



14 August 2020

Mr Andrew Wallace MP

Chair

House of Representatives Standing Committee on Social Policy and Legal Affairs

PO Box 6021

Parliament House

Canberra ACT 2600

By email: family.violence.reps@aph.gov.au

Dear Mr Wallace,

Inquiry into family, domestic and sexual violence

1. Women's Legal Service NSW (**WLS NSW**) thanks the House of Representatives Standing Committee on Social Policy and Legal Affairs for the opportunity to comment on the Inquiry into family, domestic and sexual violence.
2. WLS NSW is a community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims support, care and protection, human rights and access to justice.
3. WLS NSW has an Indigenous Women's Legal Program (**IWLP**). This program delivers a culturally safe legal service to Aboriginal women in NSW and has been operating for over 19 years. A key part of the work of IWLP involves community access workers and lawyers working together to support Aboriginal women to engage in the family law system, including supporting and representing clients through the Indigenous list operating in the Federal Circuit Court in the Sydney Registry.
4. WLS NSW is a member of the National Advocacy Group on Women on Temporary Visas Experiencing Violence. During COVID-19 the increased risks to safety and need for women and children on temporary visas experiencing violence to be able to access safe housing, income, medical and legal support has again been highlighted with insufficient action. We implore State, Territory and Commonwealth Governments to take urgent action now to protect and support women and their children on temporary visas experiencing violence, including through medical, housing, income and legal support.
5. WLS NSW is also a member of Women's Legal Services Australia (**WLSA**). We endorse WLSA's submission to this inquiry.

Access to justice and role of specialist women's legal services

6. WLSA's submission highlights the vital role of specialist women's legal services in providing gendered, sexual, domestic and family violence (**SDFV**) informed, trauma informed, culturally safe legal services to



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women who have experienced SDFV as well as the vital role of Aboriginal and Torres Strait Islander community controlled legal services.

7. Specialist women's legal services are crucial to enable women (and their children) to navigate their way through the legal system, including the family law system, safely. Specialist women's legal services are safe places for women where staff have a deep understanding of gendered violence, complex trauma, intersecting and compounding disadvantage and can also provide a holistic, trauma informed response to multiple legal issues, for example, family law, care and protection, family violence, housing and victims support. Due to our expertise and building of trust, women disclose violence they tell us they have never been able to tell anyone before – particularly sexual violence.
8. It is important that legal assistance services and the legal system are adequately funded at all times to ensure people who have experienced SDFV can access the law including to ensure their safety and where relevant the safety of their children.
9. In 2014 the Productivity Commission acknowledged the significant strain on the legal assistance sector and the urgent need for immediate additional investment to respond to pressing legal need. The Productivity Commission recommended the immediate initial investment of an additional \$200 million for civil law matters, including family law and further additional funding follow the costings to quantify the total funding required. This recommendation is still to be implemented.
10. Since then research has found that victim-survivors of family violence are 10 times more likely to have legal issues than others and 16 times more likely to have family law issues than others.¹ It is important victim-survivors get early access to legal support to try and resolve their legal issues early before issues escalate.
11. In times of crisis, including natural disasters and pandemics, such as COVID-19, it is vital additional funding be provided to respond to additional pressing legal and other needs – particularly for people experiencing SDFV, whom, given the gendered nature of such violence, are primarily women.
12. A recent Australian Institute of Criminology study highlights an increase in women in Australia first experiencing SDFV during COVID-19 as well as an increase in the frequency and severity with which women who have previously experienced SDFV are continuing to experience such violence during COVID.² The study also highlights more than one third of women who experienced physical violence, sexual violence or coercive control on at least one occasion wanted to seek advice or support but have been unable to do so safely during COVID.³
13. Adequate funding of specialist services is required to respond to the expected surge in help seeking behaviour which will eventuate when victim-survivors feel safe to seek help.
14. We acknowledge the Government's recent announcement of \$63.3 million additional funding for the legal assistance sector to address additional legal needs caused by COVID-19. This includes \$49.8 million for legal assistance services, 40% of which must be used in matters relating to domestic violence and

¹ Christine Coumarelos, (2019) "Quantifying the legal and broader life impacts of domestic and family violence", *Justice Issues*, Paper 32, (Law and Justice Foundation of NSW) accessed at: [http://www.lawfoundation.net.au/ljf/site/articleIDs/61BD5751775FA93B852584090007B5B9/\\$file/JI_32_D_FV_legal_needs.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/61BD5751775FA93B852584090007B5B9/$file/JI_32_D_FV_legal_needs.pdf)

² H Boxall, A Morgan & R Brown (2020). *The prevalence of domestic violence among women during the COVID-19 pandemic*. Statistical Bulletin no. 28. Canberra: Australian Institute of Criminology. <https://www.aic.gov.au/publications/sb/sb28>, p11.

³ *Ibid*, p 14.

\$13.5 million for IT costs to support the sector's transition to delivering assistance virtually and online.⁴ We support a significant proportion of this funding being directed towards specialist women's legal services across Australia and to community controlled Aboriginal and Torres Strait Islander legal services, including the Family Violence Prevention Legal Services and Aboriginal and Torres Strait Islander legal services.

Safety First in Family Law

15. While noting the important work of the National Plan to Reduce Violence against Women and their Children 2010-2022 (**National Plan**) and accompanying Action Plans, the next National Plan must have a greater focus on safety in family law.
16. We recommend for the full implementation of WLSA's Safety First in Family Law Plan⁵:
 - Step 1: Strengthen the family and domestic violence response in the family law system
 - Step 2: Provide effective legal help for the most disadvantaged
 - Step 3: Ensure family law professionals have real understanding of family and domestic violence
 - Step 4: Increase access to safe dispute resolution models including legally assisted dispute resolution
 - Step 5: Overcome the gaps between the family law, family and domestic violence and child protection systems
17. The Safety First in Family Law Plan is supported by research, evidence and key recommendations from past inquiries and reviews into family law, including the recent Australian Law Reform Commission Review.
18. We draw particular attention to the need to remove the presumption of equal shared parental responsibility in the *Family Law Act 1975* (Cth).
19. We strongly support the introduction of the Family Law Amendment (A Step Towards a Safer Family Law System) Bill 2020, introduced as a private members bill into the House of Representatives on 24 June 2020. If passed, the presumption of equal shared parenting responsibility will be removed from the *Family Law Act 1975*. If removed the starting point in any decision about children will be what is in their best interests.
20. For too long there has been a widespread misunderstanding within the community about the meaning of equal shared parental responsibility – many think it means equal time and so feel they have no option but to enter into arrangements based on this misbelief even though they may fear these arrangements are unsafe for their children and themselves. These agreements are often made without first seeking legal advice. The continued existence of equal shared parental responsibility is placing children at risk of further abuse.
21. WLSA's Safety First in Family Law Plan calls for the removal of the presumption. Last year the Australian Law Reform Commission recommended the removal of equal shared parental responsibility, as did the

⁴ Prime Minister's Media Statement, Update on Coronavirus measures, 6 May 2020 access at: <https://www.pm.gov.au/media/update-coronavirus-measures-050520>

⁵ Women's Legal Services Australia, Safety First in Family Law Plan, 2019, accessed at: http://www.wlsa.org.au/uploads/campaign-resources/Safety_First_in_Family_Law_Plan.pdf

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House of Representatives Standing Committee on Social Policy and Legal Affairs report (**SPLA Report**) in 2017.

Women's economic independence

22. There are a range of factors limiting women's economic independence which impact on women being able to escape violence which stem from gender inequality. These factors need to be addressed. Some of these factors include: the gender pay gap, including impact on superannuation; gender stereotypes and attitudes; women primarily undertaking unpaid carer's work; inadequate recognition of SDFV in family law property settlements.
23. Child support policy and practice needs to reflect the reality that financial abuse is a common feature of domestic and family violence; and that child support is a key platform where ongoing abuse can be perpetrated against adult victims-survivors and children. Child Support legislation must be amended to provide for the best interest of the child to be the paramount consideration in child support decisions. We repeat our previous recommendation to trial a State guaranteed child support payment, consistent with the Child Support inquiry recommendation.⁶
24. Adequate social security is also required.
25. We have previously expressed concern about the inadequate levels of Newstart which are below the poverty line.⁷ We are concerned by the gendered impact, noting single parent families are primarily female headed. Access to adequate social security is a vital way to support victim-survivors of SDFV. It is essential to maintain an increase to the rate of JobSeeker, Youth Allowance and related payments, following the expiry of the Coronavirus Supplement and in line with the recommendations of the report from the Inquiry into Newstart and related payments and to explore other ways to support victim-survivors of SDFV financially.

If you would like to discuss any aspect of this submission, please contact me or [REDACTED], Law Reform and Policy Coordinator on [REDACTED].

Yours faithfully,

Women's Legal Service NSW

Philippa Davis

Principal Solicitor

⁶ House of Representatives Standing Committee on Social Policy and Legal Affairs, Inquiry into the Child Support Program, June 2015, Recommendation 25.

⁷ P. Davidson, P. Saunders, B. Bradbury and M. Wong (2020), Poverty in Australia 2020: Part 1, Overview. ACOSS/UNSW Poverty and Inequality Partnership Report No. 3, Sydney: ACOSS, p9 accessed at: http://povertyandinequality.acoss.org.au/wp-content/uploads/2020/02/Poverty-in-Australia-2020_Part-1_Overview.pdf