

# Redfern Legal Centre

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Senate Finance and Public Administration Committees  
PO Box 6100  
Parliament House  
Canberra  
ACT 2600

19 August 2014

Attention: Committee Secretary

Please find attached our policy submission in response to the Senate Finance and Public Administration Committee's Inquiry into Domestic Violence in Australia.

We would welcome the opportunity to further discuss our submission with you.

Yours faithfully,

Redfern Legal Centre

Jacqui Swinburne  
Acting Chief Executive Officer

**SUBMISSION:**

**SENATE FINANCE AND PUBLIC ADMINISTRATION COMMITTEE INQUIRY-  
DOMESTIC VIOLENCE IN AUSTRALIA**

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**DATE:**

**18 August 2014**

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## **1 Introduction: Redfern Legal Centre**

Redfern Legal Centre (RLC) is an independent, non-profit, community-based legal organisation with a prominent profile in the Redfern area.

RLC has a particular focus on human rights and social justice. Our specialist areas of work are domestic violence, tenancy, credit and debt, employment, discrimination and complaints about police and other governmental agencies. By working collaboratively with key partners, RLC specialist lawyers and advocates provide free advice, conduct case work, deliver community legal education and write publications and submissions. RLC works towards reforming our legal system for the benefit of the community.

## **2 RLC's Work in the Area of Domestic Violence**

RLC is well placed to comment on and make recommendations to the Senate Finance and Public Administration Reference Committee's Inquiry into Domestic Violence in Australia (Inquiry). RLC manages the Sydney Women's Domestic Violence Court Advocacy Service (Sydney WDVCS), which provides legal advice and assistance to approximately 1,700 women per year. The Sydney WDVCS is funded by Legal Aid through the Women's Domestic Violence Court Advocacy Program (WDVCP), which was established in 1996 and operates at 108 New South Wales Local Courts. The Sydney WDVCS operates at the Downing Centre (central Sydney), Balmain, Newtown and Waverly local courts.

The aim of the Sydney WDVCS is to assist women and children experiencing domestic violence to obtain protective orders and to assist them with their other legal and social needs, including providing family law and financial advice, referrals to housing and counselling, and other support. We have a particular interest in ensuring that vulnerable women such as Aboriginal and Torres Strait Islander women, culturally and linguistically diverse women, women with disability, women in same-sex relationships, transgender women, and women in regional and remote areas have equal and appropriate access to legal and other domestic violence support and assistance. The case study below provides an example of the holistic services provided by the Sydney WDVCS.

### **Case study - Sally**

Sally has recently separated from her abusive husband, Glen. Sally and Glen have two small children together. Sally and the children moved into her mother's two-bedroom apartment after she was assaulted by Glen in front of the children. Police charged Glen with assault and applied for an AVO protecting Sally and her children.

Sydney WDVCS advocated for Sally with police to vary the orders protecting her, so the orders now include a condition that Glen must not approach or contact her except through his legal representative or as agreed in writing, or as permitted by an order of the family court.

Sydney WDVCS assisted Sally to make enquiries about refuge accommodation for herself and her children, and she was referred to the tenancy service at Redfern Legal Centre for advice about the lease on the house she lived in with Glen. Sally was also referred to

Redfern Legal Centre for family law advice. Sydney WDVAS has assisted Sally to complete an application form for counselling through Victims Services. She has also been provided with information about financial assistance available to her through Victims Services and about the urgent payment from Centrelink available to victims of domestic violence.

Through their work, the Sydney WDVAS has developed specialist knowledge about the legal system and support services available to victims of domestic violence. It has also built key partnerships with Sydney Local Courts and the NSW Police Force.

Sydney WDVAS has been chosen to host the city launch site of the NSW Domestic Violence Reforms for the Waverley Local Court catchment area. This element of the Reforms will include the coordination of the Local Referral Point for all domestic violence matters referred from NSW Police in the Waverley Court catchment area, and coordination of the Safety Action Meetings for women at serious threat of domestic violence.

RLC has specialist legal practice areas in discrimination law, employment law, and tenancy law, which are of particular relevance to the issue of domestic violence. RLC's expertise is informed by its work in these areas. RLC is aware of the complex and intersecting legal and social issues of those women experiencing domestic violence and the impact on their lives.

RLC and Sydney WDVAS have been actively involved in domestic and family violence law and policy reform for many years, and have advocated for changes to legislation and processes. The Sydney WDVAS Coordinator is a member of the NSW Attorney General's Apprehended Domestic Violence Legal Issues Coordinating Committee (AVLICCC), the NSW Domestic and Family Violence Council (a statutory board), a previous member of the NSW Victims Advisory Board, participates in state-wide domestic violence focus groups and forums, and makes law reform submissions on domestic violence and family law.<sup>1</sup>

### **3 RLC's view in summary**

RLC welcomes the opportunity to provide information to the Committee on issues regarding domestic violence in Australia, including how the Federal Government can best respond to domestic violence. However, RLC notes its concern that contributing to inquiries like this is becoming increasingly difficult for CLCs and other legal service providers since restrictions were placed on using Commonwealth funding to undertake law reform, policy and advocacy work.<sup>2</sup> We hope that the Committee sees value in CLCs advocating on behalf of vulnerable clients and supports us to continue this important work.

RLC's Submission responds to the following Inquiry Terms of Reference:

#### **a. Prevalence and impact of domestic violence;**

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<sup>1</sup> See RLC's Submission to the NSW and Australian Law Reform Commissions' Family Violence Inquiry in 2010; Submission on the ALRC's Inquiry and Issues Paper 36 – Family Violence and Commonwealth Laws: Employment and Superannuation in 2011; Submission to the NSW Parliamentary Inquiry into Domestic Violence Trends and Issues in 2011; Submission to the NSW Legislative Council Select Committee

<sup>2</sup> See National Association for Community Legal Centres (NACLC) Submission to the Senate Finance and Public Administration Committee Inquiry into Domestic Violence in Australia in 2014 and Women's Legal Service Australia (WLSA) Submission to the Senate Finance and Public Administration Committee Inquiry into Domestic Violence in Australia in 2014, p 12.

- b. Adequacy of policy and community responses to domestic violence;
- c. Effects of policy decisions regarding housing, legal services and economic independence on the ability to escape domestic violence; and
- d. How the Federal Government can best support, contribute to and drive social, cultural and behavioral shifts.

Domestic violence is a human rights issue. Australia is obligated to take steps towards eliminating domestic violence under the *Convention on the Elimination of All Forms of Discrimination against Women 1979* (CEDAW).<sup>3</sup> Discrimination against women is a cause and consequence of domestic violence and Article 2 of CEDAW requires state parties to legislate to prohibit all discrimination against women, including gender-based violence. While we do not specifically comment on the causes of domestic violence in this Submission, it is widely acknowledged that gender inequality, patriarchal attitudes and discrimination are a root cause of domestic violence. As such, responses to domestic violence must attempt to change behaviour and community attitudes towards women and promote substantive equality in all areas of life. It is vital that the Federal Government address domestic violence as a systemic human rights issue in Australia.

The Submission begins with an overview of the prevalence of domestic violence in Australia, and then discusses a number of areas where the Federal Government should work to improve law and policy responses to domestic violence, such as through the removal of barriers for victims accessing legal assistance and the strengthening of family and anti-discrimination law. Throughout this Submission we refer the Committee to previous inquiry recommendations that are yet to be implemented.

Given our specific experience, RLC's Submission focuses on the experience of disadvantaged and vulnerable women experiencing domestic violence, including women who are lesbian, bisexual or transgender. However RLC notes that domestic violence occurs in all relationships, including in male same-sex relationships and that any person regardless of their sex, sexuality or gender identity, can be a perpetrator or victim of domestic violence. The RLC supports the Submissions of ACON and the Inner City Legal Centre which highlight the need for specific protection and support in lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) communities, as research shows that these groups experience domestic violence at roughly the same rate as the wider community.<sup>4</sup>

RLC strongly supports and endorses the Submission of the National Association for Community Legal Centres (NACLC) and Women's Legal Service Australia (WLSA) to this Inquiry<sup>5</sup> and its suggestions for future law reform.

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<sup>3</sup> CEDAW was ratified by Australia on 28 July 1983. At <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>. See also, CEDAW Committee General Recommendation No 12 and CEDAW Committee General Recommendation 19. At <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx>.

<sup>4</sup> Special Collections – Same Sex (2012) *Australian Domestic and Family Violence Clearinghouse*. At <http://www.adfvc.uNewSouthWales.edu.au/specialcollectionssamesex.html>.

<sup>5</sup> National Association for Community Legal Centres (NACLC) Submission to the Senate Finance and Public Administration Committee Inquiry into Domestic Violence in Australia in 2014 and Women's Legal Service Australia (WLSA) Submission to the Senate Finance and Public Administration Committee Inquiry into Domestic Violence in Australia in 2014. At [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Finance\\_and\\_Public\\_Administration/Domestic\\_Violence/Submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Domestic_Violence/Submissions).

## 4 RLC's Recommendations

### **Recommendation 1:**

RLC recommends that further gender-disaggregated data collection and research on the prevalence and nature of domestic violence, especially with respect to vulnerable groups, should be funded.

**Recommendation 2:** RLC strongly recommends that the National Plan is adequately resourced and that effective and meaningful consultation with the community sector takes place, particularly with vulnerable communities.

**Recommendation 3:** RLC recommends that existing funding of CLCs general and specialised domestic violence legal services be protected, and that additional funding be allocated to CLCs to carry out this important work.

**Recommendation 4:** RLC recommends that holistic and integrated models for legal and non-legal service delivery should be funded as a means to increase access to legal and other support services to vulnerable victims of domestic violence and increase opportunities for early intervention

**Recommendation 5:** RLC recommends that being a victim of domestic violence should be a protected attribute under Federal and State anti-discrimination law.

**Recommendation 6:** RLC recommends further protections for victims of domestic violence be implemented into the *Fair Work Act 2009* (Cth) including paid domestic violence leave, flexible working arrangements without a minimum period of service and adverse action protections.

**Recommendation 7:** RLC recommends that all domestic and family violence related deaths be systemically and regularly reviewed and reported on.

**Recommendation 8:** RLC recommends that the presumption of equal shared parental responsibility be removed from the *Family Law Act 1975* (Cth) and that decisions on parenting arrangements should be made on a case-by-case basis, with the safety of the child the primary consideration.

**Recommendation 9:** RLC recommends that vulnerable witness protections be implemented into all state and territory legislation to ensure that victims of domestic violence are not cross-examined by the accused perpetrator in any family, criminal or civil proceedings.

**Recommendation 10:** RLC recommends that the Government initiate an inquiry into how family violence should be dealt with in property proceedings under the *Family Law Act 1975* (Cth).

**Recommendation 11:** RLC recommends that family law writers undergo training and accreditation on domestic violence and working with trauma.

**Recommendation 12:** RLC recommends that persons on temporary protection visas be

protected under the *Migration Act 1994* (Cth) and that culturally appropriate support services are available.

**Recommendation 13:** RLC recommends that primary prevention initiatives to raise awareness of domestic violence and change attitudes and behaviour be prioritised. Adequate funding for national and local primary prevention initiatives focusing on vulnerable groups is recommended.

**Recommendation 14:** RLC recommends that appropriate domestic violence specialist support services are funded and resourced, focusing on the needs of vulnerable groups in Australia.

**Recommendation 15:** RLC recommends that safe and appropriate emergency housing and affordable low-income accommodation is made available for victims of domestic violence and their children.

## 5 Responses to Specific Issues

### 5.1 Prevalence and impact of domestic violence

Domestic violence is one of the most pressing human rights, social and health issues in Australia today. While there is a need for more data on the prevalence of domestic violence, particularly as it impacts vulnerable groups, research indicates domestic and family violence is the leading contributor of death, disability and illness in women aged between 15 and 44 years.<sup>6</sup> Alarmingly, one woman is killed by her current or former partner almost every week in Australia.<sup>7</sup>

RLC provides legal assistance and support to a number of groups of women who are particularly vulnerable to experiencing domestic violence, including Aboriginal and Torres Strait Islander women, culturally and linguistically diverse women, women with disability, women in same-sex relationships, transgender women, women in regional and remote areas, and older women. These groups are more likely to experience domestic violence and the impact of domestic violence on their lives is often compounded by other disadvantage factors.

In the twelve month period 1 July 2013 to 30 June 2014, Sydney WDVCS provided specialist domestic violence assistance to 1,723 women experiencing domestic violence. Statistics show that Aboriginal and Torres Strait Islander women, for example, are 45 times more likely than non-ATSI women to be victims of domestic violence.<sup>8</sup> We also know that women with

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<sup>6</sup> Victorian Health Promotion Foundation, *The health costs of violence: Measuring the burden of disease caused by intimate partner violence* (2004), p 8. At <http://www.vichealth.vic.gov.au/~media/ResourceCentre/PublicationsandResources/PVAW/IPV%20BOD%20web%20version.ashx>.

<sup>7</sup> J Dearden & W Jones, *Homicide in Australia: 2006-07 National Homicide Monitoring Program annual report*, Monitoring Reports 01, Australian Institute of Criminology (2009), p 2. At <http://www.aic.gov.au/documents/F/F/B/%7BFFB9E49F-160F-43FC-B98D-6BC510DC2AFD%7Dmr01.pdf>; A Morgan and H Chadwick, *Key issues in Domestic violence*, Australian Institute of Criminology, Research in Practice, Summary Paper No 7, December 2009, p 1. At [http://www.aic.gov.au/documents/5/6/E/%7B56E09295-AF88-4998-A083-B7CCD925B540%7Drip07\\_001.pdf](http://www.aic.gov.au/documents/5/6/E/%7B56E09295-AF88-4998-A083-B7CCD925B540%7Drip07_001.pdf).

<sup>8</sup> C Cunneen, 'Preventing Violence against Indigenous Women through Programs which Target Men' (2002) 24(1) *University of New South Wales Law Journal* 242, p 242.



disability face a higher risk of violence and abuse, although data is lacking.<sup>9</sup> While domestic violence can affect anyone, regardless of their socioeconomic or other status, the impact of domestic violence on these groups of vulnerable women is significant. For women from these groups, there are barriers to reporting and receiving assistance and this leads to a continuation of the violence. The Federal Government must recognise the significant impact of domestic violence on these vulnerable groups, including the impact of intersectional discrimination, and the specific needs of these women must be considered in law and policy responses to domestic violence.

Further, domestic violence is a hidden issue in society and often goes underreported. Research suggested in 2012 that only 50% of victims of domestic violence reported their abuse to the police.<sup>10</sup> Nevertheless, the impact on individuals, communities and the economy is quantifiable to some extent. For example, the economic impact of domestic violence has been calculated to cost Australia \$13.6 billion and will rise to \$15.6 billion per annum by 2021-2022 if effective and immediate action is not taken.<sup>11</sup>

#### **Recommendation 1:**

Further gender-disaggregated data collection and research on the prevalence and nature of domestic violence, especially with respect to vulnerable groups, should be funded.

## **5.2 Consistent and coordinated national response to domestic violence**

RLC and Sydney WDVCS have previously called for a consistent and coordinated national response to domestic violence whereby government plans, programs, laws and policies are implemented in and across State and Federal governments based on meaningful consultation. Australia's primary policy on domestic violence, the National Plan to Reduce Violence Against Women and their Children (National Plan) of February 2011,<sup>12</sup> and the accompanying Action Plans<sup>13</sup> currently lack coordinated implementation and consultation. It is important that the National Plan is properly resourced, as pointed out in the NACLC and WLSA Submission, and is implemented in partnership with both government and community stakeholders. So far, community consultations with the National Plan Implementation Panel (NPIP) have been lacking. The National Plan should also be properly and independently monitored to ensure its long-term progress. We endorse the views contained in the NACLC and WLSA Submission on this issue.

In our submission to the 2010 NSW and Australian Law Reform Commission Family Violence Inquiry, RLC's Sydney WDVCS recommended an integrated and specialist national response

<sup>9</sup> J Dillon, *Violence against People with Cognitive Impairments: Report from the Advocacy/Guardianship Program at the Office of Public Advocate, Victoria*, Office of Public Advocate (2010); A Didi et al, 'Stop the Violence: Addressing Violence against Women and Girls with Disabilities in Australia. Background paper' (2013) *Women with Disabilities Australia*.

<sup>10</sup> NSW Family & Community Services, *Women in NSW Report 2013* (2013), p 169. At [http://www.women.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0003/271452/Women\\_NSW\\_report\\_13\\_06.pdf](http://www.women.nsw.gov.au/__data/assets/pdf_file/0003/271452/Women_NSW_report_13_06.pdf).

<sup>11</sup> KPMG, The National Council to Reduce Violence Against Women and their Children, *The Cost of Violence against Women and their Children*, Department of Families, Housing, Community Services and Indigenous Affairs (2009), p 4. At [http://www.dss.gov.au/sites/default/files/documents/05\\_2012/vawc\\_economic\\_report.pdf](http://www.dss.gov.au/sites/default/files/documents/05_2012/vawc_economic_report.pdf).

<sup>12</sup> Council of Australian Governments, *National Plan to Reduce Violence Against Women and their Children 2010-2022* (2010).

<sup>13</sup> *National Implementation Plan for the First Action Plan 2010-2013: Building a Strong Foundation*. At [http://www.dss.gov.au/sites/default/files/documents/07\\_2014/first\\_action\\_plan\\_1.pdf](http://www.dss.gov.au/sites/default/files/documents/07_2014/first_action_plan_1.pdf); and *Second Action Plan 2013-2016: Moving Ahead*. At [http://www.dss.gov.au/sites/default/files/documents/06\\_2014/sap\\_updated\\_26june.pdf](http://www.dss.gov.au/sites/default/files/documents/06_2014/sap_updated_26june.pdf).

to domestic violence including a common set of policies and objectives, mechanisms for inter-agency collaboration and information sharing, the provision of legal and non-legal victim support and training and education programs. RLC draws the Committee's attention to those recommendations where they have not been adequately implemented.<sup>14</sup>

We are pleased to note that under the NSW Domestic and Family Violence Reforms, a new service delivery model will be implemented which will involve a whole of government approach to domestic violence, with participants including the justice cluster, health, education, housing and family and community services. Under the strategy a new risk identification tool will be used by police to determine the level of threat to victims, and Safety Action Meetings (SAMs) will be conducted for women at serious threat of domestic violence. Amendments to the *Crimes (Domestic and Personal Violence) Act 2007* will allow for information sharing between agencies participating in the SAMs, where an action plan will be implemented to reduce the threat of domestic violence to victims.

RLC and Sydney WDVCS will be taking a lead role in these Reforms and will host the city launch site for the Waverley Court catchment area.

**Recommendation 2:** RLC strongly recommends that the National Plan is adequately resourced and that effective and meaningful consultation with the community sector takes place, particularly with vulnerable communities.

### 5.3 Barriers to accessing legal services

#### (a) Funding of domestic violence specialist and other legal services

RLC's Sydney WDVCS is an example of a domestic violence specialist service in Sydney that provides free, high quality, specialist domestic violence advocacy and assistance. The Sydney WDVCS works with victims of domestic violence to assist them to participate in the legal process, and advocates with the NSW Police Domestic Violence Liaison Officers (DVLO) or police prosecutors on behalf of these clients to ensure protection orders are appropriate to the client's safety needs. The Sydney WDVCS also works to ensure that clients receive the support and assistance they need to engage with the legal process and to access other important support services, with a particular focus on the needs of vulnerable clients. Sydney WDVCS has a dedicated Aboriginal Specialist Worker and a culturally and linguistically diverse specialist worker to provide culturally appropriate assistance. The importance of this and other specialist domestic violence legal services has been acknowledged. For example, the NSW and Australian Law Reform Commission Report, *Family Violence- A National Legal Response* recommended that the state and territory governments 'should prioritise the provision of, and access to, culturally appropriate victim support services for victims of family violence, including enhanced support for victims of high risk and vulnerable groups'.<sup>15</sup>

<sup>14</sup> RLC Submission to the NSW Law Reform Commission and Australian Law Reform Commission Inquiry into Family Violence (2010) At <http://rlc.org.au/sites/default/files/attachments/Austlawreform.pdf>.

<sup>15</sup> Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence- A National Legal Response* (2010), Recommendation 29-3.

In addition to these specialist domestic violence services, there is a need for generalist community legal centres (CLCs) to be well resourced to provide appropriate legal services to disadvantaged and vulnerable Australians, including victims of domestic violence. Many CLCs like RLC provide holistic legal services integrated with essential non-legal support services and referrals, as mentioned above. CLCs such as RLC have built strong relationships with local communities, and with other service providers and are well placed to provide quality, timely and appropriate legal advice and referrals.

RLC is concerned that the Federal Government has announced funding cuts of \$43.1 million to legal assistance services over the next four years from 2013-2014,<sup>16</sup> including cuts of \$19.6 million in funding to CLCs. Further cuts have since been announced.<sup>17</sup> Funding cuts to CLCs could reduce their capacity to deliver general and specialised legal services to victims of domestic violence.

Additional funding for CLCs to provide other domestic violence related legal services, such as family law advice and credit and debt advice, is needed. The integrated legal service approach of many CLCs such as RLC is especially important for clients who are victims of domestic violence, as they often face multiple legal problems related to the abusive relationship. Further, court advocacy and support for domestic violence victims seeking assistance in related civil and family law proceedings is recommended to ensure that victims are effectively represented and protected from the perpetrator who may seek to utilise other court processes to further traumatise their victim.

In April 2014, the Productivity Commission recommended that funding for CLCs be restructured, which could result in reduced funding for CLCs. We refer the Committee to our submission to the Productivity Commission on Access to Justice Arrangements,<sup>18</sup> in which we highlight our concerns with any changes to the funding for CLCs.

**Recommendation 3:** RLC recommends that existing funding of CLCs general and specialised domestic violence legal services be protected, and that additional funding be allocated to CLCs to carry out this important work.

(b) A flexible intake criteria

RLC provides legal services to many women who are victims of domestic violence and are part of a vulnerable and disadvantaged group. Many of these women might not otherwise have access to legal services, as they may not meet the strict intake criteria to access a grant of legal aid and may not be able to afford to pay for legal services themselves. RLC is concerned that CLCs' ability to provide legal assistance to women experiencing domestic violence is limited by their funding and capacity, which as highlighted above is under threat.

Where women are turned away from services due to lack of capacity, they may not have

<sup>16</sup> Mid-year Economic and Fiscal Outlook 2013-14, December 2013.

<sup>17</sup> Attorney-General Portfolio Budget Statements 2014-15 at pp 19, 29:<<http://www.ag.gov.au/Publications/Budgets/Budget2014-15/Documents/00%20Attorney-General%20s%20portfolio%20PBS%202014-15%20full%20book.PDF>>

<sup>18</sup> Redfern Legal Centre, Submission to the Productivity Commission's Inquiry into Access to Justice Arrangements (12 November 2013). At [http://www.pc.gov.au/\\_\\_data/assets/pdf\\_file/0011/130502/sub115-access-justice.pdf](http://www.pc.gov.au/__data/assets/pdf_file/0011/130502/sub115-access-justice.pdf).

anywhere else to go and may have to face the legal system alone, or worst, may be forced to stay in violent relationships. As pointed out by NACLC and WALSA in their submission, women escaping a domestic violence situation may not have access to financial documents and other information needed in order to access legal services, and therefore a flexible approach to intake criteria is important.

To overcome barriers for victims of domestic violence accessing legal assistance, RLC has adopted a flexible and holistic intake criteria, which recognises domestic violence as a standalone indicator of vulnerability. This approach was taken in 2011 in response to unmet legal needs of certain vulnerable groups who would have nowhere else to go if turned away.

#### 5.4 Holistic and integrated models for legal service delivery

The impact of domestic violence is multifaceted and includes health, economic and social impacts for individuals and their communities. In addition, many vulnerable persons face barriers to accessing legal advice and services and may be reluctant to approach legal services for assistance. Free legal services that can be delivered in conjunction with other services in a safe and trusted environment are more likely to be accessed and will result in the delivery of quality legal advice and early intervention services to vulnerable women.

RLC has recently established the first Medical Advocacy Partnership in New South Wales with the Royal Prince Alfred Hospital. Research has shown that the majority of legal advice is not sought from lawyers, but rather from other trusted non-legal professionals, such as health and welfare workers.<sup>19</sup> Further, many women have health issues with a social cause such as domestic violence, poor housing, disability, or discrimination, and are in need of both medical and legal services. Clayton Utz Foundation funded-research found that CLCs are the most appropriate legal organisation to develop 'Medical-Legal Partnership' (MLP) models. The benefits of the MLP model is supported by both Australian and overseas evidence that medical-legal clinics improve access to justice for vulnerable people and contribute to long-term health benefits.<sup>20</sup>

**Recommendation 4:** RLC recommends that holistic and integrated models for legal and non-legal service delivery should be funded as a means to increase access to legal and other support services to vulnerable victims/survivors of domestic violence and increase opportunities for early intervention.

#### 5.5 Discrimination and domestic violence

Domestic violence and taking steps to escape domestic violence often negatively impacts a victim's employment and accommodation situation. In the context of employment, which is essential to safeguard a person's economic independence, their ability to get to work, perform and be safe at work is often compromised by their domestic violence situation.<sup>21</sup>

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<sup>19</sup> Law & Justice Foundation, 'Legal Australia Wide-Survey: Legal Need in NSW', Access to Justice & Legal Needs, Vol 8, August 2012.

<sup>20</sup> Peter Noble, 'Better Health Through Medical-Legal Partnership' (Advocacy-Health Alliances, August 2012). At [http://advocacyhealthalliances.files.wordpress.com/2012/08/aha-report\\_general.pdf](http://advocacyhealthalliances.files.wordpress.com/2012/08/aha-report_general.pdf).

<sup>21</sup> Ludo McFerran, ADFVC and Micromex 'Safe at Home, Safe at Work? National Domestic Violence and the Workplace Survey' (2011).

We draw the Committee's attention to the RLC's Submission<sup>22</sup> to the NSW and Australian Law Reform Commission Report, *Family Violence - A National Legal Response*, where we discuss the experiences of the WDVCS clients who have found that their workplaces are not supportive of their need to take time off work, and that their workplaces have little understanding of the impact of domestic violence on their lives.

The *Sex Discrimination Act 1975* (Cth) does not include being a 'victim or survivor of domestic violence' as a protected attribute, although this has been recommended by a number of organisations during the consultation process on the Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012 and was recommended by the Senate Committee Majority Report in 2013<sup>23</sup>.

It is important that women experiencing domestic violence have safe and adequate housing options available to them to assist them to escape violent relationships. In respect to accommodation, victims and survivors of domestic violence often face discrimination by real estate agents for example, who may not allow the victim to leave their lease, and may hold them responsible for property damage caused by their violent partner. In these situations, victims/survivors may face difficulty re-accessing a private rental accommodation because their rental history has been negatively impacted. If being a victim/survivor of domestic violence were to a protected attribute under the *Sex Discrimination Act*, discrimination would be prohibited on that basis for a person in the areas of employment, accommodation and other areas of public life.

Similarly, the *Fair Work Act 2009* (Cth)<sup>24</sup> does not include 'victim or survivor of domestic violence' as a protected attribute in s 351(1) and 772(1)(f). However, the National Employment Standards now provide that employees who have worked with the same employer for 12 months can request flexible working arrangements if they are experiencing domestic or family violence.<sup>25</sup> This is a positive development implementing one of the recommendations of the 2011 NSW and Australian Law Reform Commission (ALRC) inquiry into how Commonwealth laws could be improved to better protect the safety of those experiencing family violence including in the area of employment law.<sup>26</sup> However, legislative protections for victims/survivors of domestic violence from workplace discrimination could be strengthened through the introduction of adverse action protection and paid domestic violence leave for survivors/victims and their carers. Workplace protections for victims/survivors of domestic violence is especially important for casual and part-time workers, as we know that victims/survivors of domestic violence are more likely to be employed on a casual basis.<sup>27</sup>

<sup>22</sup> Redfern Legal Centre, 'Submission to the Australian Law Reform Commission on Family Violence-Commonwealth Laws' (2011): At <http://www.alrc.gov.au/sites/default/files/pdfs/CFV%2015%20Redfern%20Legal%20Centre.pdf>.

<sup>23</sup> Senate Standing Committee on Legal and Constitutional Affairs report on the Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012 (Majority Report) 2013. Recommendation 3.

<sup>24</sup> *Fair Work Act 2009* (Cth). At <http://www.comlaw.gov.au/Details/C2014C00342>.

<sup>25</sup> This amendment implemented one of the recommendations of the Australian Law Reform Commission: 'Family Violence and Commonwealth Laws- Improving Legal Frameworks (ALRC Report 117) (2012). At <http://www.alrc.gov.au/publications/family-violence-and-commonwealth-laws-improving-legal-frameworks-alrc-report-117> (accessed 30 July 2014).

<sup>26</sup> Australian Law Reform Commission, 'Family Violence and Commonwealth Laws- Improving Legal Frameworks (ALRC Report 117) (2012). At <http://www.alrc.gov.au/publications/family-violence-and-commonwealth-laws-improving-legal-frameworks-alrc-report-117>

<sup>27</sup> S Franzway et al 'Domestic violence and women's employment, *Our Work, Our Lives Conference on Women and Industrial Relations*, 20-21 September 2007.

It is also important to note that discrimination against victims or survivors of domestic violence is often of an intersectional nature, whereby a person also faces discrimination on the basis of their sex, race, disability, sexual orientation or gender identity. In these cases the causes and impacts of domestic violence are compounded and require specific responses.

**Recommendation 5:** RLC recommends that being a victim/survivor of domestic violence should be a protected attribute under Federal and State anti-discrimination law.

**Recommendation 6:** RLC recommends further protections for victims/survivors of domestic violence be implemented into the *Fair Work Act 2009* (Cth) including paid domestic violence leave, flexible working arrangements without a minimum period of service and adverse action protections.

## 5.6 National review of domestic violence homicides

RLC supports the recommendation of the NSW and Australian Law Reform Commission Report, *Family Violence- A National Legal Response*<sup>28</sup> that 'State and territory governments should undertake systemic and ongoing reviews into deaths resulting from family violence'. RLC supports the comments made by the NACLC and WLSA with respect to the developing a national prevention strategy for domestic violence homicides, including collaborative risk assessment and management.

**Recommendation 7:** RLC recommends that all domestic and family violence related deaths be systemically and regularly reviewed and reported on.

## 5.7 Family law and domestic violence law reforms

Domestic violence victims often face complex family law problems. The 2010 Australian and NSW Law Reform Commission Report, *Family Violence- A National Legal Response*<sup>29</sup> published 186 recommendations for reform. Many of these recommendations have not yet been implemented. While we will only comment on some of these recommendations, we urge the Committee to implement all remaining recommendations from the 2010 Report.

In relation to parenting orders, the Commission recommended that section 60CG of the *Family Law Act 1975* (Cth) be 'amended to provide that the court should give primary consideration to the protection of that person over the other factors that are relevant to determining the best interests of the child.'<sup>30</sup> Further the Commission recommended that 'state and territory family violence legislation should provide that courts not significantly diminish the standard of a protection order for the purpose of facilitating consistency with a parenting order.'<sup>31</sup> As such, RLC supports the recommendation that the presumption of

<sup>28</sup> Recommendation 31-6, Australian Law Reform Commission and New South Wales Law Reform Commission, 'Family Violence – A national legal response (ALRC Report 114) (2010). At <http://www.alrc.gov.au/publications/family-violence-national-legal-response-alrc-report-114> (accessed 30 July 2014).

<sup>29</sup> Australian Law Reform Commission and New South Wales Law Reform Commission, 'Family Violence – A national legal response (ALRC Report 114) (2010). At <http://www.alrc.gov.au/publications/family-violence-national-legal-response-alrc-report-114> (accessed 30 July 2014).

<sup>30</sup> Ibid, Recommendation 16-4, p 28.

<sup>31</sup> Ibid, Recommendation 16-6, p 28.

equal shared parental responsibility be removed from the *Family Law Act 1975* (Cth) and that decisions on parenting arrangements should be made on a case-by-case basis, with the safety of the child the primary consideration. We endorse the comments made by the NACLC and WLSA on this issue.

RLC also supports the recommendation for vulnerable witness protection in family law proceedings including in domestic violence civil proceedings. Legislation across all states and territories should protect vulnerable witnesses from direct cross-examination by the alleged self-represented perpetrator, as is the case for sexual offence trials. There is inconsistency across Australian States and Territories, with specific victim protection provisions in domestic violence proceedings only available in five of the states and territories. The NSW and Australian Law Reform Commission Report, *Family Violence- A National Legal Response* recommended that 'state and territory family violence legislation should prohibit the respondent in protection order proceedings from personally cross-examining any person against whom the respondent is alleged to have used family violence.'<sup>32</sup> However, there are no vulnerable witness protections in family law proceedings. Victims are already vulnerable to re-traumatisation when participating in family law and other proceedings, which allow them to come into contact with and sometimes be cross-examined by their abuser. This is especially concerning as research has shown that perpetrators of domestic violence may use court proceedings as an opportunity to exert control of their partner. Further, the NSW and Australian Law Reform Commission commented that 'to be personally cross-examined by the defendant was seen as having a negative impact on the complainant's ability to answer questions, thus affecting the quality and nature of the evidence received.'<sup>33</sup> Alternatives for witness questioning, such as video conferencing and using a legal representative, should be utilised.

RLC also notes that the NSW and Australian Law Reform Commission recommended that the Australian Government initiate an inquiry into how family violence should be dealt with in property proceedings under the *Family Law Act 1975* (Cth). RLC supports this recommendation as there is need for recognition of the impact that domestic violence has on the process and outcome of property settlements. It is the experience of RLC that many victims of domestic violence face financial hardship when they escape a domestic violence situation. Victims are also disadvantaged by reason of coming up against their abuser in property settlements and are at risk of re-traumatisation. RLC endorses the submission of the Hunter Community Legal Centre Inc to this Inquiry with respect to this issue.

Finally, RLC is concerned that some family law writers are not informed about the nature and impact of domestic violence and may not always treat clients with sensitivity. RLC supports the comments made by the NACLC and WLSA and the need for accreditation and training of family report writers to ensure their understanding of domestic violence, and their competency in dealing with clients traumatised from domestic violence.

**Recommendation 8:** RLC recommends that the presumption of equal shared parental responsibility be removed from the *Family Law Act 1975* (Cth) and that decisions on

<sup>32</sup> Ibid, Recommendation 18-3, p 30.

<sup>33</sup> Ibid, p 1337.

parenting arrangements should be made on a case-by-case basis, with the safety of the child the primary consideration.

**Recommendation 9:** RLC recommends that vulnerable witness protections be implemented into all state and territory legislation to ensure that victims/survivors of domestic violence are not cross-examined by the accused perpetrator in any family, criminal or civil proceedings.

**Recommendation 10:** RLC recommends that the Government initiate an inquiry into how family violence should be dealt with in property proceedings under the *Family Law Act 1975* (Cth).

**Recommendation 11:** RLC recommends that family law writers undergo training and accreditation on domestic violence and working with trauma.

## 5.8 Protection for women on temporary migration visas

RLC endorses the comments of the NACLC and WLSA with respect to amending the *Migration Regulations 1994* (Cth) to provide protection and support for victims of domestic violence who in Australia on temporary visas. It was recommended, but had not implemented, that the 'Australian Government should create a new temporary visa to allow victims of family violence who are secondary holders of a temporary visa to make arrangements to leave Australia; or apply for another visa'.<sup>34</sup> Such reform would ensure consistency in the treatment of victims/survivors of domestic violence who are not permanent residents of Australia and ensure their safety and support.

**Recommendation 12:** RLC recommends that persons on temporary protection visas be protected under the *Migration Act 1994* (Cth) and that culturally appropriate support services are available.

## 5.9 Community education and public awareness

Primary prevention through community education, public awareness and other initiatives to change attitudes and behaviour should be central to the Federal Government's efforts to prevent and address domestic violence in Australia. Community education programs and public awareness initiatives aimed at reducing domestic violence must target vulnerable groups such as CALD, refugee and Aboriginal and Torres Strait Islander communities. This is especially important for those groups who do not share the English language and legal system. For example, the Family Law Council have commented that there is a need for information about court processes and domestic violence laws in CALD communities in Australia.<sup>35</sup>

<sup>34</sup> Australian Law Reform Commission, 'Family Violence and Commonwealth Laws- Improving legal frameworks (ALRC Report 117), Recommendation 20–3.

<sup>35</sup> 'Improving the family law system for clients from culturally and linguistically diverse backgrounds', A report to the Attorney-General prepared by the Family Law Council (February 2012).  
At <http://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Pages/FamilyLawCouncilpublishedreports.aspx>.



RLC also supports primary prevention programs such as the Respectful Relationships education program and Love Bites<sup>36</sup> that are aimed at young people.

**Recommendation 13:** RLC recommends that primary prevention initiatives to raise awareness of domestic violence and change attitudes and behaviour be prioritised. Adequate funding for national and local primary prevention initiatives focusing on vulnerable groups is recommended.

#### 5.10 Access to domestic violence support services

Accessible and appropriate domestic violence support services including access to health services, psychosocial support and social welfare must be in place for victims to escape domestic violence and seek support. Domestic violence support services are particularly limited in rural and remote communities. While we do not provide detailed comments on the availability of domestic violence specialist support services in this Submission, RLC urges the Committee to consider the available of culturally appropriate domestic violence support services and the particular needs of vulnerable women.

#### 5.11 Access to emergency and other accommodation

Domestic violence is one of the leading causes of homelessness among women and children in Australia.<sup>37</sup> There is currently a lack of appropriate emergency housing and longer-term accommodation for victims of domestic violence and their children. We refer the Committee to our submission to the Senate Standing Committee on Economics Inquiry into Social, Public and Affordable Housing.<sup>38</sup> RLC is particularly concerned about the unavailability of emergency and other accommodation, as finding a safe place to go is a key determinant of whether a victim will be able to escape a violence relationship, and re-build their lives.

**Recommendation 14:** RLC recommends that appropriate domestic violence specialist support services are funded and resourced, focusing on the needs of vulnerable groups in Australia.

**Recommendation 15:** RLC recommends that safe and appropriate emergency housing and affordable low-income accommodation is made available for victim/survivors of domestic violence and their children.

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<sup>36</sup> NAPCAN's Love Bite's Program has won awards for providing domestic violence prevention training to young students and is endorsed by the Australian Domestic and Family Violence Clearing House.

<sup>37</sup> Commonwealth of Australia, *Women, Domestic and Family Violence and Homelessness: A Synthesis Report* (2008) At: [http://www.dss.gov.au/sites/default/files/documents/05\\_2012/synthesis\\_report2008.pdf](http://www.dss.gov.au/sites/default/files/documents/05_2012/synthesis_report2008.pdf).

<sup>38</sup> Redfern Legal Centre, Submission to the Senate Standing Committee on Economics Inquiry into Social, Public and Affordable Housing (28 February 2014): [http://www.parliament.nsw.gov.au/Prod/Parlment/committee.nsf/0/651974304237052eca257c93001b8a91/\\$FILE/0108%20Redfern%20Legal%20Centre.pdf](http://www.parliament.nsw.gov.au/Prod/Parlment/committee.nsf/0/651974304237052eca257c93001b8a91/$FILE/0108%20Redfern%20Legal%20Centre.pdf).