors and their children.

In relation to family law reform overall, there needs to be an acknowledgement that for reform to be fully implemented and effective, better funding and resourcing of the system is required. In 2014, the Productivity Commission recommended an urgent immediate injection of an additional \$200 million in

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<sup>33</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>



funding for legal assistance services for civil and family law prior to determining the longer term contribution required. We are concerned about the prospect that major reforms are being attempted in a system that is already so overstretched even in terms of fulfilling its basic functions.

### 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>34</sup> Appointing more judges will improve the early identification of risks. Increase in appointments should be accompanied by sufficient training to judges.

### Employ 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>35</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>36</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>37</sup> highlighted the need for the government to provide funding for the employment of Aboriginal and Torres Strait Islander family liaison officers.

### Employ 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.

We thank you for the opportunity to participate in this inquiry. If you would like to discuss the contents of the AWAVA submission further, please contact Dr Merrindahl Andrew, AWAVA Program Manager, using the details below.

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Australian Women Against Violence Alliance

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<sup>34</sup> Law Council of Australia (2017) Parliamentary inquiry into a better family law system to support and protect those affected by family violence.

<sup>35</sup> Family Court of Australia, 2016-2017 Annual Report. We note that the most recent reports do not provide such disaggregation of employees.

<sup>36</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>37</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>