
Improving the family law system

**Creating a family law system that it is safe, accessible, fair, inclusive, and just.
May 2023**

Women's Legal Services Australia (WLSA) and National Legal Aid (NLA) welcome the introduction of the *Family Law Amendment Bill 2023*.

The **proposed changes are vital reforms** towards a system that:

- **prioritises the best interests of children;**
- **promotes the safety of children and victim-survivors of domestic and family violence;**
- **recognises the diversity of families;** and
- **encourages inclusion and accessibility.**

In our role providing legal assistance in often the most complex family law matters we see opportunities to improve how the family law system helps separating families make parenting decisions, keeps children and victim-survivors safe, and promotes the best interests of children.

The current *Family Law Act 1975* is not responsive enough to domestic and family violence and is open to abuse of process. This exacerbates safety risks for victim-survivors, and leaves our clients confused about their rights and responsibilities when separating or leaving a violent relationship.

Various reviews, notably the Australian Law Reform Commission's (ALRC) Inquiry into the Family Law System, research reports, and the courageous advocacy of victim-survivors with experience of the family law system, have confirmed these deficits and provide a strong evidence base for change.

We welcome changes to the family law system to improve the experience of all users, and in particular our clients, who are among the most marginalised and disadvantaged in the community. Because of these changes, the family law system will be less confusing and traumatic and will lead to safer outcomes for children and parents.

We support:

- **Repeal of the presumption of equal shared parental responsibility** to ensure a focus on child safety.
- Court consideration of what arrangements **promote the safety of the child** and the child's carers, including retaining judicial discretion to tailor orders that are unique to each child's best interests and flexible to the needs of individual children.
- **Recognition of the diversity of First Nations family structures** and consideration of the best interests of First Nations children in this context.
- Ensuring the **voices of children are heard** through Independent Children's Lawyers, including in Hague Convention matters.
- **Regulation of family report writers.**
- Changes that further **prevent the improper use, or abuse, of the family law system** which can exacerbate safety risks for victim-survivors.

The family law system could also be further strengthened by helping to ensure that everyone in the family law system understands the complex dynamics of family violence, takes a gendered, inclusive and culturally safe approach, and is adequately supported to provide the highest quality assistance.

It is critical that alongside any legislative changes, the family law system is properly resourced.

There must be more funding for:

- **Access to legal assistance** services for people experiencing disadvantage, victim-survivors of violence, First Nations communities, culturally and linguistically diverse communities, LGBTQIA+ people, and people with a disability;
- Greater access to **family violence and trauma informed, culturally safe specialist legal assistance** services, **particularly for women** who are victim-survivors of violence;
- **Independent Children’s Lawyers** to ensure all children who need it can participate in decision making about their best interests via high quality, culturally safe legal assistance;
- **Indigenous Liaison Officers** in courts; and
- **Supporting greater diversity and inclusion in the family law profession**, including judges, legal practitioners, and family report writers, to ensure the diverse needs of the Australian community can be met by the system.

About us

Women’s Legal Services Australia

Women’s Legal Services Australia (WLSA) is a national network of 13 specialist Women’s Legal Services (WLS) in each State and Territory across Australia. WLS are Community Legal Centres specifically developed to improve women’s lives through specialist legal representation, support, and advocacy. WLS provide trauma-informed, integrated, and wraparound legal services to women that meet a range of their legal and other support needs to improve women’s safety and recovery from violence.

National Legal Aid

National Legal Aid (NLA) represents the Chief Executive Officers of the eight Australian State and Territory Legal Aid Commissions (LACs). LACs are independent statutory authorities funded by the Commonwealth and respective State and Territory governments to provide legal assistance to people experiencing financial disadvantage.

In 2021-2022 Legal Aid Commissions provided 23,000 grants of legal aid for ongoing legal representation in Commonwealth family law matters and another 22,000 in connection with state/territory laws about family violence and child protection. National Legal Aid data shows that family violence is a factor in nearly 86 per cent of legally aided cases before the family law courts.¹

Legal Aid Commissions provide legal advice and minor assistance, duty services, family dispute resolution and case representation in commonwealth family law matters, including child support matters, and in state domestic and family violence and care and protection matters. Legal Aid Commission services include integrated and wraparound specialist services for clients.

¹ 2022 - Legal Aid Commission Commonwealth family law party file sample (matters opened in the 2021-22 financial year - total E. 800 files).