



## **Women's Legal Service Inc. (Queensland)**

### **Submission to Parliament of Australia**

#### **Finance and Public Administration References**

#### **Committee**

#### **Domestic Violence in Australia**

#### **Women's Legal Service**

Women's Legal Service Inc. (WLS) is a specialist community legal centre that provides legal and welfare advice and assistance to women in Queensland. We have operated for 30 years and assisted over 60,000 women. In the last financial year (2013/14) we assisted over 2,000 women. We know there are a further 16,000 requests for assistance that we are unable to meet. Forty percent (40%) of our clients are from rural, regional and remote areas of the State. We provide assistance in the areas of domestic violence, family law, child support and some child protection.

WLS has a particular interest in the intersection of violence against women and children, as well as legal processes and the law. Our submission is informed by the direct experience we have with women providing legal advice, representation and support. Apart from legal advice, assistance and representation to women who seek assistance at our service for daytime legal appointments, our services also include:

- Legal advice to women in the Brisbane Women's Correctional Centre;
- Legal advice to women at the Gold Coast Centre Against Sexual Violence (via skype)
- Legal advice and limited legally assisted FDR at two Family Relationship Centres located at Logan and Mt Gravatt;
- Legal advice and assistance (1 day per week) through our rural, regional and remote (RRR) specialist telephone service to women living in RRR regions in Queensland.
- General legal advice 1800 telephone number (operating 4 days per week)
- Twice weekly night-time legal advice clinics staffed by over 100 volunteer lawyers, community workers and students.
- Legal advice and representation at the Domestic Violence duty lawyer service at Holland Park Magistrates Court.

- Welfare and domestic violence social work assistance.

WLS is involved in a voluntary and unfunded basis with 3 coordinated community responses to domestic violence in Brisbane including, the Brisbane Integrated Response to Domestic Violence (BIRDV), Domestic Violence Court Assistance Network (DVCAN) and the Domestic Violence Assistance and Support Service (DVASS). We are linked in at a local, State and national level with legal, community legal centre and domestic violence networks. We also work closely with the Carinity-Talera service that has a specialised program for child witnesses to domestic violence and other domestic violence services such as the Ipswich Women's Centre against Domestic Violence that work directly with both women and children affected by domestic violence.

WLS welcomes the opportunity to provide a submission to the Inquiry.

WLS is a member of the Women's Legal Service Australia (WLSA) and supports and endorses the joint submission by WLSA and the National Association of Community Legal Centres (NACLC) to this inquiry. WLS' submission will address additional issues to the NACLC and WLSA joint submission that highlight issues from our Service perspective.

### **Prevalence and Impact of domestic violence**

Family and Domestic Violence (FDV) is about attaining, keeping and maintaining power and control over another individuals, usually in an intimate partner relationship. It is selective, uninvited and repetitive oppression of another person. It can include one incident when that incident is used against the person to threaten, coerce or control them. It is instrumental rather than emotionally reactive and a person uses the behaviour to gain benefits and resources in the relationship (Johnson 2006; Kimmel 2002; Stark 2010). There is a gendered experience to the violence.

The statistics are clear that violence against women and children in Australia is extensive and at unacceptably high rates. One in three women experience violence and one in five women experience sexual violence in their lifetime. One in four children witness violence in their home<sup>1</sup>.

The unofficial statistics from the Queensland Police Service for 2012/13 state:

- There has been a 10% increase in reported FDV incidents in Queensland;
- There have been 12 228 breaches, an increase from 10 997 from the previous year;
- There have been 14 659 police applications for protection orders and 8 241 private applications, an increase from 12 845 and 7 444 respectively from the last financial year;
- One in three homicides in Queensland involve domestic violence.

Intimate partner violence was found to be the main contributor to death and disability to women aged 15 to 44 in Victoria.<sup>2</sup>

Domestic violence claims the lives of more Australian women under 45 than any other health risk, including cancer.<sup>3</sup>

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<sup>1</sup> ABS 2006

<sup>2</sup> <http://www.vichealth.vic.gov.au/Programs-and-Projects/Freedom-from-violence/Intimate-Partner-Violence.aspx>

<sup>3</sup> *ibid.*

Every three hours, a woman is hospitalised from domestic violence.<sup>4</sup>

Indigenous women are up to 35 times more likely to be hospitalised.<sup>5</sup>

Domestic violence is not a “post code” crime and affects all socio-economic, cultural and religious groups.

### **Economic Cost of Family and Domestic Violence**

Apart from the impact on the emotional health of individuals and the community as a whole, FDV has a significant economic cost, estimated to be (US \$) 14.7 billion in 2013.<sup>6</sup> Without action to address violence against women and their children, approximately three quarters of a million Australian women will experience and report violence by 2021-22, costing the Australian economy \$15.6 billion, approximately 1.1% of Australia’s GDP.<sup>7</sup> These are conservative figures as they are based on reported incidents of violence.<sup>8</sup> The KPMG report on the economic costs of violence against women was ground breaking, as it highlighted the economic cost on businesses, government, not-for-profit organisations and individuals measuring the problem in the same ‘currency’ as other economic and social issues.<sup>9</sup>

In 2008, it was estimated that the estimated expenditure on responding to domestic violence in Queensland was \$111 million.<sup>10</sup> This figure is projected to increase. Although we exist in a tight fiscal environment, the KPMG report makes clear that there is a significant cost to the community by **not** appropriately responding to FDV. It is also clear that public education campaigns and media reports of violence increase awareness about violence in the community. This increased awareness will mean rates of reporting domestic violence will most likely increase before they begin to plateau or decrease. Increased reporting rates can result from a great awareness and greater confidence by victims to seek help.<sup>11</sup> The investment for government is worthwhile, as it has been shown that for every woman whose experience of violence can be prevented there is a cost saving of approximately \$20,766 across all affected groups in society.<sup>12</sup>

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<sup>4</sup> Pointer S & Kreisfeld R (2012) Hospitalised interpersonal violence and perpetrator coding, Australia, 2002-05. Injury research and statistics series no. 77

<sup>5</sup> Australian Institute of Health and Welfare (2006) Family Violence among Aboriginal and Torres Strait Islander peoples

<sup>6</sup> Presentation by Ms Liz Forsyth, Partner KPMG at the WLS *Thought Leader forum* on 20<sup>th</sup> May 2014 at Queensland Parliament House.

<sup>7</sup> KPMG, *The Costs of Violence Against Women and their Children*, a Report prepared for the National Council to Reduce Violence against Women and their Children, March 2009.

<sup>8</sup> Presentation by Ms Liz Forsyth, Partner KPMG at the WLS *Thought Leader forum* on 20<sup>th</sup> May 2014 at Queensland Parliament House.

<sup>9</sup> *ibid.*

<sup>10</sup> *ibid*

<sup>11</sup> Quote MS Liz Forsyth, Partner KPMG at the WLS *Thought Leader Forum* 20<sup>th</sup> May 2014 at Queensland Parliament House

<sup>12</sup> KPMG, *The Costs of Violence Against Women and their Children*, a Report prepared for the National Council to Reduce Violence against Women and their Children, March 2009.

## Children

Children's exposure to family violence is a significant issue and it is recognised as a form of child abuse.<sup>13</sup> Research has shown fairly definitively that 'violent household are significantly more likely to have children than non-violence households and that violent households have a significantly higher proportion of children aged five years and under.'<sup>14</sup>

As the Benevolent Society highlights in their *Social Issues Snapshot: The impact of domestic violence on children*<sup>15</sup> safe outcomes for women and children, who live with domestic violence are inextricably linked:

*"Children's experiences of domestic violence are extensive and complex. They include witnessing or being exposed to violence, being the victim of direct abuse, being injured while trying to intervene, and exposure in utero. **Research show that the severity of the impact on children is similar regardless of whether they witness violence or experience physical violence themselves....Violence towards children (or threats of violence) is also a strategy used by perpetrators to exert control over their partner or ex-partner and to undermine their parenting and the mother-child relationship. For mothers, such strategies create feelings of helplessness around protecting their children. **Children's safety and emotional well-being are directly linked to the safety of their mothers.*****

*Addressing the needs of the mothers strengthens the mother-child relationship, as it supports mothers to respond effectively to their child, which in turn reduces the impact of the trauma of domestic violence on the child."*

### At a Service level

There is little doubt that there has been an increase in complexity of our caseload over the last few years. This *may* be because we are targeting more vulnerable and disadvantaged women through our case management guidelines but the numbers of women seeking assistance from our service in the last few years who are in crisis has consistently increased. For example, at our night time volunteer legal advice clinics, women are regularly turned away as we can't meet the demand. The frequency and regularity of this has increased over the last few years. Although the volunteer session starts at 6pm, women regularly turn up seeking legal advice at 4.30pm to secure an appointment - as it is run on a first come first serve basis. Again, this is occurring more frequently and is becoming 'the norm'.

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<sup>13</sup> Edelson, Shin and Amendariz "Measuring Children's Exposure to Domestic Violence: The Development and Testing of the Child Exposure to Domestic Violence (CEDV) Scale (2008) 30 Children and Youth Services Review 502-521; C Humphreys, Domestic Violence and Child Protection: Challenging Direction for Practice Issues Paper 13, Australian and Domestic and Family Violence Clearinghouse, Sydney 2007 and M Flood and L Fergus, *An Assault on Our Future: The Impact of Violence on Young People and their Relationships*, White Ribbon Foundation, 2008, p.8.

<sup>14</sup> Easteal P and Grey D "Risk of harm to children from exposure to family violence: Looking at how it is understood and considered by the judiciary" (2013) 27 Australian Journal of Family Law at p.59 citing K Richards, Children's Exposure to Domestic Violence in Australia, Trends and Issues in Crime and Criminal Justice No 419, Australian Institute of Criminology, 2011.

<sup>15</sup> Originally published 2012 and re-printed July 2013.

As a Service, we have been required to respond to this increased demand, urgency and risk that women are presenting to our drop in service. Within the confines of our very tight budget, we have managed to increase staffing to provide support to our volunteer coordinator. We have now employed a domestic violence social worker, who conducts a level of risk assessment and referral for women who have experience violence and an experienced lawyer to triage women at the door and ascertain the level of urgency, regarding their legal matter. If women are turned away, they are given the option of coming back on another night, the lawyer telephoning them the next day or obtaining a legal appointment. Both of these new positions are non-permanent and the workers are employed on short term contractual contacts because of budgetary constraints.

As we advised previously in our opening remarks we are unable to provide assistance to an additional 16 000 women each year who try to contact us by telephone. We are regularly advised by our referral agencies that women telephone the referral agency to complain about their inability to get through to us.

We are currently trying to increase access to our service by the establishment of a new volunteer program at WLS called *Legal Link*, where solicitors from legal firms volunteer on the telephones during the day. We already have 4 volunteers and are hoping to increase these numbers in the future. Unfortunately, this will only be part of the answer as any increase in access also results in an increase in demand on our solicitor's time in relation to ongoing casework.

#### **Why women seek assistance from us?**

Women (many of whom have experienced domestic violence) seek assistance from our Service because:

- Women seek services from WLS, either at a time when they are **thinking about separation or when they have been separated** from their partner. Separation is well recognised as the most dangerous time for women and children escaping violence. However, danger for women and children peaks again when women take steps post-separation towards permanent separation eg. The finalisation of family law matters that can take place 12-18 months after separation.<sup>16</sup>
- **A lack of legal aid** - despite domestic violence being a priority in the National Partnerships Agreement, and despite many of our clients meeting the strict criteria for legal aid financial disadvantage, they often have difficulty in meeting the legal aid 'merit' test and therefore cannot obtain legal aid for legal representation in their family law matters to work out their children's arrangements post-separation. The Legal Aid merit test is not a true *legal merit* test as it is heavily influenced by Legal Aid budgetary allocations for the week or month that the client seeks assistance. We are aware that if a matter involves the appointment of an independent children's lawyer, it can increase the difficulty of our clients obtaining legal aid. Because of legal aid budgetary constraints children's representation will be prioritized over party representation. This is a concern in matters involving domestic violence because in many of these cases, the adult victim's evidence is the **only** evidence of the violence or the

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<sup>16</sup> Hardesty Jennifer L. "Separation Assault in the Context of Post-divorce Parenting: An Integrative Review of the Literature" *Violence against Women* 2002 quoting Ellis (1992) at p.600.

only evidence that can detail the impacts on the children. Her ability to give cogent and clear evidence is severely compromised without legal representation.

If women do not obtain Legal Aid assistance this means that they have to make the difficult decision to represent themselves in court. For some women, especially those who are unable to speak English or have limited literacy - this is **no choice at all**. It all becomes too difficult and we fear they may return to their abusive spouse. For others that undertake this momentous challenge we fear that they do not fare well. They find it almost impossible to deal with the trauma of the domestic violence, his ongoing violence and harassment, respond to their children's ongoing trauma as well as prepare for and be present at court events. Often they can present to the court and family law professionals as highly distressed, angry and agitated or fearful and mute. They often do not make good witnesses.

- **An inability of some women to meet the financial disadvantage test of legal aid** but are unable to afford a private lawyer. eg. they may work part-time, have a fairly low asset pool but enough to make them ineligible for legal aid assistance.
- **Community services being under funding pressure**, some are facing an uncertain funding outlook (including Women's Legal Services and all community legal centres) and some services have been de-funded.
- There is **greater community awareness of domestic violence** and this encourages women to come forward and seek assistance.
- Brisbane and some regional centres in Queensland such as Bundaberg and Toowoomba have experienced **recent natural disasters**. Indeed, Women's Legal Service itself is physically located in an area where flooding occurred and people lost their houses and businesses. There is overseas and domestic research that proves that violence against women increases after natural disasters.<sup>17</sup>
- **The GFC and financial stress families are currently experiencing**. This is not a cause of the violence but probably exacerbates pre-existing dynamics. For example, over the last few years there has been an increase in the numbers of women presenting in a situation where they are living 'separated but under the one roof' with their ex-partner. Often the matters involve violence. The ex-partner can refuse to move out as a tactic of control and also because they want to assert their legal rights in the home and over their children. However, it can also be for financial reasons, lack of housing options or affordability. Some of these cases are very volatile and dangerous.
- **Emphasis on shared parenting and presumption of equal shared parental responsibility (ESPR) in the Family Law Act**. Many women who seek assistance from our Service believe that they must give the father who is the perpetrator of violence, equal time with the children. The presumption of ESPR and emphasis in the Act on shared parenting were not changed by the 2012 amendments to the Family Law Act. There is continued confusion in the community between ESPR and equal time. Many members of the community believe

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<sup>17</sup> see Debra Parkinson and Claire Zahrah The hidden disaster: violence in the aftermath of natural disaster (Women's Health Goulbourn North East) Attorney-General's Department, Australian Emergency Management Institute.

there is a presumption of equal time, which is not legally correct. Although, the presumption is not meant to apply in cases of violence and abuse; this does not always work in practice.

Why is this the case? It is often difficult to 'prove' violence/ abuse to the satisfaction of the court because it occurs 'behind closed doors', many victims can be unrepresented in court because of limited legal aid and many matters are settled in mediation, often without legal assistance. When orders for ESPR are made, the court is required to consider equal time or alternatively, orders for substantial and significant time. The presumption continues to place victims immediately on the 'backfoot' in the court or in mediation, resulting in orders/ agreements that include ESPR or shared parenting provisions that can:

- **Expose victims of violence and their children to ongoing violence, intimidation and manipulation;**
- Allow ample opportunities for perpetrators of violence to exert ongoing control and decision-making in the family;
- Provide opportunities for the mother's parental authority with the children to be continually undermined;
- Effectively deny many children the therapeutic assistance they require through domestic violence or trauma counselling because the law requires the permission of the perpetrator and this is often refused or it is unsafe to undertake counselling because the perpetrator will have unsupervised contact with the child.

Women's Legal Services Australia has long advocated that parenting arrangements should be in the best interests of each child, worked out on a case-by-case basis. The safety and wellbeing of families is too important to not take the time to judge each case on its own merits, especially when domestic violence and abuse are involved.

Women's Legal Services and domestic violence groups advocated strongly against the 2006 changes to the Family Law Act that emphasized shared parenting. We were always concerned that it was a volatile mix to promote shared and joint parenting in a legal system where there are so many cases involving FDV and abuse, where often the victim of violence is not legally supported by Legal Aid, Child Safety will not respond if they assess there is a 'protective parent', there is no specialised DV risk assessment and the adult victims are made to feel unsupported and that they are solely responsible for protecting their child.

### **Policy impacts on women's ability to escape domestic violence**

#### **The need for a nationally coordinated response to domestic violence deaths**

There are a variety of State based death review systems and coronial processes that investigate DV deaths at the State level and some of these make recommendations for systemic improvements. We are uncertain how well these State based systems deal with federally based issues, laws, and processes and if the right experts are asking the right questions. Eg. The family law processes and systems.

We are uncertain how to do this but feel there must be some way that important information relevant to making improvements to the federal system should not be lost in local, State based inquiries that may concentrate on State police and domestic violence service responses (as important as these are) rather than federal issues. Eg. Marriage counsellors are federally funded



through DSS and important questions could be asked about their interactions with couples in circumstances when there has been a murder, including whether there is a need to develop national standards and training around DV. There is also an issue in relation to lag time between when the deaths occurred and when the investigation takes place and when the recommendations for change are ultimately released.

We simply raise this point as an issue for investigation by the committee. There may be processes in place that deal with these matters that WLS is unaware.

### **Increased funding for Women's Legal Services, community legal centres and Legal Aid**

We endorse the WLSA and NACLCLC submissions on the barriers women face in being able to access specialist legal assistance, and support the call for increased funding to both Legal Aid Commissions and community legal centres to undertake this work.

### **Family law system – adversarial system vs protective**

There are a range of reasons why women who experience domestic violence are less likely to be heard in the family law system or at worst exposed (or their children are exposed) to further violence through the family law system. These reasons can include a problem in "proving the violence" to the satisfaction of the legal system. However, there are systemic barriers that can impede a woman's ability to achieve this including:

- a failure by the police to charge, take out protection orders or take breach action.
- Violence occurs *behind closed doors often* without third party verification.
- The failure of child protection systems to properly investigate or be resourced to do so;
- Lack of understanding by professionals of DV dynamics and impact on victim; professionals can miss coercive and controlling behaviours;
- Perpetrators deliberately interfere in any evidence gathering; blame the victim and 'play' the system.
- Failure by professionals within the system to understand the relationship between violence against women and violence against children;
- Lack of legal aid and legal representation;
- Fragmented and disjointed system; and
- Community services under-resourced and over-stretched.



Despite the extent of domestic violence in the wider community and in the family law system itself the dominant discourse in research, policy and practice is high conflict families, common couple violence or separation instigated violence. The emphasis on "conflict", separation violence and mutuality can direct attention away from issues of safety and risk.

Domestic violence can be minimised in family law practice as being an isolated, uncharacteristic incident caused by the distress of a separation, rather than as a risk marker for severe or even lethal violence in the context of a pattern of historical abuse. **Violence towards the mother can be assessed as separate from issues of risk and safety for the children.** For example, it can be regarded that he is a bad husband but a good father. Despite domestic violence being highly relevant to the determination of parenting orders, its importance can be minimised in the context of parenting.

When domestic violence cases are categorised as high conflict, common couple or as separation violence - the effect on the victim is that the violence is mutualised and the responsibility for stopping the violence and protecting the children is shifted solely onto the adult victims.

In telling reach by Patricia Easteal and Dimian Grey<sup>18</sup> in their consideration of 60 judgements where the facts included allegations of family violence, and exposure to family violence and/or child abuse. They concluded that orders for no time or even for only supervised time **are not the norm** in cases involving allegations of either child abuse or exposure.

Most of the cases applied the 2006 reforms to the Family Law Act and only 4 applied the 2012 reforms. Unsupervised contact was determined in 70% of the cases – a trend that is consistent with research outcomes over the last 15 years. This is consistent with our client experience and the reasons that women seek assistance from our service - they are concerned about their and their children's safety post-separation and especially in relation to family law outcomes. These concerns are ongoing despite the changes to the Family Law Act in 2012 that clearly prioritised the protection of children.

These are extremely concerning research findings, albeit not surprising.

### **Abuse on Contact training**

We enclose a copy of a training flyer for our *Abuse on Contact: Keeping Children Safe on Contact* training program that has been developed with the assistance of an Ian Potter Fund Community grant by the Women's Legal Service in conjunction with the Ipswich Women's Centre against Domestic Violence and Carinity - Talera - a children's domestic violence counselling service.

The target audience for the training is for community and children's workers to provide them with some practical tools they can implement in their day to day practice to increase the safety of women and children post-separation. The abuse on contact training package builds on the work of the Service in this area for the last 15 years.

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<sup>18</sup> "Risk of harm to children from exposure to family violence: Looking at how it is understood and considered by the judiciary" *AJFL*(2013) at 59

Abuse on Contact is harm that occurs when victims (both adults and children) of family or domestic violence are exposed to ongoing violence post-separation as a result of the legal requirement to comply with family law orders, parenting plans or other agreements that allow or promote time with the perpetrator of the violence. Arguably, it is the 'human face' of the Eastaer and Grey research referred to previously.

The training will include the assessment of domestic violence risk for women and children up to and including lethality. The Brisbane training session which is the only one advertised so far booked out in 2 days. We have a waiting list of 80 places of people who would like to attend the Brisbane training and despite advertising that the training is full, we are continuing to get rsvps to the event on a daily basis.

The over-subscription to this training is perhaps an indicator of the extent of the problem in the community.

### **The need for court risk screening and assessment**

Although it is well recognised that the core business of the family law courts is ongoing risk management in matters involving child abuse and domestic violence, the courts themselves do not currently or historically undertake routine DV risk screening or assessment of its cases. We would recommend that this occurs. It is important to recognise that risk is not static and can change quickly. We would recommend that specialists in domestic violence be involved in the development of any tool and the training of court staff.

### **The need for accreditation of family report writers**

Family reports are socio-psychological assessments used in the family law system to assist the court to make decisions in the best interests of children. The report writers are usually social workers or psychologists. We understand that the court is currently developing family report writing standards about family violence, for their family law consultants. We congratulate the court for taking this initiative and for consulting on this document. However, the standards will only have limited application to the family consultants employed by the Family Courts and will not cover family report writers employed by Legal Aid or in private practice.

Perhaps more concerning is that recently the AASW (Australian Association of Social Workers) released a public information sheet advising that they had received legal advice that they were unable to investigate or receive complaints about their members who conducted family reports as it would be in breach of s. 121 of the Family Law Act (publication of materials). This means that social workers who are in private practice and are involved in writing family reports are in effect, working in an unregulated environment. They are not employed by the courts or Legal Aid, that may have some organisational oversight and without regulation by their professional bodies. If the AASW's legal advice is correct then this would also extend to other professional association such as the psychologist's board. These professionals are interacting with some very vulnerable families and interviewing children who have been traumatised and may have been subject to violence and abuse. The announcement by the AASW provides further evidence for the urgent need for accreditation.

### **Traumatised children are not getting access to direct counselling support**

Our work with Carnity-Talera has alerted us to the issue that children's counsellors who work post-separation are often unable to provide direct assistance to traumatised children who have experienced or been exposed to domestic violence. This is because the children will often be having unsupervised contact with the perpetrator of violence and the counsellors make an assessment that it would often be too unsafe for the children for counselling to be undertaken in such a situation. The children's counsellors may work with the mother (who is dealing with her own trauma) to help her support her children, in an effort to provide the children with some support indirectly. This is not in any way an ideal situation for vulnerable children in Australia.

There is also very limited funding for children and domestic violence counsellors and Carnity-Talera report large waiting lists for their services.

### **An alternative legal approach that prioritises domestic violence**

Researchers Professor Helen Rhoades, Professor John Dewar and Nareeda Levers were awarded an Australian Research Council Grant to consider simplification of Part VII of the Family Law Act (Children's section). As part of the research on that grant we provided the following feedback and recommendations to the researchers about Part VII that would assist decision-making in family law where there was domestic violence.

Women's Legal Services have long advocated that a separate and distinct legislative pathway should be developed for cases involving domestic violence in the family law .

Our ideas about this are set out below.

- **Identification of the existence of family violence at an early stage**

That FDV and abuse cases should be identified at the earliest stage in decision-making and any assessments of the children and the family should be made, taking into account safety concerns and risk. At the moment the existence of family violence is not finally determined until the final hearing of a matter which can be up to 18 months - 2 years after proceedings are commenced.

- **A specialised legal pathway that incorporates the dynamics of violence be developed**

The dynamic of violence is all pervasive and issues of ongoing control and manipulation of the family are a reality. Difficult, hard decisions must be made by judges to limit contact, deny contact or limit decision-making around issues of parental responsibility in families where there is violence. Assessments by professionals with clinical experience and expertise in family violence and risk assessment need to guide the judiciary. Additionally, the long-term impacts on children being placed in the care of a perpetrator of violence must be thoroughly examined.

- **Shared parenting needs to be carefully considered in family violence cases**

Because of the attraction of shared parenting to violent men as a way to exert ongoing control, we would recommend provisions be inserted into the Family Law Act that guide decision-making around shared parenting, when it is most appropriate and specifically excluding domestic violence cases. We support the removal of the presumption of equal shared parental responsibility and overall emphasis in the Act on equal time and shared parenting.

- **An alternative legislative framework was suggested by Women's Legal Services Australia. It incorporates aspects of risk assessment in the legislation itself:**

*(1) In considering what parenting orders to make when there are allegations of family violence, the court must take into account the following matters*

- a) Whether there is any family violence involving the child or a member of the child's family including a consideration of the following:*
- i. the nature and seriousness of the family violence used in the family;*
  - ii a consideration of the pre-separation relationships in the family and the impact of the family violence on those individuals and their relationships;*
  - iii how recently the family violence occurred;*
  - iv. the frequency of the family violence;*
  - v. the likelihood of further family violence occurring;*
  - vi. consider how the child was subjected to or exposed to family violence and the physical and/or emotional harm caused to the child by the violence;*
  - vii. the physical and/or emotional harm caused to a member of the child's family by the violence*
  - viii. any views expressed by the child on the matter;*
  - ix. Whether the other party believes the child would be safe if certain parenting orders are made;*
  - x. any steps undertaken by the violent party to prevent further family violence from occurring.*
  - xi. if both parents or carers allege family violence the court must consider the nature of the violence alleged by each party to determine the 'predominant aggressor' of the family violence'.*

*To assist the court in this determination they must consider the following including:*

- i. the nature of the violence alleged between the parents or carers and a consideration of the context in which it occurred..*
  - ii. whether the violence satisfies the definition of family violence;*
  - iii. whether any of the violence was in self-defence or retaliatory.;*
  - iv. a consideration of who is the most fearful;*
  - v. a consideration of who is the most powerful, controlling and/or has access to the most resources; .*
  - vi. Any other relevant matter*
- iii When making parenting orders where there is family violence the court must:*

- vii. *undertake a risk-benefit assessment about the safety and desirability of certain parenting orders and must articulate its reasons for making the orders;*
  - viii. *When undertaking the risk-benefit assessment, it is acknowledged that the safety of other victims of violence in the family is an important consideration in determining the child's safety;*
  - ix. *consider whether there should be a period of no time with or communication with the child at an interim stage to allow time for the family to re-settle and/or stabilise.*
  - x. *provide risk management strategies within the orders that are appropriate in the circumstances including for example, supervision at a contact centre, orders for sole parental responsibility, limited or no time with orders.*
  - xi. *consider the issues outlined in (paragraph 2 below) in light of the findings of family violence in the family.*
- (2) *When considering what parenting orders to make, the court must take into account the following matters, so far as they are relevant:*
- (a) *the child's views, including any factors such as the child's maturity and level of understanding that are relevant to the weight to be given to the child's views;*
  - (b) *the child's age, stage of development and cultural background, including the lifestyle, culture and traditions of the child and of either of the child's parents;*
  - (c) *the capacity of each of the child's parents and other significant persons to provide for the child's current and future needs;*
  - (d) *the nature of the relationship between the child's parents or carers, including a consideration of the following:*
    - i the nature and degree of any violence or conflict between the parents or carers, and*
    - ii how the parents or carers have communicated about the child in the past; and*
    - iii the current and future likelihood of the parents or carers to communicate effectively with each other about the child; and*
    - iv whether orders are needed that limit communication and contact between the parents or carers.*
  - (e) *the nature of the child's relationship with each parent or carer and other people of importance in the child's life;*
  - (f) *the attitude to the responsibilities of parenthood demonstrated by each of the child's parents or carers*
  - (h) *the current care arrangements for the child and the likely effect of any changes in the child's circumstances, including:*
    - i. on the child of changes to the current arrangements;*
    - ii. on the child of separation from either of the child's parents or carers, any siblings or other significant people in the child's life;*

- (i) if the child is an Aboriginal child or a Torres Strait Islander child,*
- i. the child's right to enjoy his or her Aboriginal or Torres Strait Islander culture (including the right to enjoy that culture with other people who share that culture); and*
  - ii. the likely impact any proposed parenting order under this Part will have on this right;*
- (j) the potential for therapeutic or educational services to improve the capacity of a parent or carer to meet the child's needs;*
- (k) the reasonable practicality of the parenting orders being sought having regard to the following:*
- (i) how far apart the [parents](#) live from each other; and*
  - (ii) the [parents'](#) current and future capacity to implement a proposed arrangement; and*
  - (iii) the [parents'](#) current and future capacity to communicate with each other and resolve difficulties that might arise in implementing an arrangement; and*
  - (iv) the impact that an arrangement of that kind would have on the child.*
- (l) any other fact or circumstance that the court thinks is relevant.*

## **Early Intervention**

### **CFDR**

WLS provides legal advice at 2 Family Dispute Resolution (FDR) services at Logan and Mt Gravatt. There is real potential for these services to be expanded so our lawyers can regularly represent clients at FDR sessions. In Queensland legally assisted mediations in FRCs are not common or widespread. With extra resourcing we would be able to assist more vulnerable women in this way.

Despite screening, exceptions and legal exemptions it is common practice for mediations to proceed when there is DV in the relationship. In an Attorney-General's issues paper, FDR services estimated that 80% of their work involves domestic violence. Our client's experience is that they are often pressured to form agreements that are not safe for them or their children, due to the ongoing exertion of power and control in the FDR setting. We believe that there *may* have been an increase in the levels of violence that are currently being assessed as appropriate for mediation. We are unsure about the reasons for this but it might be the skill level of practitioners who conduct the screening, the fact that women may want to mediation despite the levels of violence, the lack of alternatives for women who may be ineligible for legal aid or can't afford a private lawyer.

Another more appropriate response is a model of legally assisted mediation that was specifically developed to take into account issues of domestic violence, the Coordinated Family Dispute Resolution (CFDR) model. This model was funded as a pilot between 2011- 2013, but no longer exists due to the withdrawal of funding. It provided extensive support to both the victim and

perpetrator of violence via men's workers and domestic violence workers and involved lawyers in the process. An essential component was ongoing specialised risk assessment which resulted in some matters deemed too unsafe, too risky or otherwise inappropriate to mediate. It acted as an important filtering process for matters that were appropriate for supported mediation and determined early those matters that really needed a court intervention.

### **Housing**

The lack of affordable housing is a major barrier to women leaving domestic violence. The financial, emotional and social barriers to leaving domestic violence are so significant that many women remain in unsafe relationships, as they are forced to choose between domestic violence and homelessness. These issues are continually being raised in domestic violence community groups in which WLS participates as a very "real" barrier to women being able to separate safely from abusive men.

In Queensland, The Domestic and Family Violence Protection Act 2012 and the Residential Tenancies and Rooming Act 2008 include provisions for victims of domestic violence to remain in the home (either rented or owned), for leases and tenancies to be legally ended or altered and allow the removal of the perpetrator from the home. These provisions have their place in the preventive space. However, these provisions can be inconsistently interpreted by magistrates and there can be an ongoing cultural reluctance to prevent a legal owner of a property from having access to their property.

Programs such as *Staying Home Leaving Violence* (NSW) and *Safe at Home* (VIC) rely on a justice-led approach to avoid homelessness for women and children, through similar state legislation by removing the perpetrator of violence from the home, and providing coordinated support and practical assistance to the woman to increase her safety. We believe, programs are more likely to be successful within a context of specialist domestic violence courts (operating in some states), which provide women with access to legal representation as well as the confidence of a consistent judicial response. We support such an approach.

### **Barriers to accessing affordable housing**

Housing affordability remains a critical issue for women whether they leave, or choose to remain in their home after separation. In practice, many women experiencing domestic violence are financially dependent on their partner, or rely on dual incomes for housing and daily living expenses. Remaining in the private rental or mortgaged family home may not be sustainable as women simply cannot afford the rental / mortgage payments. Remaining in the family home may be unsafe, due to the perpetrators knowledge of the location and the property itself. Invariably domestic violence, along with all relationship breakdowns increases the demand for affordable accommodation for single parent families.

In Queensland, home owners are not eligible for social housing or NRAS rental properties. There are some exemptions in relation to domestic violence however accessing these discretionary provisions is an onerous process and the asset test still excludes women, despite having no means of accessing the equity in the home. Property settlements under the Family Law Act 1975 often take years to finalise. Whether women remain or leave the matrimonial property, if they are a legal owner they have extremely limited affordable housing alternatives. Many women in this situation are entitled



to very little equity (or have negative equity), rely on Centrelink benefits and experience significant financial hardship.

Another group of highly vulnerable and marginalised women who we regularly assist are women on temporary visas and some New Zealand citizens who are experiencing domestic violence. These women are not eligible for social housing as they are not permanent residents or Australian citizens. They may be applying for permanent residency under the domestic violence provisions in the Migration Regulations, however this process is lengthy, and these women have limited affordable housing options. These women also face barriers to accessing emergency accommodation because they often have no income (not entitled to Centrelink) and no exit options.

In our service, a large proportion of our clients are women living 'separated under the one roof', where they live in the same home as their former partner or spouse after separation. Women are choosing this option for economic reasons due to a lack of affordable housing alternatives. Many women we assist who are 'separated under one roof' are in very untenable and unsafe environments, often with children and often experiencing ongoing domestic violence.

**The lack of affordable housing for women escaping violence puts pressure on the (expensive) crisis refuge sector.**

Discussions with domestic violence sector workers in Queensland highlight issues of chronic underfunding for refuges and an ever increasing demand for medium to long term housing. Women and children are in refuge for extended periods while waiting for social housing.

In Queensland, in the 3 months from Dec 2013 to Feb 2014, DVConnect recorded the placement of 633 women and 978 children escaping domestic violence in motels. The majority of these placements were due to no available vacancies or where women were unable to access the refuge vacancy (DVConnect data 2014).

The refuge system is crisis driven, focusing on immediate safety and support needs of women and children. However, women face an uncertain future as the exit points into affordable, safe, long-term housing are limited. Wait times are long and housing services offer no guarantee of housing. This 'bottleneck' in accessing affordable long term housing puts pressure on refuges to the point when they are routinely turning women away. For women in the refuge, the wait for appropriate housing further prolongs the period of social and educational disruption for them and their children which increases the likelihood of their return to violent partners.

**Increasing the Supply of Affordable Housing**

There is widespread consensus amongst the housing and domestic violence sectors for the need to increase the development and supply of affordable housing options, including public and community housing as well as low-cost private rental such as NRAS properties.

In relation to women escaping domestic violence, the timeliness of accessing housing and support is crucial for women to transition to safe and secure futures. It could be argued that the high rate of women returning to violent partners (research estimates 7 times before final separation) is due to the failure of our service systems (support, legal, housing) to respond appropriately and effectively to address their needs.

Women require flexible pathways from domestic violence to independent and affordable housing.

## Changes required to eliminate violence against women and their children

### Housing

- The Federal and State governments need to increase the supply of a range of affordable housing options to address the critical shortage of social housing. Increasing the affordable medium term and long term housing options for women escaping domestic violence will alleviate some pressure on the crisis refuge system as well as a broad range of flow on economic benefits across other sectors such as health and mental health.
- The introduction of specialist domestic violence courts alongside coordinated legal and support services for women in Queensland. This is a preventative strategy to avoid domestic violence led homelessness for women and children. Successful models also include the provision of housing and support for perpetrators of domestic violence who are excluded from the family home.
- The Federal Government assist with additional financial assistance for housing costs for a temporary period for women escaping domestic violence to access or to remain in private rental housing as a long term option. The Private Rental Assistance Program (PRAP) scheme currently operating in areas of Victoria offers a successful model. This has been demonstrated to be effective in assisting eligible women to access sustainable long term private rental, which has the broader benefit of reducing the pressure on refuges and the demand for social housing.
- Social housing and affordable housing providers could relax their eligibility criteria for women and children escaping domestic violence. This may include women applying for permanent residency under the Migration Regulations and women who are legal homeowners. Access to affordable housing in these circumstances could be provided on a medium term basis and reasonable notice be provided to women if they are not eligible for social housing when their legal matter is finalised.
- The implementation of a program similar to the *Same House Different Landlord* program in QLD may allow women who have experienced domestic violence access to a safe and affordable property on a temporary basis. The social housing property is head leased to a domestic violence service which manage the tenancy and provide support to the woman and children. Flexible entry requirements may include an initial transitional period, and if she meets the criteria the tenancy agreement can be transferred from the domestic violence service to the social housing provider on a long term basis. A replacement property is then provided to the domestic violence service. Such a scheme will minimise the social disruption to women and children and may benefit women exiting refuge, or for women leaving directly from domestic violence with planning.

## Legal Services

### ***Specialised DV Courts and Legal Assistance for women***

There is compelling local and international evidence that specialised court and police responses result in earlier and increased successful prosecutions. In an interview with the Director of the United States' Department of Justice's Office on Violence against Women it was stated that:

*"Jurisdictions with specialized domestic violence prosecution programs generally have the highest rates of successful prosecution.[32] From July to December 2010, 81 Arrest Program and Rural Program grantees reported that they developed or supported a specialized prosecution unit. In two years, a specialized domestic violence prosecution unit in Chicago convicted 71% of defendants compared to 50% of domestic violence defendants convicted by the rest of the Cook County office.[33] Four years after Milwaukee implemented a specialized prosecution unit, felony convictions had increased five-fold.[34] Significantly, VAWA Grants to Encourage Arrest Program-funded prosecutors' offices had a 76% conviction rate for sexual assault cases in the second half of 2010.*

*There is also a body of research indicating that the increased availability of legal services has significantly contributed to a decline in domestic violence in the United States.[35] Obtaining a protection order has been shown in multiple studies to reduce future assault and improve quality of life.[36] Even when orders were violated, there was a significant reduction in subsequent abuse.[37] A recent study showed that the state of Kentucky averted \$85 million in costs by reducing violence and improving victims' quality of life through protection orders.[38]"<sup>19</sup>*

The Australian Law Reform Commission recommended the establishment of specialised domestic violence courts. This includes divisions, programs, lists or a specialised court room within existing Magistrates Courts as they would enhance the efficacy and effectiveness of the courts in dealing with domestic violence<sup>20</sup>.

WLS currently provides a duty lawyer service to any woman who presents to the Holland Park Magistrates Court for domestic violence matters. There is currently no Statewide DV duty lawyer service available at every Queensland Magistrates Court. Domestic Violence Duty lawyers should be trained in the dynamics of FDV. The legal response should be part of a broader coordinated community response to domestic violence that provides additional welfare support services at the court, and where all professionals and the court work from a focus of prioritising women and children's safety. We recommend that:

- **That Queensland establish specialised domestic violence courts which includes specialised divisions or programs, with trained specialist magistrates.**

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<sup>19</sup> <http://www.forbes.com/sites/rahmkanani/2012/03/08/doj-director-on-violence-against-women-in-the-united-states/>

<sup>20</sup> <http://www.alrd.gov.au/publications/Executive%20Summary/improvingpractice>

- **That the Queensland Government establish and fund a FDV duty lawyer service for women in all Magistrates Courts in Queensland and that it be staffed by lawyers who are trained in the dynamics of FDV.**

### **Conclusion**

Once again, WLS thanks the committee for providing us with an opportunity to comment on such an important social issue. If you require further information, WLS representatives will be more than happy to appear at any public hearings or to discuss the issues raised in our submission, at your convenience.