



WLSA is a national network of community legal centres specialise in women's legal issues. We have a particular interest in family law and family violence matters and are located in each state and territory in Australia. These are our top five priorities.

Emphasis on shared parenting be removed from the Family Law Act

The presumption of equal shared parental responsibility (ESPR) and emphasis in the Act on shared parenting were not changed by the 2012 family law amendments. The presumption of ESPR is not meant to apply in cases of violence and abuse. However, this does not always work in practice. Why is this case? It is often difficult to 'prove' violence/ abuse to the satisfaction of the court, because it occurs 'behind closed doors', many victims can be unrepresented in court because of limited legal aid and many matters are settled in mediation, often without legal assistance. The presumption continues to place victims and their children immediately on the 'backfoot' in the court or in mediation, resulting in orders/ agreements that include ESPR or shared parenting provisions that can:

- expose victims of violence and their children to ongoing violence, intimidation and manipulation;
- allow ample opportunities for perpetrators of violence to exert ongoing control and decision-making in the family;
- provide opportunities for the mother's parental authority with the children to be continually undermined; and
- effectively deny many children the therapeutic assistance they require through domestic violence or trauma counselling because the law requires the permission of the perpetrator and this is often refused.

Each family and each individual child in each family is unique and has different needs. This is especially true for children who have experienced violence and abuse. Parenting arrangements should be *in the best interests of each child*, worked out on a case-by-case basis. The safety and wellbeing of families is too important to not take the time to judge each case on its own merits, especially when family violence and abuse are involved.

Increased funding to meet legal needs of women

WLSA acts for and advises many women who are victims of family violence and/or have concerns about their children's safety, who experience financial hardship but who are unable to obtain legal aid at all or adequate legal aid to properly conduct their family law matters. The legal needs of Aboriginal and Torres Strait Islander women also requires special consideration. WLSA believes that there should be a specific legal aid pathway in family law, for those who have experienced family violence, with its own set of guidelines that take into account these complex dynamics. The guidelines should also provide clear criteria for the funding of specialised family violence reports (which is consistent with the *Family Courts Family Violence Best Practice Principles*) to support decision-making by courts around issues of violence.

There is an urgent need for increased funding of Women's Legal Services (WLS) including Aboriginal and Torres Strait Islander WLS. The legal aid system requires additional funding to respond appropriately to family law and family violence issues.

Vulnerable witness protection introduced in family law

The extent of family violence in the family law system is significant. Australian Institute of Family Studies (AIFS), in their study, *Allegations of family violence and child abuse in family law children's proceedings (2007)*, identified that over half of the family law files they examined contained allegations of family violence. It is also well recognised that some violent and controlling perpetrators will use litigation against their former spouses as a way to continue to control and/or punish them after separation.

There are currently no specific provisions in family law that prevent perpetrators of violence, who act for themselves without a lawyer, from cross-examining the victim of violence. Similar legal protections exist in State law in criminal jurisdictions for sexual offences and in domestic violence legislation. Being cross-examined by their own abuser has devastating emotional and psychological consequences on victims of violence. It is only fair and just that vulnerable witnesses in family law also be protected.

The Human Rights and Anti-Discrimination Bill be passed

WLSA supports the passing of the *Human Rights and Anti-Discrimination Bill* with the amendments recommended by the Senate Standing Committee. The consolidation of the laws into a single Act will make it clearer and more accessible, which promotes access to justice.

In particular, we support the inclusion of domestic violence as a protected attribute, which is consistent with our human rights obligations and the *National Plan to Reduce Violence against Women and their Children*. It also builds upon current protections in industrial awards and enterprise agreements.

We also support the Senate Standing Committee's recommendation to remove exceptions allowing religious organisations to discriminate in the provision of services because the strong public policy message should be one of non-discrimination. WLSA is extremely disappointed with the Government decision to not proceed with this legislation at this stage because it misses a once in a generation opportunity to 'get things right'.

Improvements for culturally and linguistically diverse (CALD) women on temporary visas who experience family violence, regarding access to Centrelink, adequate legal aid and protections under the Migration Act

For victims of family violence, having access to an adequate income is essential for safety. Women on some temporary visas (eg. student, tourist, skilled migration) who have been subjected to violence and then separate are unable to obtain Centrelink benefits and other government benefits, such as public housing. This can be dangerous for women and children because it makes it difficult for them to leave. These women should be eligible for a Centrelink benefit at least until their migration status has been determined. They should have access to adequate legal aid for comprehensive legal assistance to empower them to seek safety. The legal issues involved in these matters can be complex and inter-related and may not be finalised in a legal aid conference (mediation) and may require a court determination.

WLSA also supports the Australian Law Reform Commission's recommendations in *Family Violence and Commonwealth Laws - Improving Legal Frameworks (2011)* about extending the family violence provisions in certain circumstances and the creation of a new visa (with access to special Centrelink benefits) for secondary visa holders who experience family violence, but who are unable to access the family violence exception.

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