



24 July 2020

House of Representatives Standing Committee  
PO Box 6021  
Parliament House  
CANBERRA ACT 2600

**Re: Inquiry into family, domestic and sexual violence, and the need for specialist women's services.**

We, as the Chief Executive Officers of Women's Legal Services from across the country, write to the Committee to explain why there is a current and continued need for specialist service providers to represent women in Australia. Women's Legal Services Australia (WLSA) is also making a supplementary submission to this inquiry.

**What we do.**

Across the country, Women's Legal Services provide legal assistance to members of our community identifying as women in a holistic approach. Primarily we address all forms of gender discrimination, providing advice on family law, family violence, child protection and discrimination, in most cases where there has been a relationship breakdown and/or violence. Legal assistance services our organisations provide include a mix of legal advice on the phone, duty lawyer services (on the spot legal assistance in courts), mediation, ongoing legal representation for priority cohorts experiencing particular disadvantage, as well as outreach and community legal education.

More recently, many Women's Legal Services have expanded our service provision to include financial counselling and social work to complement our legal assistance. This 'value adding' focuses on the overall well-being of our clients. It allows us to deliver more integrated holistic services that are more efficient, and more focused on the whole person, as opposed to simply focusing on the legal response. Adopting this approach to service delivery, client outcomes are more sustainable and longer lasting. The intention is to support women to realise their full opportunity after leaving a relationship and/or the violence they have experienced.

Women's Legal Services also provide advice to Government on proposed administrative, policy and legislative reforms. Through our day to day work with clients, we are in a unique position to identify gaps in the legal system and the impact this has on our clients.

We are organisations committed to changing the cultural norms which continue to perpetuate the gender stereotypes that drive family violence. Effectively, our goal is to achieve equality, so that there will be no need for our services to level the playing field in the future.

## Why are specialist services for women required in 2020?

One woman a week is murdered in Australia.

One in four Australian women experience family violence. One in three Australian women have experienced physical or sexual violence since the age of 15.<sup>1</sup> One in two women have experienced sexual harassment during their lifetime.<sup>2</sup>

The average full-time weekly wage for a woman is 15.3% less than a man's.<sup>3</sup> In the 2015-2016 financial year, the average superannuation balances for women aged between 60-64 were just over half of those men had accumulated.<sup>4</sup> This is not equality.

The voice of women who have a lived experience of family violence is getting louder. Communities across Australia want to be part of the solution. Communities across Australia want to change this Australian story.

The high incidence of violence against women and their children cost the Australian economy \$22 billion in 2015-2016.<sup>5</sup> The Government needs to adopt innovative ways to address violence against women. It simply costs too much for us to ignore how to work differently and how to change the legal system.

## Australia's international obligations - United Nations CEDAW.

Australia is a signatory to the *United Nations Convention on the Elimination of Discrimination Against Women* (CEDAW). CEDAW provides that women are to be free of all forms of discrimination. Article 1 describes discrimination as: *"Any... restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, ... on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field"*. Furthermore Article 3, requires the Government to secure political, social, economic and cultural equality for women. There is still much work to do.

Women's Legal Services are a practical expression of special measure programs aimed at assisting women achieve structural equality. Women's Legal Services represent the Government's attempt to in part address the political, social, economic and cultural inequality that Australian women continue to experience.

Against all equality markers, Australian women remain disadvantaged. While women and girls make up 50.7% of the Australian population, we only comprise 47% of all employees in Australia with an average take home pay that is \$251.20 less each week than men.<sup>6</sup>

One in two mothers reported workplace discrimination concerning their pregnancy, leave or return to work. Furthermore, one in five women reported being made redundant, restructured out, dismissed or having their contract end.<sup>7</sup>

Gender Inequality, expressed statistically as part of the lived experience of women, is the driver of

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<sup>1</sup> Australian Bureau of Statistics 2016

<sup>2</sup> Australian Bureau of Statistics 2017

<sup>3</sup> Workplace Gender Equality Agency, February 2018 p4

<sup>4</sup> Association of Superannuation Funds of Australia Ltd, October 2017 p5

<sup>5</sup> KPMG, The Cost of Violence against Women and their Children in Australia, May 2016, p4

<sup>6</sup> Workplace Gender Equality Agency, February 2018, p1. See also: [humanrights.gov.au](http://humanrights.gov.au) Face the facts: Gender Inequality 2018

<sup>7</sup> [humanrights.gov.au](http://humanrights.gov.au) Face the facts: Gender Inequality 2018

family violence. The Australian Government must therefore continue to build the capacity and specialisation of services for women to work towards combatting this inequality. Inaction is not an option.

It is critical that the economic potential of each and every Australian is harnessed as we respond to the COVID-19 crisis. The Australian Government cannot afford for 50.7% of the Australian population to not be afforded an equal opportunity to economically contribute to the recovery of this nation to the global economic crisis that confronts us. The Australian Government must work towards ensuring that “systemic gender bias and inequities come to light.”<sup>8</sup> In the words of the Snap Forward Feminist Policy Network submission to the Senate Select Committee on COVID-19, women must not be left to disproportionately bear the brunt of the economic, social and cultural impacts of COVID-19.

Funding specialist legal services for women recognises that women do not enjoy equal rights at law due to structural inequalities. Special measures protections allow for Australia to support efforts to equal the playing field, with the idea that one day we will all be equal and there will be no need for targeted and specialised services to achieve equity.

The creation of Women’s Legal Services across the country is a special measure program promoted by the Commonwealth Government to ensure women have equal access to the law. Women’s Legal Services recognise the structural barriers women experience in accessing the law. The continual funding of Women’s Legal Services allows the Australian Government to in part fulfil its international obligation. The same argument can be applied for specialist Aboriginal and Torres Strait Islander services, where socio-economic and health disparities warrant special measures be adopted to work towards creating equality in real terms.

### **COVID-19 response and the economic and social recovery.**

COVID-19 has created an environment where stress has escalated, impacting family relationships and dynamics. Increased stress, family disruption, social isolation and financial pressures exacerbate gender inequalities in homes. These gender inequalities are the drivers that underpin family violence.

The reliance on gender norms is heightened during times of economic uncertainty and during times of crisis. During COVID-19, much of the burden has fallen on women. The sectors in which women traditionally work - childcare, hospitality, retail and tourism - have been particularly impacted. The burden for caring for children and families and for supervising “at home learning” has also sat with women.

The perpetuation of existing gender stereotypes has been exemplified during COVID-19, as they historically are during crisis. Financially, women statistically have lower superannuation balances due to breaks in paid employment, and heavy reliance on part-time and casual work.<sup>9</sup> The Secretary General of the United Nations, Antonio Guterres, has expressed concern that limited gains in gender equality and women’s rights made over the decades are in danger of being rolled back due to the COVID-19 crisis. It is essential that a gendered lens is applied to any response to mitigate these impacts.

### **Our approach to family violence is different.**

As specialist service providers to women, our approach to family violence is different. We work from the basis that the driver of family violence is gender inequality.

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<sup>8</sup> Snap Forward Feminist Policy Network Submission to Senate Select Committee on COVID-19 (published on [broadagenda.com.au](https://broadagenda.com.au)).

<sup>9</sup> Association of Superannuation Funds of Australia Ltd, October 2017 p5

Across the country, Women's Legal Services are the only service providers of comprehensive, joined-up, multi-disciplinary services, across family law, family violence and child protection. We are the only provider of property division advice and representation for smaller pools of property where family violence is a feature or where there are no other avenues for women to access their legal rights.

Without the existence of Women's Legal Services in each state and territory, the legal costs of pursuing a woman's legal entitlements often outweighs the value of the property pool in dispute. This further entrenches poverty for women.

### **We operate within a feminist framework.**

In recognition of the high incidence of family violence throughout communities in Australia, many Women's Legal Services in the country operate Domestic Violence Units (DVUs) - specialist family violence units that are funded to provide a holistic service to women who have experienced or are experiencing family violence.

Women's Legal Services also build collaborative relationships with other specialist services for women in the sector, including sexual assault service providers, specialist counselling, health services and shelters. More recently, many DVUs have expanded to include services such as financial counselling and social work, providing a capacity to provide services and referrals that wrap around women to support their choices moving forward. This is a self-determining and empowering model of service delivery.

As specialist services for women, we also facilitate community conversations around the behaviours that constitute abuse and are unlawful under the various state laws. We work to challenge cultural norms that are permissive of family violence.

We understand that gender inequality is the driver of family violence. It is only when these gender assumptions and norms are questioned, challenged and unpacked that we are able to work towards building a community response to family violence. As services we are all committed to facilitating these cultural conversations and to improving the resilience of our communities.

### **We are trauma informed.**

As trauma informed services, we take the time we need to work with clients with complex presentations. This means that we do not put strict time limits on our advice or casework sessions with our clients, and that we are able to look at the client's problem with a holistic approach, providing facilitated referrals, assistance with non-legal support from in-house financial counsellors and social workers, and can provide access to interpreting and translation services.

We are also aware of the importance of safety planning and risk management, and work collaboratively with other professionals to manage these presentations amongst our clients.

Women's Legal Services recognise that our clients are not just in need of legal support to navigate a separation. We provide socio-legal services.

### **We advocate for systems reform.**

From our legal work through casework, telephone advice, community legal education and outreach activities, we identify changes required of an administrative, policy or legislative nature that create barriers for women.

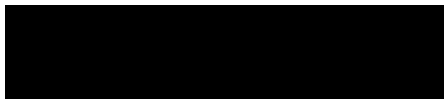
This feedback and input into law and policy development is an important source of advice to Government based on the expertise our services develop through navigating our clients experience of the system. This experience informs our submissions to Parliamentary inquiries and informs law reform proposals we submit. This experience forms the foundations that underpins the Women's Legal Services Australia **Safety First in Family Law Plan** that we have been advocating for since 2015. A copy of this document is attached to this letter.

In conclusion, our submission aims to draw the Committee's attention to the need for Women's Legal Services to be funded appropriately to respond to the particular disadvantage experienced by women across the country. Women's Legal Services are committed to making the legal system more accessible and responsive to the issues affecting women in Australia.

Yours faithfully,



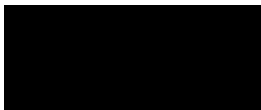
Yvette Cehtel  
Chief Executive Officer, Women's Legal Service Tasmania



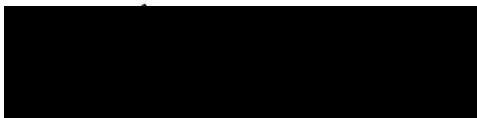
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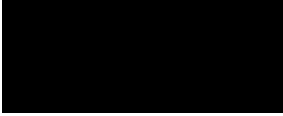
Christine Robinson  
Coordinator, Wirringa Baiya Aboriginal Women's Legal Centre Inc.



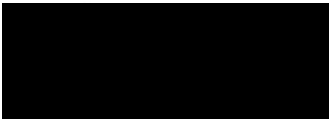
Janet Taylor  
Managing Principal Solicitor, Central Australian Women's Legal Service



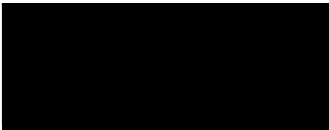
Vanessa Lethlean  
Managing Solicitor, Top End Women's Legal Service Inc



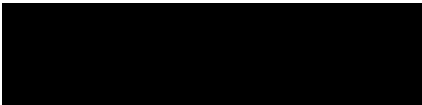
Brooke Brenner  
Chief Executive Officer, Katherine Women's Legal Service



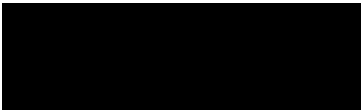
Dr Gillian Booth-Yudelman  
Chief Executive Officer, Women's Legal Service WA



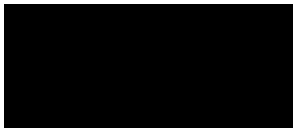
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Zita Adut Deng Ngor  
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# **Supporting the safety and financial recovery of family and domestic violence victim- survivors in the justice system**

## **Submission to the Inquiry into Family, Domestic and Sexual Violence**

**24 July 2020**

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## About WLSA

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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. Some of our centres have operated for over 35 years.

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, across all jurisdictions. Our legal services are directed to marginalised and disadvantaged women, most of whom have experienced family and domestic violence. Therefore, our primary concern when considering any proposed legal amendments is whether they will make the legal system fairer and safer for our clients – marginalised and disadvantaged women.

Our members' principal areas of legal service work are family and domestic violence (family and domestic violence intervention orders), family law, child protection and crimes compensation. Our members also deliver training programs and educational workshops to share our expertise regarding effective responses to violence and relationship breakdown.

Finally, both WLSA and its individual member services work to contribute to policy and law reform discussions, primarily focused on sexual and family and domestic violence, to ensure that the law does not unfairly impact on women experiencing violence and relationship breakdowns.

The terms 'victim,' 'survivor,' and 'victim-survivor' have been used interchangeably throughout this submission to refer to women, children and others who have experienced or are experiencing family and domestic violence in any of its forms. Further, in acknowledgement of the gendered nature of family and domestic violence, survivors are referred to as women and children and perpetrators are referred to as men.

### **Acknowledgement**

We acknowledge the family and domestic violence victims-survivors with whom we work and whose voices and experiences inform our advocacy in the hope for positive change.

# Executive Summary

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WLSA acknowledges that the Australian Government and state and territory Governments have taken action to address all forms of violence against women since the National Plan to Reduce Violence against Women and their Children 2010 – 2022 (the National Plan) was introduced. The Australian Government however still has a long way to go to achieve an integrated whole-of-system response to ensure the safety and financial security of women and children experiencing and recovering from family and domestic violence.

The focus of this submission is on term of reference (D). WLSA is concerned that the important role of and access to integrated specialist legal assistance to address the needs of victim-survivors is not expressly included in the National Plan.

WLSA seeks to promote a whole of government approach to family violence that is safe, just, supportive, non-discriminatory and responsive to the needs of women and intersex, trans and gender diverse people in accessing justice. A holistic and integrated service system and justice system response can provide pragmatic and meaningful support for individual victims to protect their safety and financial and emotional security. It can also contribute to broader social and cultural shifts to transform community attitudes about family and domestic violence and the issues of gender inequality, male privilege, and socio-economic power imbalances that underpin it.

The Australian Government's approach to the implementation of justice and legal reforms to keep women and children safe has however been piecemeal since the National Plan was first introduced in 2010. A long term systemic approach to reform needs to be adopted to guarantee the safety and financial recovery of victim-survivors. While short-term or one-off funding have enabled projects to be launched, and projects piloted, this limits the capacity to build relationships, trust and continuity, which are key to successful long term partnerships. Sustainable and longer-term funding will work to facilitate continuity in service delivery and staffing within Community Legal Centres (CLCs), including specialist women's legal services, Aboriginal and Torres Strait Islander community controlled legal services; Family Violence Prevention Legal Services (FVPLS) and Aboriginal and Torres Strait Islander Legal Services (ATSILS), all delivering integrated services.

The number of matters in the legal and justice system involving allegations of family and domestic violence is expected to increase. Sexual, family and domestic violence services across Australia have seen a marked increase in women seeking assistance with family and domestic violence matters over the past five years, as public discussion around the issue has grown momentum. Research has also clearly demonstrated that domestic and family and domestic violence during and post natural disasters increases<sup>1</sup> and that domestic and family and domestic violence reported around the world during COVID-19 has increased.<sup>2</sup> Research recently published by the Australian Institute of Criminology has confirmed this<sup>3</sup>. WLSA members urge the Committee to take this into account when developing its recommendations to the Government in the final report.

WLSA acknowledges that the Australian Government has allocated specific family and domestic violence-related funding for several specialist women's legal services, and other legal services, as part of the Women's Safety Package. This funding has facilitated access to legal help for women experiencing family and domestic violence across Australia through the operation of 15 specialist domestic violence units (DVU's) and 5 health justice partnerships (HJP's).

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<sup>1</sup> Debra Parkinson & Claire Zara, The hidden disaster: domestic violence in the aftermath of natural disaster, *Australian Journal of Emergency Management*, Vol 28(2), 2013 and Hayley Gleeson, A new bushfire crisis is emerging as experts brace for an imminent surge in domestic violence, ABC News, 24 February 2020 accessed at: <https://www.abc.net.au/news/2020-02-24/domestic-violence-anticipated-spike-bushfires-crisis/11980112>

<sup>2</sup> Amanda Taub, 'A New Covid-19 Crisis: Domestic Abuse Rises Worldwide', *The New York Times*, 6 April 2020 accessed at: <https://www.nytimes.com/2020/04/06/world/coronavirus-domestic-violence.html>

<sup>3</sup> <https://www.aic.gov.au/publications/sb/sb28>

WLSA recommends that the Australia Government further supports women and children experiencing family violence by providing adequate and additional funding to specialist women's legal services and Aboriginal and Torres Strait Islander Community Controlled specialist legal services; National Family Violence Prevention Legal Services and Aboriginal and Torres Strait Islander legal services. Providing support in this way will assist the most disadvantaged, high risk families in the family law system. We note also that a significant proportion of the funding, recently announced for the legal assistance sector in response to COVID-19, needs to be directed towards specialist women's legal services around the country and community controlled Aboriginal and Torres Strait Islander legal services. These legal support services are crucial to enable women (and their children) to navigate their way through the family law system safely.

The Government should use the positive evaluations of the DVU and HJP pilots as the basis for a national roll-out of the reforms across Australia. WLSA acknowledges that in November 2018, the Commonwealth Government announced an additional \$29.8 million to extend funding for these existing units over 3 years from 2019-2020. However, only a small number of DVU's and HJP's have been funded despite the positive evaluation of the pilots. In 2018, the evaluation of the units and partnerships conducted by Social Compass were positive and found that the units and partnerships had multiple benefits including increased legal access, literacy and positive legal outcomes.

The Family Advocacy and Support Service (FASS) model has also received a positive evaluation. While FASS plays an important role as a duty lawyer service WLSA notes that there is also the need to fund ongoing comprehensive DV, trauma informed and culturally safe legal representation.

WLSA recommends to the Committee its Safety First in Family Law Plan<sup>4</sup> (attached). The plan was publicly launched last year, with the support of Dr Rosie Batty OAM, former Australian of the year. The five step plan has also been endorsed and is supported by over 100 organisations across Australia<sup>5</sup>. The majority of matters in the family law courts involve family and domestic violence.<sup>6</sup> The steps to a safer family law system include:

1. Strengthen the family and domestic 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 and domestic violence
4. Increase access to safe dispute resolution models including legally assisted dispute resolution
5. Overcome the gaps between the family law, family and domestic violence and child protection systems.

WLSA members have been working closely with the family law courts this year to improve the safety of women and children navigating the family law system in Australia. We welcome the initiative of the Chief Justice of the Family Court of Australia and Chief Judge of the Federal Circuit Court of Australia, the Honourable William Alstergren, which has led to the establishment of a special COVID-19 list where parenting matters related to COVID-19 can be urgently listed and dealt with within 72 hours. This list is for urgent matters, including family and domestic violence, which are related to COVID-19. WLSA submits that the effective operation of the COVID-19 family law list depends largely on it being supported by access to legal advice and representation.

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<sup>4</sup> [http://www.wlsa.org.au/uploads/campaign-resources/Safety\\_First\\_in\\_Family\\_Law\\_Plan.pdf](http://www.wlsa.org.au/uploads/campaign-resources/Safety_First_in_Family_Law_Plan.pdf)

<sup>5</sup> [http://www.wlsa.org.au/media\\_releases/endorsements\\_for\\_wlsa\\_safety\\_first\\_in\\_family\\_law\\_plan](http://www.wlsa.org.au/media_releases/endorsements_for_wlsa_safety_first_in_family_law_plan)

<sup>6</sup> AIFS study

# Recommendations

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WLSA recommends that the Australian Government:

1. Supports specialist women's legal services and community controlled Aboriginal and Torres Strait Islander legal services to deliver socio-legal services which meet the complex needs of victim survivors so that they can be safe, supported and financially secure.
2. Continues its commitment to addressing family and domestic violence by rolling out DVUs and HJPs under the Women's Safety Package Measures
3. Continues to improve the family law system's response to family violence by adopting the recommendations included in WLSA's safety first in family law five step plan:
  - Strengthen family violence response in the family law system
  - Provide effective legal help for the most disadvantaged
  - Ensure family law professionals have real understanding of family violence
  - Increase access to safe dispute resolution models
  - Overcome the gaps between the family law, family violence and child protection systems.
4. In consultation with the family law courts, support and resource the family law courts to assist them in their efforts to improve their family law response by continuing funding and rolling out the Risk Screening pilots (the "Lighthouse Project") across all family law court registries;
5. In consultation with the family law Courts, promote the early determination of family violence, through a family violence informed case management process and the testing of evidence of family violence early.
6. Support legislation that would remove the presumption of equal shared parental responsibility and the language of equal shared time from Part VII of the *Family Law Act*. Any proposals to introduce legislative presumptions into the *Family Law Act*, to determine property and financial cases should be opposed.
7. Continue to fund community legal centres, including specialist women's legal services and Legal Aid Commissions to broaden domestic violence, trauma informed, Lawyer Assisted Family Dispute Resolution (LAFDR) availability for priority clients in both parenting and property matters. Continue to fund Aboriginal and Torres Strait Islander community controlled legal services to provide culturally safe family dispute resolution.
8. Continue to support and work towards the implementation of recommendations from Women's Legal Service Victoria's Small, Claims, Large Battles report
9. Work collaboratively with state and territory governments to 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

# What is Family and Domestic Violence?

Family and domestic violence is a pattern of behaviour, which can include physical, sexual, psychological, emotional and financial abuse, designed to intimidate, undermine, isolate and control victims. Perpetrators can also use violence or threats of violence against children, other family members and pets.<sup>7</sup> Survivors of family and domestic violence are commonly subjected to the use of concurrent and overlapping tactics of power and control over time that cause cumulative physical, psychological and financial harm and injury to them. Most commonly, family and domestic violence occurs in intimate partner relationships, with men more likely to be the perpetrator and women the victim survivor.

Economic abuse is almost a universal experience for women reporting to family and domestic violence services. Of the total number of women across Australia who access family and domestic violence services, around 85% would say that they had had some level of financial abuse as part of the coercive control in a relationship.<sup>8</sup> Economic abuse can take various forms (controlling all finances, not allowing oversight or input into financial decisions, not providing the basic necessities, interfering with employment, generating debt in her name with no benefit to her, refusing to contribute financially to joint loans, etc). Economic abuse seriously compromises women's ability to exercise autonomy and decision-making. The element of control is always a factor in economic abuse and it predominantly happens alongside other forms such as physical, emotional and sexual violence. However, it is often not understood as a significant physical security risk. The risk of economic abuse is often minimised, and it often will not satisfy a family and domestic violence interim intervention order on its own.

## The Family Law System's Response to Family and Domestic violence

### WLSA's Safety First in Family Law 5 Step Plan

Since 2015, Women's Legal Service Australia (WLSA) has been advocating for its Safety First in Family Law<sup>9</sup> plan to be implemented. WLSA's safety first in family law plan was publicly re-launched with the support of Rosie Batty, former Australian of the Year and OAM, last year<sup>10</sup>. The plan, which has been endorsed by over 100 organisations across Australia, includes 5 steps for reform to keep women and children safe.

The five steps to a safer family law system include:

- Step 1: Strengthen the family and domestic violence response in the family law system
- Step 2: Provide effective legal help for the most disadvantaged
- Step 3: Ensure family law professionals have real understanding of family and domestic violence
- Step 4: Increase access to safe dispute resolution models including legally assisted dispute resolution
- Step 5: Overcome the gaps between the family law, family and domestic violence and child protection systems.

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<sup>7</sup> Royal Commission into Family Violence (Vic) final report

<sup>8</sup> <https://www.abs.gov.au/ausstats/abs@.nsf/mf/4906.0/>

<sup>9</sup> [http://www.wlsa.org.au/campaigns/safety\\_first\\_in\\_family\\_law](http://www.wlsa.org.au/campaigns/safety_first_in_family_law)

<sup>10</sup> <https://www.news.com.au/national/politics/politicians-should-embrace-a-fivestep-plan-to-combat-family-violence/news-story/d0bf391997e8b867c6455fd2cbfda990>

### Step 1: Strengthen the family and domestic violence response in the family law system

The family law courts do not have case management processes specifically designed for family violence cases (other than serious child abuse). The family law system also has difficulty identifying and determining family violence early. Women often have to manage the risk of family violence without system oversight.

WLSA members have been working closely with the Family Law Courts this year to improve the safety of women and children navigating the family law system in Australia. We welcome the initiative of the Chief Justice of the Family Court of Australia and Chief Judge of the Federal Circuit Court of Australia, the Hon Will Alstergren, which has led to the establishment of a special COVID-19 list where parenting matters related to COVID-19 can be urgently listed and dealt with within 72 hours. This list is for urgent matters, including family and domestic violence, which are related to COVID-19. WLSA submits that the effective operation of the COVID-19 family law list depends largely on it being supported by access to domestic violence, trauma informed, culturally safe legal advice and representation. A significant proportion of funding recently announced for the legal assistance sector needs to be directed towards specialist women's legal services around the country and community controlled Aboriginal and Torres Strait Islander legal services. These legal support services are crucial to enable women (and their children) to navigate their way through the family law system safely.

We note that in December 2019 the Australian Government announced that the Family Law Courts would receive \$13.5 million over 3 years to trial risk screening, triage and high risk list at Brisbane, Parramatta and Adelaide. The planning for the trial, now known as the Lighthouse Project, is well underway. WLSA supports the trial which effectively follows the underlying safety principles outlined in step 1 of the Safety First in Family Law Plan.

### *Remove the presumption of equal shared parental responsibility from the Family Law Act 1975*

WLSA strongly supports the introduction of the *Family Law Amendment (A Step Towards a Safer Family Law System) Bill 2020*, introduced as a private members bill into the House of Representatives on 24 June this year. If passed, the presumption of equal shared parenting responsibility will be removed from the Family Law Act 1975<sup>11</sup>. If removed the starting point in any decision about children will be what is in their best interests.

For too long there has been a widespread misunderstanding within the community about the meaning of equal shared parental responsibility – many think it means equal time and so feel they have no option but to enter into arrangements based on this misbelief even though they may fear these arrangements are unsafe for their children and themselves. These agreements are often made without first seeking legal advice. The continued existence of equal shared parental responsibility is placing thousands of children at risk of further abuse.

WLSA's safety first in family law plan has been calling for the removal of the presumption since it was first launched in 2015. Last year the Australian Law Reform Commission recommended the removal of equal shared parental responsibility, as did the SPLA<sup>12</sup> Committee's report in 2017.

We refer the Committee to previous submissions WLSA has made to other inquiries on why the presumption needs to be removed.

### Step 2: Provide effective legal help for the most disadvantaged

Gaps in legal assistance services are well recognised, including the effects of continual under resourcing of legal and related services and the need for stronger community-based partnerships across the legal and non-legal sectors.

WLSA welcomes the Australian Government's recent announcement of \$63.3 million additional funding for the legal assistance sector to address additional legal needs caused by COVID-19. This includes \$49.8 million for legal assistance services, 40% of which must be used in matters relating to domestic violence and \$13.5 million for IT costs to support the sector's transition to delivering assistance virtually and online.<sup>13</sup>

However, WLSA remains concerned by the large gap in the number of women who are able to access legal aid and those who can afford a private lawyer. We refer again to the Productivity Commission's recommendation in [year] of an immediate injection of \$200 million for legal assistance service providers for civil law matters, including family law. In our view, greater investment in legal assistance services has manifold benefits for the family law system, and provides excellent return on investment. The Productivity Commission also recommended that further costings be undertaken to quantify the total funding required.

Legal issues can be particularly significant at crisis point for women, children and young people experiencing family violence. Multiple pressing legal matters, such as intervention orders, access to children, finances and housing must be dealt with in different courts, in different jurisdictions and under different legislation. Early identification and support to resolve legal problems:

- Improves the safety of women and their children
- Prevents legal crises and protracted legal issues
- Provides consistent and integrated family violence response
- Minimises the impact on a person's wellbeing, and minimises the costs that likely consequences can impose on other publicly funded services (such as housing, health, mental health, and child protection).<sup>14</sup>

Research shows that most people consult only one adviser when they have a legal problem and that they are more than twice as likely to consult a social service adviser rather than a legal adviser for their legal needs<sup>15</sup>. If the first adviser consulted is inappropriate, it is unlikely that a person's legal needs will be met — highlighting the importance of ensuring that the first point of contact can either directly assist or at least, has the ability to refer people to appropriate legal assistance.<sup>16</sup>

Many women facing significant disadvantage and barriers to access to justice are unable to get the legal help they need. Private legal representation in family law is prohibitively expensive and free legal assistance in family law, even for the most disadvantaged, is difficult to access. Family court and federal circuit data has also revealed that in nearly half of all cases that go to trial around 30% of matters involve an unrepresented party<sup>17</sup>

### *The role that specialist women's legal services play in addressing the complex needs of victim survivors*

Specialist women's legal services are vital in empowering and supporting women to claim their legal rights and ensure women can exercise agency, by providing them with a choice of legal assistance services. Staff of these services also have a thorough understanding of the nature and dynamics of domestic and family violence, impact of trauma and are able to recognise intersecting and compounding forms of disadvantage and enact appropriate strategies to respond.

Specialist Women's Legal Services, are able to provide innovative, integrated services in sexual, family and domestic violence, family law and child protection and successfully fill the cross jurisdictional gaps between the different systems.

<sup>11</sup> [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bId=r6508](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6508)

<sup>12</sup> 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 (2017)

<sup>13</sup> Prime Minister's Media Statement, Update on Coronavirus measures, 6 May 2020 access at: <https://www.pm.gov.au/media/update-coronavirus-measures-050520>

<sup>14</sup> Access to Justice Review Summary Report, August 2016. Further modelling undertaken by the Productivity Commission suggests that the costs to the community of not providing duty lawyer assistance to victims of family violence could be as high as \$1700 per case see Access to Justice Arrangements – Productivity Commission Inquiry Report, Vol 1 Sept 2014 Page 165, (Coumarelos et al. 2012)

<sup>15</sup> Around 70 per cent of people consult non-legal advisers with only 30 per cent consulting legal advisers - see Access to Justice and Legal Needs – Legal Australia Wide Survey, Legal Need in Australia, Law and Justice Foundation NSW Aug 2012

<sup>16</sup> Access to Justice Review Summary Report, August 2016

<sup>17</sup> Refer to annual reports Federal Circuit Court of Australia and Family Law Court of Australia 2018-2019



Specialist family and domestic violence lawyers and social service professionals are readily able to identify interconnected life issues and provide early assistance before issues reach crisis point. Given that it can be incredibly dangerous for a victim survivor to separate from a violent partner, it is essential for early support to include a specialised family and domestic violence, trauma informed legal response.

Experiencing family and domestic violence can drive social disadvantage, exposing women to a complex web of legal and non-legal problems and reducing their capability to address legal issues that need to be addressed. Victim-survivors of family and domestic violence often encounter personal and systemic barriers to getting legal, financial and social work service assistance.

Integrated models of legal and social services working collaboratively together are increasingly being used to address the many needs of clients at the same time. Models of integrated service are an innovative response to evidence that legal issues rarely exist in a vacuum and often result in, or arise from, a mixture of problems related to health, housing, finances, mental health, employment, education and family. 'Integration' can take different forms including co-location, multidisciplinary teams or partnerships with other community services.

Specialist Women's Legal Services are in a unique position to be able to provide integrated wrap-around socio-legal services, including financial counselling and social work support services to assist women experiencing domestic violence to protect themselves and their children and to financially and emotionally recover from family and domestic violence. Ongoing integrated legal, social and financial case management empowers women to make safe decisions and to manage the relationship breakdown by enabling them to understand complex legal and financial rights. In some cases, this can save lives.

Recognising the role that specialist women's legal services play in assisting victim – survivors, the Financial Counselling Foundation recently provided three-year funding for 10 family and domestic violence financial counsellor positions throughout Australia, the majority to be placed within community legal services which work with family and domestic violence victim survivors. The Foundation "hopes that these 10 one-off grants in other jurisdictions, will encourage those other Governments to make these new positions permanent after the Foundation's funding ceases".<sup>18</sup> Women's legal services who have been provided with funding include:

- Women's Legal Service NSW
- Women's Legal Service Queensland
- Central Australian Women's Legal Service
- Women's Legal Service WA
- Women's Legal Service SA
- Women's Legal Service Tasmania

### Step 3: Ensure family law professionals have real understanding of family and domestic violence

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.

WLSA has previously recommended that the Australian Government fund and coordinate the development of a national comprehensive family violence training program for family law legal professionals (including independent children's lawyers and family dispute resolution practitioners) and work with state and territory law institutes and bar associations to roll out the training.

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<sup>18</sup> <https://www.financialcounsellingfoundation.org/funded-projects>



WLSA acknowledges that work is underway to improve the family violence competency of professionals working in the system and welcomes the consultation process being followed to seek the views of stakeholders, including WLSA.

#### Step 4: Increase access to safe dispute resolution models including legally assisted dispute resolution

WLSA believes that a well-supported mediation process, with expert lawyers and mediators who are family violence and trauma informed, culturally competent, LGBTIQ aware and disability aware and have a sound understanding of family law, can be an empowering process for a victim-survivor of family violence. As outlined in more detail in WLSA's submissions to other inquiries, matters where family violence is identified are often screened out of non-legally assisted mediation due to safety concerns. This limits the opportunity for early resolution.

Where the violence or other safety concerns are not identified early on by either the parties (particularly where they are self-represented), and/or by family law professionals, the family may proceed to non-legally assisted dispute resolution. This carries with it a significant risk that power imbalances are perpetrated through the process, which in turn increases the risk that any resultant consent orders or agreements do not adequately take into consideration family violence or safety concerns. Legal assistance services have experience and expertise in non-adversarial forums such as lawyer assisted family dispute resolution, which with the necessary safeguards can be used appropriately in family violence matters. Women's Legal Service Queensland helped to develop the Co-ordinated Family Dispute Resolution model - a model specifically designed for parenting matters involving family violence. Further, several WLSA members and Associate members, including Women's Legal Service NSW, Women's Legal Service Victoria, Women's Legal Service Queensland, North Queensland Women's Legal Service, Central Australian Women's Legal Service and Family Violence Prevention Legal Services provide representation in lawyer assisted family dispute resolution with particular expertise in matters relating to family violence and child abuse.

The Australian Law Reform Commission's review of the family law system's final report acknowledged the important role of lawyer-assisted FDR, including in circumstances of family and domestic violence and referred to the Standing Committee on Social Policy and Legal Affairs recommending the expansion of lawyer-assisted FDR. Funding, including for representation at court and in FDR and mediations, was recommended by:

- the Productivity Commission's Access to Justice Arrangements 2014 (recommendations 21.2 and 21.4 to 21.7);
- the Standing Committee on Social Policy and Legal Affairs Parliamentary Inquiry into a better family law system to support and protect those affected by family and domestic violence 2018 (recommendation 4 relates to expanding lawyer-assisted FDR); and
- the Australian Law Reform Commission and NSW Law Reform Commission, Family and domestic violence – A National Legal Response 2010 (recommendation 29.4 stated that government should prioritise the provision of and access to legal services for victims of family and domestic violence, including enhanced support for victims in high risk and vulnerable groups).

#### Step 5: Overcome the gaps between the family law, family and domestic violence and child protection systems

There is currently an ineffective 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.

To overcome the gaps WLSA recommends that 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 needs to be

seamless from the point of view of those who engage with it and prioritises the safety of women and children. The framework should be guided by the steps outlined in WLSA's safety first plan.

WLSA acknowledges that the Australian Government has been working to improve information sharing and coordination between the family law, family violence and child protection systems. \$10.4 million in seed funding has been granted to pilot a co-location model, which will embed state and territory family safety officials (such as child protection or policing officials) in family law courts across Australia. WLSA supports this initiative.

However, it is important that information sharing is not seen as the panacea. An information-sharing framework must focus on agency and safety for victims-survivors of family violence in consultation with specialist family violence experts and legal services.

## Financial Recovery from sexual, domestic and family violence for victim-survivors

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Research tells us that women are at greater risk of poverty than men, and women are more at risk of post-separation financial hardship. Principles of fairness relate directly to women's financial hardship following separation. Addressing the systemic family law system failures that cause complexity, delay and cost will significantly improve the overall financial situation of women post separation.

It is worth noting that Family and Domestic Violence has a serious and increasing economic cost to society. A Price Waterhouse Coopers study in 2015 estimated that violence against women costs the Australian economy \$21.7 billion per year, with victim/survivors bearing the major burden of this cost.<sup>19</sup>

In 2016 Women's Legal Service Victoria (WLSV) established the Small Claims, Large Battles (Small Claims) project to **investigate the barriers to fair financial outcomes in the family law system for vulnerable and disadvantaged women**, many of whom had experienced family and domestic violence. The final report<sup>20</sup> published in 2018 highlighted the disproportionate costs of legal assistance for small property matters. Landers & Rogers, who represented clients on a pro bono basis throughout the project, shared costings data that demonstrated, as property settlement outcomes became smaller, the proportion of the settlement consumed by legal fees increased, illustrating the significant cost-benefit decision many women face when considering whether to pursue a property settlement.

WLSA acknowledges and welcomes the Women's Economic Security (WESS) reforms, announced in 2018, in response to WLSV's Small Claims, Large Battles report recommendations, including:

- \$10.3 million to Legal Aid Commissions for a two year trial of lawyer-assisted mediation for property matters with asset pools of up to \$500,000 (excluding debt), in each state and territory.
- \$5.9 million in new funding to federal family courts to conduct a two year trial of simpler and faster court processes for resolving family law property cases with an asset pool of up to \$500,000 (excluding debt).
- \$3.3 million in new funding for the Australian Taxation Office to develop an electronic information-sharing system to give the family law court improved visibility of parties' superannuation assets when making property orders.

Mediation services such as Family Dispute Resolution (FDR) can provide a cost effective option for parties to negotiate a property settlement in a structured environment with legal representation.

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<sup>19</sup> <https://www.pwc.com.au/press-room/2015/violence-against-women-costing-Australia-nov15.html>

<sup>20</sup>

<https://www.womenslegal.org.au/files/file/WLSV%20Small%20Claims%2C%20Large%20Battles%20Research%20Report%202018.pdf>

WLSV's Small Claims, Large Battles final report also highlighted the need for the Legal Aid Commissioners to broaden their availability of funding for priority clients to pursue small property matters in the family law system. A 'common thread' between legal aid commissions is that parenting tends to take precedence over property disputes. When parenting and property issues are in dispute at the same time, resolving the parenting dispute often takes precedence. This is despite unresolved conflict over finances having the potential to negatively affect negotiations about parenting and undermine parents' ability to work cooperatively.

WLSA is concerned about the long term financial impact that the early release of super and COVID measures will have on women who are experiencing family and domestic violence and their retirement outcomes. Government financial assistance is crucial to supporting financially disadvantaged women to recover from family and domestic violence. Data has been released by APRA which suggests that women are being disproportionately impacted by COVID-19. We therefore recommend that the Australian Government roll out the successful flexible support package scheme in Victoria to all states and territories and work with state and territories Ministers to encourage them to announce similar measures.

### ***Simplifying superannuation splitting in the family law system***

WLSV's Small Claims, Large battles report highlighted the barriers that women are facing accessing small entitlements to superannuation after relationship breakdown through the family law system. The majority, 87%,<sup>21</sup> of women assisted in the Small Claims, Large Battles project experienced financial abuse. The two main barriers are financial disclosure and the complexity of the system itself. The first barrier was addressed in the WESS announcement outlined above. The ATO is currently designing the information sharing system with the courts, however this work has stalled. We refer to the Committee to an ABC report that was aired on ABC radio on 23 July this year which outlined why the Government needs to press ahead with the reform agenda.<sup>22</sup>

Over the past year WLSV has been working closely with key stakeholders in the superannuation industry including the Australian Institute of Superannuation Trustees (AIST), Women in Super and HESTA, to address the second barrier – the complexity of the system. Progress is being made. Key to these reforms are the implementation of recommendations 5-8 of the Small Claims, Large Battles report, to simplify the superannuation splitting in Australia. In September last year, an industry roundtable was held to discuss the reforms and how the superannuation industry could develop and endorse a simplified template order. WLSV is continuing to lead the industry towards reform, in partnership with AIST, Women in Super and HESTA, this year. Staff from the Attorney General's Department (Family Law division) are also assisting WLSV to progress these reforms and judges in the Federal Circuit Court of Australia have been providing valuable input. The superannuation industry has to date agreed, in-principle, to a standardised superannuation splitting draft order template and procedural fairness letter.

We invite the Committee to seek an update from WLSV prior to the final report of the Committee being handed down.

**If there is insufficient room above to summarise your experience and relevant issues,  
please attach additional pages to this submission as required.**

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<sup>21</sup><https://www.womenslegal.org.au/files/file/WLSV%20Small%20Claims%2C%20Large%20Battles%20Research%20Report%202018.pdf> p.10

<sup>22</sup> <https://www.abc.net.au/news/2020-07-23/superannuation-scheme-to-protect-domestic-violence-survivors-no/12473102>