

Inquiry into family, domestic and sexual violence

Submission to the House Standing Committee on Social
Policy and Legal Affairs

17 July 2020

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Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

The ALA office is located on the land of the Gadigal of the Eora Nation.

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to provide this submission to the House Standing Committee on Social Policy and Legal Affairs ('the Committee') inquiry into family, domestic and sexual violence.
2. This submission will focus on the following Terms of Reference:
 - d) The way that health, housing, access to services, including legal services, and women's economic independence impact on the ability of women to escape domestic violence;
 - h) The experiences of all women, including Aboriginal and Torres Strait Islander women, rural women, culturally and linguistically diverse women, LGBTQI women, women with a disability, and women on temporary visas.
3. The prevalence of domestic and family violence in Australia is nothing short of alarming. The ALA notes the opening statement from the Senate Legal and Constitutional References Committee report released in March this year, referring to the Fourth Action Plan in 2019:

'Every two minutes, police are called to a domestic and family violence matter. Every day, 12 women are hospitalised due to domestic and family violence. Every nine days, a woman is killed by a current or former partner.'²
4. Aboriginal and Torres Strait Islander women are 35 times more likely to be hospitalised as a result of family violence-related assaults than non-Indigenous women.³ Women with disability also experience very high rates of violence and abuse – an issue that has been frequently raised during Australia's review before United Nations bodies.⁴

² *Fourth Action Plan of the National Plan to Reduce Violence against Women and their Children 2010-2022* (2019), 2, as referred to in the Senate Legal and Constitutional Affairs References Committee Inquiry into domestic violence with particular regard to violence against women and their children, May 2020, 1.

³ Australian Government Productivity Commission Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2009 Fact Sheet: Women, men and children* (2009), 2.

⁴ Committee on the Elimination of Discrimination Against Women, *Concluding observations of the Committee on the Elimination of Discrimination against Women – Australia* (CEDAW Concluding

5. The urgency to address this situation is further illustrated by the fact that since early March 2020, 12 women have lost their lives at the hands of their domestic partners.
6. The ALA notes that over the last ten years, the issue of domestic and family violence has been the subject of numerous inquiries at state/territory and federal levels. The ALA is concerned that many of the recommendations of these inquiries have not been implemented and is concerned that this inquiry may be met with similar inaction. The ALA strongly submits that there is an urgent need for additional resourcing for front-line services and primary prevention. The ALA also submits that the Government must address issues within the justice system, including the chronic underfunding of the family law system, and that Commonwealth and state/territory governments must ensure stable and adequate funding of legal assistance services for both victims and perpetrators of family violence.

Access to legal services

7. The ALA submits that timely access to justice and legal representation is essential for women and children seeking to escape domestic violence. Many women who are victims of domestic violence are unable to access legal advice without Legal Aid. This limits their capacity to access the court system and other services, and their ability to escape their violent circumstances. The ALA is greatly concerned about the inadequacy of Legal Aid funding and the inadequate resourcing for legal assistance services.
8. The ALA considers it essential that there is adequate and sustainable funding for women's legal services, including Aboriginal and Torres Strait Islander women's legal services. These services focus on empowering and supporting women and helping women to pursue their legal rights. The services have a specialist and thorough understanding of the nature and dynamics of domestic and family violence and why such violence is primarily perpetrated against women and children. The ALA submits that it is essential that women have a choice of legal assistance services from which to access support.
9. The lack of adequate and sustainable funding for Legal Aid has serious adverse effects on women and children, particularly when violence has occurred or is alleged. Self-represented litigants who have been victims of violence are at a significant disadvantage as they face

Observations), 30 July 2010, CEDAW/C/AUL/CO/7, paragraph 43, accessed on 5 August 2014 at: <http://www2.ohchr.org/english/bodies/cedaw/cedaws46.htm>.

difficult task of presenting a case, including the possibility of having to cross-examine the perpetrator. If the perpetrator is also unrepresented, this means that the perpetrator may be required to personally cross-examine the victim.

10. The ALA strongly recommends that the Government increase funding for all legal assistance services, including specialist women's legal services, to an adequate and sustainable level.

Family court services

11. The ALA submits that the prevalence of domestic violence has a serious adverse impact on the delivery of all services within the family law system. The Family Court of Australia, the Federal Circuit Court and the Family Court of Western Australia deal with a high number of matters involving allegations of family violence and/or child abuse, with such allegations being raised in the majority of matters.⁵ Those cases are less likely to resolve outside of the court system and are likely to require judicial determination.
12. The ALA submits that the family courts system is not adequately resourced to appropriately deal with family violence and its effects. Victims and survivors of family violence need a court system which is flexible, accessible and adequately resourced to address the basic issue of litigants feeling and being safe at court, enabling appropriate investigations of allegations and risk, and enabling victims to access support services.
13. An under-resourced family courts system makes it more difficult for women to escape domestic or family violence because it means:
 - delays in accessing the family courts system;
 - less capacity on the part of the system to deal with matters urgently;
 - delays in the final resolution of cases which require judicial determination; and
 - risk of financial stresses and anxieties for at-risk families being exacerbated as a result of the delay.⁶

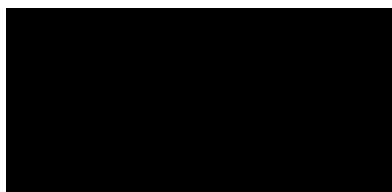
⁵ Law Council of Australia (2014), *Submission to the Senate Finance and Public Administration Committees Inquiry into Domestic Violence*, 11 August 2014, 4–5.

⁶ Ibid.

14. The ALA is also concerned that some perpetrators will use litigation against their former partners as a way to continue to control and/or punish them after separation.⁷ There are currently no specific provisions in the family law jurisdiction that prevent unrepresented perpetrators of violence from cross-examining the victim/survivor of violence. The lack of such protections can act as a barrier to accessing justice for the most disadvantaged and vulnerable in our community.
15. The ALA considers that cross-examination by an alleged abuser has a devastating impact on a victim and may result in that person choosing to settle their family law children's matters on less than satisfactory terms to avoid the trauma of being cross-examined by a violent ex-partner.⁸ The ALA submits that the *Family Law Act 1975* (Cth) be amended to ensure that victims are not directly cross-examined by an alleged perpetrator of violence, and that in a situation where the perpetrator is unrepresented the court is to appoint a person to ask questions on behalf of the alleged perpetrator. Such provisions in family law matters would provide fairness for all parties involved and increase the focus on what is in the best interests of the child.

Conclusion

16. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input into the Committee's inquiry into family, domestic and sexual violence. The ALA would welcome the opportunity to appear before the Committee to provide further assistance in relation to any of the matters raised by this submission or matters of interest to the Committee.



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⁷ Women's Legal Services NSW (2014), *Submission to the Senate Finance and Public Administration Committees Inquiry into Domestic Violence*, 8 August 2014, 11.

⁸ Ibid.