



23 January 2017

Special Rapporteur Dr Dubravka Šimonović

By email only to: vaw@ohchr.org

Dear Madam Rapporteur

Submission to Special Rapporteur on Violence Against Women: country visit to Australia

We welcome the opportunity to make a submission to you in anticipation of your visit to Australia between 13 and 24 February 2017.

Our submission on priority areas of work relates to the following key areas: (a) unnecessary complexity of the legal system as it relates to family violence victims; (b) reforms required to make family law safer for women and children; (c) economic security of women, in particular how family violence causes women's economic insecurity; and (d) the particular vulnerabilities of women in prison.

We then make provide list of suggested people and organisations to meet with, and their contact details.

Attachments

- A. [Safety First in Family Law Policy Platform](#)
- B. Introduction to Small Claims Large Battles Project
- C. [Report on the Stepping Stones Project](#)
- D. WLSA submission on recent proposed amendments to *Family Law Act* (20 January 2017)

About WLSA

Women's Legal Services Australia (**WLSA**) is a national network of community legal centres specialising in women's legal issues, which work to support, represent and advocate for women to achieve justice in the legal system. We seek to promote a legal system that is safe, supportive, non-discriminatory and responsive to the needs of women.

Our members provide free and confidential legal information, advice, referral and representation to women across Australia in relation to legal issues arising from relationship

breakdown and violence against women. Our legal services are directed to vulnerable and disadvantaged women, most of whom have experienced family violence.

Our members' principal areas of legal service work are family violence (family violence intervention orders), family law, child protection and crimes compensation. Our members also deliver community legal education programs and workshops. Individually and together we advocate for laws that are fair for women experiencing violence and relationship breakdowns. We are informed by a feminist framework that recognises the rights of women as central.

A. Complexity and inconsistency in legal system relating to in family violence victims

Over the last five years, a series of significant events in Australian history have shaped our nation's response to family violence. These have included, in particular, the death of Luke Batty, the naming of his mother, Rosie Batty, as Australian of the Year,¹ and the coronial inquest report into his death (2015);² and the Victorian Royal Commission into Family Violence, and its wide-sweeping report containing 227 recommendations for reform.³

Yet despite this, when a woman experiences family violence⁴ in Australia, there are still many barriers to access to justice. In particular, victims of family violence must navigate a complex maze of different laws, legal forums, and rules of procedure, the key aspects of which are set out in Diagram 1 below. This system is unduly complex, inconsistent between state/territories, and difficult to navigate. There are also insufficient legal and other support services to assist victims of family violence in navigating this complexity.

Firstly, a victim of family violence may have to apply for a family violence intervention order at her state or territory Magistrates' court. If there is a risk to her children's safety as a result of the family violence (or due to flow on effects of violence, such as homelessness) there may be a child protection dispute. Again, this is dealt with in the state or territory local court, and often by a specialist children's court. If the violence results in separation, and there is a parenting and/or property dispute, these are dealt with under the federal *Family Law Act 1975* (Cth). Therefore, these disputes must be heard in a court with federal jurisdiction – either the Family Court, or the Federal Circuit Court.⁵ There are then other flow-on effects of family violence that may result in legal problems: tenancy disputes, debt disputes, etc. These are dealt with under a myriad of different laws and in different forums, including: victims of crime compensation (state or territory law); tenancy law (state or territory law); consumer credit law (national law), etc.

¹ <http://www.australianoftheyear.org.au/alumni/connect/rosie-batty/>

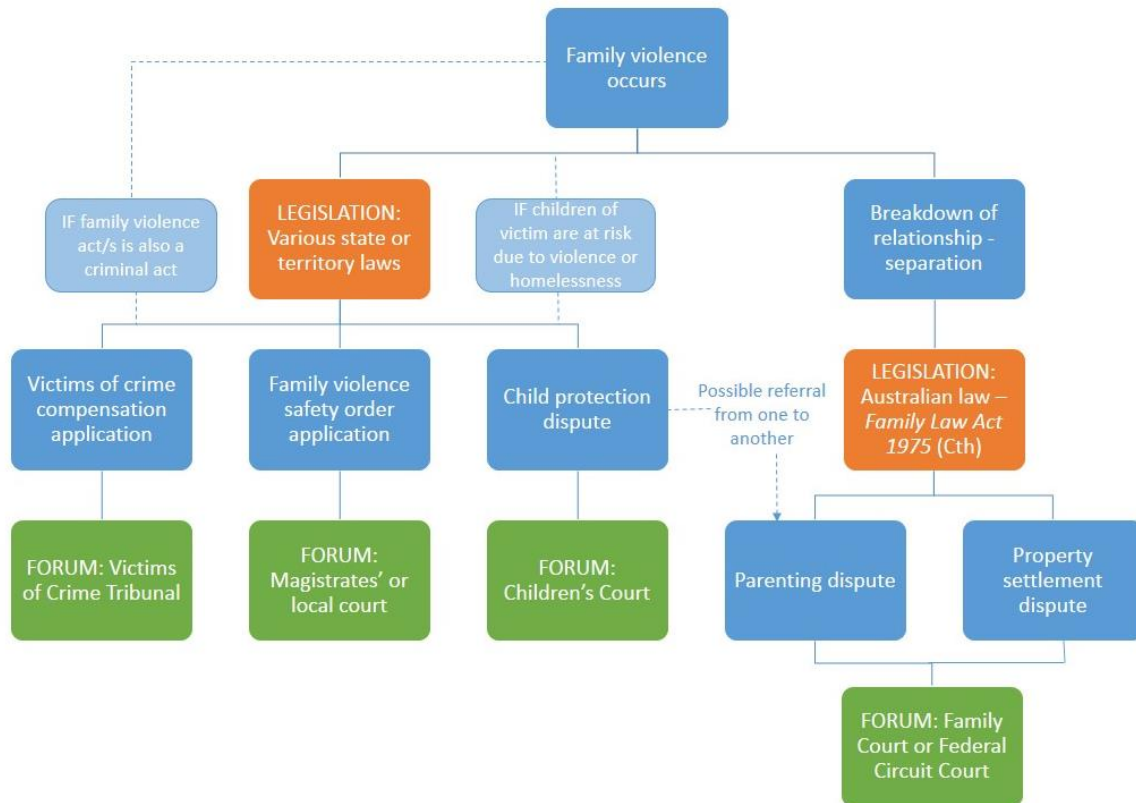
² <http://www.coronerscourt.vic.gov.au/home/findings+-+inquest+into+the+death+of+luke+geoffrey+batty>

³ <http://www.rcfv.com.au/Report-Recommendations>

⁴ There are differing definitions in different state and territory laws. Under the Victorian *Family Violence Protection Act 2008* (Vic) family violence is defined as including behaviours which are physically, sexually, emotionally, psychologically or economically abusive, as well as behaviours which are threatening, coercive or have the effect of controlling or dominating a family member - *Family Violence Protection Act 2008* (Vic) s 5.

⁵ We note that state or territory local courts have limited jurisdiction to determine *Family Law Act* disputes. Currently, state or territory courts have jurisdiction to determine parenting disputes; however, it is unclear whether all specialist children's courts do. State or territory courts also have limited jurisdiction to determine family law property disputes – up to \$20,000 – and given the very limited group of disputes that are of such low value, these courts in practice are rarely asked to invoke this jurisdiction.

Diagram 1: complexity of federal, state and territory laws



B. Commonwealth Family Law is unsafe for victims of family violence

As discussed above, victims of family violence must often interact with the (federal) family law system following separation from their abusive partner. Unfortunately, there are numerous aspects of the federal family law system that undermine the safety of the women and children.

Safety First 5-step Plan

The WLSA Safety First 5-step Plan (at **Attachment A**) sets out five important changes that would result in a safer family law system for women and children, as follows:

1. A specialist pathway for family violence cases in the family law courts.
2. Procedural steps that will reduce trauma and support those women and children who are most at risk of future violence and death.
3. Early intervention and effective legal help for the most disadvantaged.
4. Supporting women and children to financially recover from family violence.
5. Strengthening the understanding of family law professionals on family violence and trauma.

These changes are very important given that the vast majority of families with a family law parenting dispute have a history of family violence. Two Australian Institute of Family Studies (AIFS) studies suggest that 60% of families with a parenting dispute have a history of family

violence,⁶ while one Victorian Legal Aid analysis states that at least 76% of files with two or more family law disputes include both parenting and family violence.⁷ In addition, the families coming before the family courts have increasingly complex needs. The Family Law Council in its 2015 Interim Report on *Families with Complex Needs and Intersection of Family Law and Child Protection Systems* stated that families with “complex needs” are a significant portion of court users, and that this may contribute to long legal proceedings and so court delays. In particular the Council found that “[p]arents with four or more problems (family violence, safety concerns, substance misuse, problematic social media or pornography use, gambling) were most likely to use courts (42%)” to resolve their dispute, as compared to those who used family dispute resolution or lawyers.⁸

We are concerned that the current Australian Government is not taking sufficient action to respond to this problem. We note that the Australian Government recently proposed changes to the *Family Law Act*,⁹ many of which are problematic as set out in our submission on the exposure draft of the legislation (**Attachment D**).

Cuts to legal assistance funding

Many women who experience family violence cannot afford legal representation. Therefore, these women often seek initial, and then often ongoing, legal advice from our member women’s legal services, which are a type of community legal centre (**CLC**).¹⁰ CLCs are independent, non-profit, community-based organisations that provide free and accessible legal and related services to disadvantaged members of the community, and to people with special needs or who are for other reasons vulnerable and at risk.

Despite an increased recognition of the problem of family violence, and of this problem as one with one or more legal solutions, the Australian Government is cutting 30% of its funding to CLCs nationally from 1 July 2017. This is also despite the fact that while CLCs help hundreds of thousands of people each year, they are also forced to turn away thousands of people each year due to resource constraints.¹¹ Women’s legal services will be affected by these cuts. For example, Women’s Legal Service Victoria is at risk of a funding cut of \$200,000 next year, which will result in a significant decrease in legal service delivery.¹² We are concerned these funding cuts will have significant and adverse consequences for our clients, as well as for the people we may not now be able to assist.

While some funding has been redirected toward the sector through other funding initiatives,

⁶ FLC Interim Report, available 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>, pages 3-4.

⁷ FLC Final Report, available 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>, page 110.

⁸ FLC Interim Report, page 4.

⁹ <https://www.ag.gov.au/Consultations/Pages/Proposed-amendments-to-the-Family-Law-Act-1975-to-respond-to-family-violence.aspx>

¹⁰ See National Association of Community Legal Centres pre-budget submission 2017-18, available online at: <http://www.naclc.org.au/resources/NACLC%20Federal%20Budget%20Submission%202017-18%20Final.pdf>

¹¹ For more information about CLCs, see ie: <http://www.naclc.org.au/resources/NAC001%20Infographic%20Internal%20FA2.pdf>

¹² <http://www.abc.net.au/news/2016-12-21/womens-legal-service-funding-cut-victoria/8135240>

it has not been sufficient to close the service gap. In addition, we are concerned that a climate of funding uncertainty takes valuable resources away from effective advocacy and legal service delivery, and directs them, at responding to funding pressures. We therefore call for the Australian Government to take a more strategic, holistic, and long-term approach to funding of the legal assistance and family violence sector.

Particular needs of women of Aboriginal or culturally diverse backgrounds

The Family Law Council has continuously found, consistent with the experience of WLSA members' experience, that women with Aboriginal or Torres Strait Islander and culturally and linguistically diverse (**CALD**) backgrounds are being under-represented in the family law system despite high levels of family violence.¹³ The Safety First 5-step plan advocates for the implementation of the 2012 Family Law Council reports on improving the family law system for Aboriginal or Torres Strait Islander and CALD clients.

C. Economic insecurity of women – caused by economic abuse and economic hardship flowing from family violence

Financial impacts of family violence

Family violence can have considerable and lasting impact on physical and psychological health and wellbeing. In addition, a number of studies have demonstrated family violence “significantly contributes to poverty, financial risk and financial insecurity for women, sometimes long after they have left the relationship”.¹⁴ Research by ANROWS in 2016 used data from the Journeys Home survey¹⁵ to focus on women who reported experiencing physical or sexual partner violence and report on their experience of financial stress.¹⁶ They found that economic status was worse for those who had experienced violence prior to the first survey wave¹⁷ and that differences in economic status were persistent over the 3 year survey period.¹⁸ If violence was reported in multiple survey waves women were more likely

¹³ See the Family Law Council's 2016 Final Report on *Families with Complex Needs and Intersection of Family Law and Child Protection Systems*, pages 8, 78, and 146- 151, which refer to the Council's 2012 reports on ATSI and CALD users of the family law system.

¹⁴ Braaf and Barrett Meyering, above n 22, 3; See also Amanda George and Bridget Harris, 'Landscapes of Violence: Women Surviving Family Violence in Regional and Rural Victoria' (Report, Centre for Rural Regional Law and Justice, Deakin University School of Law, 2014) 35; Emma Smallwood, 'Stepping Stones: Legal Barriers to Economic Equality after Family Violence' (Report, Women's Legal Service Victoria, 2015) 6; National Council to Reduce Violence Against Women and Their Children (Australia), *Background Paper to Time for Action: The National Council's Plan for Australia to Reduce Violence against Women and Their Children, 2009-2021* (Dept. of Families, Housing, Community Services and Indigenous Affairs, 2009) 44; Ilsa Evans, *Battle-Scars: Long-Term Effects of Prior Domestic Violence* (Centre for Women's Studies and Gender Research, Monash University, 2007) 24.

¹⁵ This longitudinal study was focussed on risk of homelessness and did not specifically focus on family violence. Nevertheless, the survey included questions that addressed whether respondents had experienced violence and could therefore be used to investigate the experience of women who had been affected by family violence. Further, the sample is drawn from people who accessed Centrelink social security, and therefore focusses on individuals who are already experiencing disadvantage or hardship. It is not representative of the economic effects of violence on groups of women who are more financially secure.

¹⁶ Natasha Cortis and Jane Bullen, *Domestic Violence and Women's Economic Security Building Australia's Capacity for Prevention and Redress: Final Report* (ANROWS, 2016) 13 <<http://anrows.org.au/publications/horizons/domestic-violence-and-womens-economic-security-building-australia%E2%80%99s-capacity>>.

¹⁷ Ibid 20.

¹⁸ Ibid 20, 34.

to experience adverse economic outcomes, including a decreased likelihood of being in paid employment.¹⁹

In their recently released 10 year plan for action on family violence the Victorian Government has similarly highlighted that “[family] violence is the single largest cause of homelessness for women’ and that women escaping family violence ‘are vulnerable to unemployment and a cycle of poverty’”.²⁰ Not only do women who have experienced family violence face ongoing costs such as for medical or psychological treatment, but their ability to find or maintain employment can be impacted by ongoing health and psychiatric problems.²¹

Economic abuse

The financial repercussions of family violence are often compounded by the concurrent presence of economic abuse. In Evans’ study of survivors of family violence, 80% of participants had also experienced financial abuse.²² Smallwood has highlighted that economic abuse, now recognised and understood as a form of family violence, ‘is a subtle form of violence that is hard to identify’ and that ‘there is a grey area that makes defining economic abuse challenging’.²³ In the *Family Violence Protection Act 2008* (Vic) the definition of economic abuse describes controlling, coercive or deceptive behaviours which denies another person ‘financial autonomy’.²⁴

In practical terms economic abuse includes actions such as restricting knowledge of finances, interference with another person’s work or education, withholding or threatening to withhold financial resources, monitoring or controlling spending, accruing debt in the other party’s name without permission, refusing to pay bills or other joint debts, ruining the other party’s credit rating and forcing the other party to sign contracts or make other financial commitments.²⁵

Safety First plan response to economic abuse

Whether a result of physical, emotional, economic or other forms of abuse, financial hardship has implications for women’s independence and their safety. Braaf and Meyering suggest ‘financial security goes to the heart of women’s ability to escape from abuse’; it can influence their decision on whether to stay or leave a relationship and can impact on recovery from

¹⁹ Ibid 46.

²⁰ State of Victoria (Department of Premier and Cabinet), ‘Ending Family Violence: Victoria’s Plan for Change’ (2016) 2; See also Braaf and Barrett Meyering, above n 22, 45–47.

²¹ Evans, above n 29, 25.

²² Ibid.

²³ Smallwood, above n 29, 7; See also State of Victoria, ‘Royal Commission into Family Violence: Summary and Recommendations, Vol IV, Parl Paper No 132 (2014–16)’ (Parl Paper No 132 (2014–16), Vol IV, 2016) 94.

²⁴ *Family Violence Protection Act 2008* (Vic) s 6.

²⁵ Braaf and Barrett Meyering, above n 22, 7, 29, 35–37; Smallwood, above n 29, 6–7; National Council to Reduce Violence Against Women and Their Children (Australia), above n 29, 13; Owen Camilleri, Tanya Corrie and Shorna Moore, ‘Restoring Financial Safety: Legal Responses to Economic Abuse’ (Report, Good Shepherd Australia New Zealand and Wyndham Legal Service, 2015) 17; Prue Cameron, *Relationship Problems and Money: Women Talk about Financial Abuse* (WIRE Women’s Information, 2014) 11; See also Adrienne E Adams et al, ‘Development of the Scale of Economic Abuse’ (2008) 14(5) *Violence against women* 563.

abuse once a relationship has ended.²⁶ It is for these reasons that Step 4 of the Safety First plan is to support women and children to financially recover from family violence.

Work done in the area of economic abuse

The Stepping Stones Project was established by Women's Legal Service Victoria in 2014 to combat financial abuse sustained and to push for legal recognition by courts and creditors



to take into account the clients financial circumstances. From this program, the service has now assisted over 250 clients to reduce their collective debt by over \$300,000. With 25% of clients having a debt accrued by abusive partners, Stepping Stones is able to raise awareness and recognition of financial abuse. In 2015, our project coordinator Emma Smallwood wrote a report on the outcomes of Stepping Stones (**Attachment B**). The final report was extensively cited by the Victorian Royal Commission into Family Violence, which adopted 15 of the project's

recommendations for reform.

Following on from this project, Women's Legal Service Victoria (**WLSV**) is currently running a project titled Small Claims Large Battles which is investigating the barriers that poor women face in obtaining fair outcomes in family law property settlements by running legal cases and interviewing women about their experiences. Throughout the project, WLSV will conduct a campaign which, firstly, raises awareness of current issues in the family law system and, secondly, advocates for specific reforms to promote economic security for poor women and others using the family law system. For a brief overview of the project, see **Attachment C**. This aligns with aspects of Step 4 of the Safety First plan.

D. Women in Prison

The issue of women in prison highlights intersectional discrimination based on factors including gender, race, disability, poverty and age. In particular, we are concerned that Aboriginal and Torres Strait Islander women form 2.2% of Australian women and yet comprise 34% of the women in prison in Australia.²⁷

As Stathopoulos notes, Aboriginal women generally serve shorter sentences, often for minor offences such as driving infringements and non-payment of fines and are more likely than non-Aboriginal women to be on remand. This raises concerns about over-policing. It is also of great concern that women are being incarcerated because they are poor. As Stathopoulos acknowledges "prisoners who are on remand are usually not eligible to participate in programs".²⁸

Courts, government, and the general public are not generally well informed about the pathways to prison for women as a result of family violence, including sexual assault. A high proportion of women in prison have been victims of violent crime prior to coming into custody.

²⁶ Braaf and Barrett Meyering, above n 22, 5, 18, 26–30; See also Evans, above n 29, 24.

²⁷ Peta MacGillivray & Eileen Baldry, 'Australian Indigenous Women's Offending Patterns', Indigenous Justice Clearinghouse, Brief 19, June 2015, p1.

²⁸ Research cited in Mary Stathopoulos, *Addressing women's victimisation histories in custodial settings*, ACSSA, No 13, 2012 at 3.

For example, the 2009 NSW Inmate Health Survey found that: 66% of female inmates had been involved in at least one violent relationship and 29% of female inmates had been subjected to at least one form of sexual violence.²⁹

Lawrie's 2003 study of Aboriginal women in NSW prisons found that over 75% of Aboriginal women had being sexually assaulted as a child, just under 50% had been sexually assaulted as adults and almost 80% were victims of family violence.³⁰ As Stathopoulos observes, "the most significant co-occurrence of child sexual abuse...is substance addiction and mental health issues ... [which] is intertwined with mental health problems and pathways to offending".³¹ As Herman explains, drugs are a coping mechanism, providing relief and a form of escape from reality.³²

Therefore helping women to address their trauma is key to reducing recidivism. With respect to Aboriginal or Torres Strait Islander women this should include trans-generational trauma as a result of colonisation.

We are also concerned that the over-representation of Aboriginal and Torres Strait Islander women in prison is a factor impacting on the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care.

From our experience of working with women in prison we have in the past made numerous recommendations, which have not been taken up by government, including our recommendation at (2b) of the Safety First plan that it undertake research to audit "the barriers in the family law system for women in other high risk groups such as women with disabilities, women from regional and rural communities and women in prison."

We made further recommendations in our submission to the Senate Inquiry on Domestic Violence and Gender Equality in 2014 as follows:

RECOMMENDATION:

A genuine commitment to diversionary programs for women, especially in relation to a non-violent offence. This is particularly important where the woman has primary/substantial caring responsibilities for children and is consistent with the [United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders \(Bangkok Rules\)](#).

RECOMMENDATION:

Where a custodial sentence cannot be avoided, commitment to and expansion of programs that enable children to live with their mother in custody - either on a full-time basis or for school holidays.

RECOMMENDATION:

More Audio Visual Link (AVL) suites set up for contact visits in prison and more flexibility regarding community organisations that can facilitate the

²⁹ Ibid.

³⁰ Lawrie cited in Natalie Taylor & Judy Putt, 'Adult sexual violence in Indigenous and culturally and linguistically diverse communities in Australia,' *Trends and Issues in crime and criminal justice*, Australian Institute of Criminology, September 2007 p 2.

³¹ Mary Stathopoulos, *Addressing women's victimisation histories in custodial settings*, ACSSA, No 13, 2012 p6.

³² Herman cited in Mary Stathopoulos, *Addressing women's victimisation histories in custodial settings*, ACSSA, No 13, 2012.

contact visits through technology where the children are located. This would enable women in prison, for example, to speak to their children about their school day, sporting events, read their children a story.

RECOMMENDATION:

Improve access to safe and affordable housing so that women can get bail and parole and so their children can live with them upon release where it is safe to do so.

RECOMMENDATION:

Consistent with the Victorian Royal Commission into Family Violence recommendations 183 and 184 ensure access to counselling and other supports/programs for women in prison who want to access such services and programs, including women on remand.

Suggestions on organisations to visit

Our member women's legal services are located at each state or territory capital city, as well as at other locations. We invite you to visit one or more of our member services, which are listed here:

Centre name	City and state
Women's Legal Service (ACT & Region)	Canberra, ACT
Central Australian WLS (CAWLS) (NT)	Alice Springs, NT
Women's Legal Service (NSW)	Sydney, NSW
Shoalcoast Community Legal Centre Inc (NSW)	Nowra, NSW
Women's Law Centre (WA)	Perth, WA
Geraldton Resource Centre (WA)	Geraldton, WA
Women's Legal Service (Tas)	Hobart, TAS
Women's Legal Service Inc (Bris, QLD)	Brisbane, QLD
North Qld Women's Legal Service (QLD)	Townsville, QLD
Women's Legal Service INC (SA)	Adelaide, SA
Aboriginal Family Violence Prevention & Legal Service	Melbourne, VIC
Women's Legal Service Victoria (VIC)	Melbourne, VIC

We would be happy to arrange a meeting at one or more of these centres, upon request.

Further, as proposed in our email to your office dated 18 January 2017, we would be happy to arrange a meeting with you in Melbourne, during which we invite you to: (a) present briefly to a group of interested community lawyers about the work you are doing internationally in relation to family violence and/or family law, or another pertinent area (b) consult with the attendees by way of a round table discussion on an issue of interest.

In addition, below we provide suggestions on programmes, shelters, and organisations to visit in Melbourne, Victoria:

Contact name & role	Organisation	Contact Details	Relevant Areas
		[Individual contact details deleted prior to internet publication]	

³³ <https://www.justiceconnect.org.au/our-programs/homeless-law/get-help/women%E2%80%99s-homelessness-prevention-project>

We would be happy to assist you with any other questions you may have, or contacts that you required. Please do not hesitate to contact me by email at [deleted for internet publication].

Yours faithfully

Agata Wierzbowski
National Law Reform Coordinator