

# Safety First in family law

Five steps to  
creating a family  
law system that  
keeps women and  
children safe

## Step 1

Strengthen family  
violence response in the  
family law system

### What happens now?

- The family law system has difficulty identifying and determining family violence early
- The family law courts do not have case management processes specifically designed for family violence cases (other than serious child abuse)
- Women subjected to coercive controlling violence feel pressure to agree to parenting arrangements and consent orders. They have to manage the risk of family violence without proper court oversight
- There is little protection against perpetrators subpoenaing sensitive records in family law
- For women experiencing disadvantage, ongoing financial insecurity is heightened by the lack of fast, affordable pathways to resolve family law property disputes
- The presumption of equal shared parental responsibility is being improperly applied in many cases involving family violence

### WHAT'S THE SOLUTION?

- Strengthen family violence response through a specialist family violence pathway or specialist family violence family law courts
- Introduce effective ongoing court based family violence risk assessment practices
- Promote and resource the early determination of family violence, through a family violence informed case management process and the early testing of evidence of family violence
- Promote reliance on less intrusive forms of evidence than protected confidences
- Implement WLSV's Small Claims, Large Battles report recommendations
- 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 risk to children

## Step 2

Provide effective  
legal help for the most  
disadvantaged

### What happens now?

- Many women facing significant disadvantage and barriers are unable to get the legal help they need
- Private legal representation in family law is expensive and free legal assistance in family law, for the most disadvantaged, is difficult to access
- There are entrenched barriers in the family law system that make accessing the system particularly difficult for Aboriginal & Torres Strait Islander women, migrant and refugee women, including women on temporary visas, women with disabilities, LGBTQ communities, women in regional, rural and remote communities and women in prison

### WHAT'S THE SOLUTION?

- Boost funding to community legal centres, including specialist women's legal services, National Family Violence Prevention Legal Services, Aboriginal and Torres Strait Islander legal services and legal aid commissions to enable legal representation for disadvantaged and high risk families in the family law system
- Create a nationally consistent specialist legal aid funding pathway for family law property and parenting cases involving family violence
- Expand the Aboriginal and Torres Strait Islander list in consultation with local Aboriginal and Torres Strait Islander communities, with designated Aboriginal and Torres Strait Islander liaison positions
- Implement the recommendations from the Family Law Council's 2012 and 2016 Families with Complex Needs reports about improving the family law system for Aboriginal and Torres Strait Islander and migrant and refugee families
- Fund specialist programs to assist LGBTQ people accessing family law courts
- Increase the frequency and duration of Federal Circuit Court of Australia sittings in regional, rural and remote areas



### Step 3

Ensure family law professionals have real understanding of family violence

#### What happens now?

- ▶ The family violence capabilities of professionals in the family law system are inconsistent
- ▶ Professionals in the family law system are not required to be trained in family violence, working with victims-survivors of trauma, cultural competency, LGBTQ awareness or disability awareness
- ▶ Family report writers and children's contact services are not all subject to accreditation or monitoring.

#### WHAT'S THE SOLUTION?

- ▶ Embed the principle and practice of accessibility in the family law system
- ▶ The Australian Government fund options to ensure regular and consistent training on family violence, cultural competency, LGBTQ awareness and disability awareness for all professionals in the system, including for family law judicial officers, lawyers and interpreters. This training be developed so that it is comprehensive, ongoing and tailored. It also must address unconscious bias and the unique needs and experiences of diverse communities
- ▶ Establish a national accreditation and monitoring scheme for all for professionals who prepare family reports and for children's contact services. The scheme include mandatory training on family violence, working with victims-survivors of trauma, cultural competency, LGBTQ awareness and disability awareness
- ▶ Legislate to ensure that judicial appointments have adequate family violence and family law expertise

### Step 4

Increase access to safe dispute resolution models

#### What happens now?

- ▶ Family violence cases are often screened out of non-legally assisted dispute resolution due to safety concerns, therefore they have little opportunity for early resolution
- ▶ Legally assisted dispute resolution has been tried and tested as an effective alternative dispute resolution model for resolving parenting and property disputes for family violence victims-survivors. Due to inadequate funding, victims-survivors have limited access legally assisted dispute resolution

#### WHAT'S THE SOLUTION?

- ▶ Implement and fund a national legally assisted family dispute resolution program, appropriate for family violence cases (property and parenting), that is supported by specialist family violence and trauma informed lawyers and family dispute resolution practitioners
- ▶ Roll out a mediation model with specialist family violence and trauma informed lawyers and social workers based on the 2012 Co-ordinated Family Dispute Resolution pilot program
- ▶ The Australian Government fund culturally tailored models of family dispute resolution which are co-designed and led by Aboriginal and Torres Strait Islander communities and organisations and migrant and refugee communities and organisations

### Step 5

Overcome the gaps between the family law, family violence and child protection systems

#### What happens now?

- ▶ There is not an effective integration between the family law system and other federal, state and territory systems, including family support services and the family violence and child protection systems, to keep women and children safe
- ▶ Victims-survivors, whose legal problems arise in the context of family violence and relationship breakdown, regularly deal with multiple pieces of legislation and several different jurisdictions

#### WHAT'S THE SOLUTION?

- ▶ The Australian Government, and state and territory governments, develop an appropriate framework that crosses over the family law system and other federal, state and territory systems, including family support services and the family violence and child protection systems. The framework is seamless from the point of view of those who engage with it and prioritises the safety of women and children. The framework is guided by the steps outlined in this plan

