



WOMEN'S LEGAL SERVICES NSW

Incorporating
Domestic Violence Legal Service
Indigenous Women's Legal Program

8 August 2014

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

By email: fpa.sen@aph.gov.au

Dear Committee members

Inquiry into Domestic Violence in Australia

1. Women's Legal Services NSW (WLS NSW) thanks the Senate Finance and Public Administration Committees for the opportunity to comment on Inquiry into Domestic Violence in Australia.
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 compensation, care and protection, human rights and access to justice.
3. WLS has an Aboriginal Women's Legal Program (IWLP) which delivers a culturally appropriate legal service to Aboriginal women in NSW. We provide an Aboriginal legal advice line, participate in law reform and policy work, and provide community legal education programs and conferences that are topical and relevant for Aboriginal and Torres Strait Islander women. Domestic violence is a significant area of work for this service. The funding of this service is currently at risk (see paragraph 35 of this submission).
4. WLS NSW is a member of the Women's Legal Services Network Australia (WLSA) which is a national network of community legal centres specialising in women's legal issues. WLS NSW contributed to and endorses the submission made jointly by the National Association of Community Legal Centres (NACLC) and WLSA to this inquiry.



General comments

5. We note the short timeframe for the making of submissions and for the writing of the final report. We also note there have been many inquiries regarding domestic and family violence both at a state and federal level.¹ We therefore refer you to our previous submissions.²

a) Prevalence and impact of domestic violence in Australia

6. Violence against women is one of the most widespread human rights abuses in Australia. Domestic and family violence puts more women aged 15-44 years at risk of ill health and premature death than any other risk factor.³ It is the biggest single cause of homelessness among women and children.⁴
7. 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.⁵ We recognise that women with a 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.⁶

¹ Some examples include: Australian Law Reform Commission, *Family Violence and Commonwealth Laws—Improving Legal Frameworks* (2012) (ALRC Report 117); Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence—A National Legal Response* (2010) (ALRC Report 114); Australian Government Attorney-General's Department and R Chisholm, *Family Courts Violence Review* (2009); Family Law Council, *Improving Responses to Family Violence in the Family Law System: An Advice on the Intersection of Family Violence and Family Law Issues* (2009); Australian Institute of Family Studies, *Evaluation of the Family Law Amendment (Shared Parental Responsibility) Act 2006 Reforms*.

² Women's Legal Services Australia submission to the Department of Social Services on the development of the Second Action Plan of the National Plan to Reduce Violence against Women and their Children 2010-2022 (14 March 2014); Submission to the National Centre for Excellence about research priority issues (1 October 2013); Submission on the NSW Domestic and Family Violence Framework (29 July 2013); Submission to the Senate Legal and Constitutional Affairs Committee on the Family Law Legislation (Family Violence and Other Measures) Amendment Bill (29 April 2011); Submission to NSW Legislative Council Social Issues Committee on Domestic Violence Trends and Issues (16 September 2011); Submission to NSW Department of Attorney General and Justice on the Statutory Review of the Crimes (Domestic and Personal Violence) Act 2007 (18 November 2011); Submission to the Australian Law Reform Commission and the NSW Law Reform Commission on Family Violence: Improving Legal Frameworks (22 June 2010); WLSA submission to Professor Chisholm on the Family Courts Violence Review (19 October 2009); WLSA submission to the Australian Institute of Family Studies on the 2006 Family Law Reforms (24 August 2009);

³ VicHealth and Department of Human Services, *The Health Costs of Violence. Measuring the Burden of Disease Caused by Intimate Partner Violence – A Summary of Findings*, 2004 at 10.

⁴ Women, Domestic and Family Violence and Homelessness: A Synthesis Report, Commonwealth of Australia accessed on 5 August 2014 at: <http://www.fahcsia.gov.au/ourresponsibilities/women/publications-articles/reducing-violence/women-domestic-and-family-violence-and-homelessness-a-synthesis-report?HTML#sum>

⁵ 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) at 2.

⁶ For example, Committee on the Elimination of Discrimination Against Women, *Concluding observations of the Committee on the Elimination of Discrimination against Women –Australia (CEDAW Concluding Observations)*, 30 July 2010, CEDAW/C/AUL/CO/7 at paragraph 43 accessed on 5 August 2014 at: <http://www2.ohchr.org/english/bodies/cedaw/cedaws46.htm>

8. A high proportion of women in prison have also been victims of violent crime prior to coming into custody. The *2009 NSW Inmate Health Survey* found that: 66% of female inmates had been involved in at least one violent relationship and 29% of female inmates had been subjected to at least one form of sexual violence.⁷
9. Culturally and linguistically diverse women, young women, older women and LGBTIQ women also experience high levels of violence as outlined in the joint NACLC and WLSA submission to this inquiry.
10. Between March 2012 and March 2014 there was a 2.5% increase in domestic violence related assaults in NSW.⁸ As the rise is based on assaults resulting in grievous bodily harm (which would require medical attention) The NSW Bureau of Crime Statistics and Research (BOCSAR) suggests this is more likely to reflect an increase in such violence rather than an increase in the reporting of such violence.⁹
11. BOCSAR undertook a study in NSW in 2012 and found that less than 50% of victims of domestic violence reported the violence to police.¹⁰ In two cases investigated by the NSW Domestic Violence death Review Team¹¹ there was no relevant service contact with agencies (including specialist domestic violence agencies or the police).
12. Violence against women also comes at an enormous economic cost. Research released by the Government shows that each year violence against women costs the nation \$13.6 billion.¹² This figure is expected to rise to \$15.6 billion by 2021. It is therefore imperative that all necessary steps are taken to eliminate violence against women and girls.
13. Australia's human rights obligations to eliminate violence against women are outlined in the *Convention on the Elimination of All Forms of Discrimination Against Women 1979 (CEDAW)* ratified by Australia on 28 July 1983 and *CEDAW Committee General Recommendation No 12 (General Comment No 12)* and *CEDAW Committee General Recommendation No 19 (General Comment No 19)*.

b) Factors contributing to the present levels of domestic violence

14. Discrimination against women and girls is both a cause and consequence of violence against women and girls. *General Comment No 19* makes clear that gender-based violence is a form of discrimination within Article 1 of *CEDAW*¹³ and Article 2 of *CEDAW* obliges state parties to legislate to prohibit all discrimination against women. Such violence is a violation of the rights to life, to equality, to liberty and security of person, to the highest standard attainable of physical and mental health, to just and favourable conditions of work and not to be subjected to torture and other cruel,

⁷ Devon Idig, Libby Topp, Bronwen Ross, Hassan Mamoon, Belinda Border, Shalin Kumar and Martin McNamara, *2009 NSW Inmate Health Survey*, Justice Health, Sydney 2010 at 131.

⁸ BOCSAR, *NSW Recorded Crimes Statistics: March 2014 Quarterly report*, June 2014 at 4.

⁹ NSW Recorded Crime Statistics: March 2014 quarterly, BOCSAR media release, 2 June 2014

¹⁰ Study cited in Women NSW, *Women in NSW Report 2013* at 169.

¹¹ Report of the Domestic Violence Death Review Team 2011-12 (NSW).

¹² KPMG, *The Cost of Violence against Women and their Children. Safety Taskforce*, Department of Families, Housing, Community Services and Indigenous Affairs, Australian Government, 2009.

¹³ CEDAW Committee, *General Recommendation No. 19: Violence against Women*, UN Doc A/47/38 (1992), para 7.

inhuman, or degrading treatment or punishment.¹⁴

15. Fundamental to addressing violence against women in ensuring challenging unequal power structures and patriarchal attitudes and promoting substantive equality.
16. It is very disappointing that the National Plan to Reduce Violence against Women and their Children Second Action Plan (Second Action Plan) takes such a very narrow and limited view of gender equality focusing on 'improving women's economic independence [through] paid parental leave and access to child care; national and local efforts to support women's leadership in government, business and community; and male champions and leaders speaking out against domestic and family violence and sexual assault.'¹⁵
17. While these things play a role, gender equality would likely be better improved through the implementation of outstanding 2008 Commonwealth Sex Discrimination Act Review recommendations, including recognising and providing adequate remedies for intersectional discrimination; providing adequate remedies to address systemic issues; promoting substantive equality; and removing exemptions to the Act, such as those for religious institutions, which allow continued unfair and unreasonable discrimination against women.
18. Furthermore, the majority Senate Committee report regarding the Exposure Draft Human Rights and Anti-Discrimination Bill¹⁶ recommended the inclusion of domestic violence as a protected attribute¹⁷. Domestic violence should be included as a protected attribute in all areas of public life in anti-discrimination laws.

c) The adequacy of policy and community responses to domestic violence

Adequacy of consultation with civil society

19. We commend State, Territory and the Commonwealth Governments on the development and launch of the National Plan to Reduce Violence against Women and their Children 2010-2022 (National Plan) in February 2011. Important initiatives have started to be implemented under the First Action Plan.
20. Central to any effective response to domestic and family violence is an integrated, co-ordinated response. Services must be adequately resourced to do this. Women's Legal Services NSW represents Women's Legal Services Australia on the Advisory Group of the Australian Women Against Violence Alliance (AWAVA). We refer to AWAVA's submission to this inquiry which addresses this issue in more detail.
21. While commending elements of the National Plan, WLS NSW has repeatedly

¹⁴ CEDAW Committee General Comment No 19, para 7. See also: *International Covenant on Civil and Political Rights (ICCPR)* ratified by Australia on 13 August 1980, Articles 2, 3, 7 and 26; *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, ratified by Australia on 10 December 1975, Articles 3 and 10.

¹⁵ Second Action Plan at 19.

¹⁶ 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.

¹⁷ For reasons as to the importance of including domestic violence as a protected attribute in anti-discrimination laws see: WLS NSW Submission in response to the Exposure Draft Human Rights and Anti-Discrimination Bill, 20 December 2012.

expressed concerns about the limited opportunity for civil society engagement with the implementation of the National Plan. For example, to our knowledge, the first three-year Implementation Plan (2010-2013) was developed with very little if any consultation with key non-government organisation (NGO) stakeholders and was released in September 2012 with only 9 months remaining.

22. While there has been some consultation regarding the development of the Second Action Plan through, for example, roundtables and submissions, opportunities to attend roundtables has been selective and the submissions have not been made publically available despite requests they be made so.
23. WLS NSW is also concerned that one of the primary mechanisms for advice and communication between governments and civil society, namely the National Plan Implementation Panel (NPIP) has not been able to effectively and openly communicate with civil society. This is because NGO NPIP representatives were initially required to sign confidentiality agreements. After advocacy on the part of NGO NPIP representatives, these confidentiality requirements were lifted, however official summaries of the meetings prepared by Government have been extremely slow to be released.¹⁸
24. Further, the Advisory Groups, which were intended to provide advice to NPIP on primary prevention, service delivery, justice responses and building the evidence base, have not been implemented. This is a missed opportunity for engagement with civil society.

Adequacy of consultation and engagement with Aboriginal and Torres Strait Islander women, CALD women, women with disabilities, LGBTIQ women, younger and older women and women in prison

25. We refer to the joint NACLC and WLSA submission to this inquiry and endorse the comments made about this issue.
26. Furthermore, an issue that was repeatedly raised during community roundtables held with the UN Special Rapporteur on violence against women was the limited consultation on the implementation of the National Plan with NGOs and communities affected by violence which has “resulted in inadequate attention to the development of specific programs for marginalised women.”¹⁹
27. Consistent with human rights obligations it is vital that victims/survivors of violence be able to participate in decisions that affect their lives and rights.²⁰

Adequate resourcing of the National Plan and an independent monitoring mechanism

28. Adequately resourcing the implementation of the National Plan as well as an independent monitoring mechanism for the National Plan (and the resourcing of civil society to participate) have been recommended through several human rights

¹⁸ Edwina MacDonald and Liz Snell, ‘Transforming rhetoric into reality: addressing the challenge of making the elimination of violence against women a lived reality in Australia’, (Transforming rhetoric into reality) *The Journal Jurisprudence*, Vol 19, 2013 at 189-190.

¹⁹ Australian Human Rights Commission, *Australian study tour report: Visit of the UN Special Rapporteur on violence against women, 2012* at 15.

²⁰ *Declaration on the Rights of Indigenous Peoples*, endorsed by Australia 3 April 2009, Articles 3, 18; ICESCR Article 1; ICCPR Article 1.

processes.²¹

29. UN Women argues, an independent monitoring mechanism should include the following elements:

- time specific and measurable indicators and targets;
- an institutional multi-sectoral mechanism to monitor implementation;
- meaningful participation of civil society and other stakeholders;
- evaluation of practice and systems; and
- accountable reporting procedures.²²

30. It is important that any evaluative process is transparent, accountable and consultative. We refer to the joint NACLC and WLSA submission to this inquiry for further comments on this issue.

d) The effect of policy decisions regarding housing, legal services and women's economic independence on the ability of women to escape domestic violence

Housing

31. We refer to our submissions to the Senate Standing Committee on Economics Inquiry into affordable housing and the NSW Legislative Council Inquiry into social, public and affordable housing for our comments related to housing.²³

32. Women's Legal Services Australia is a member of the Equality Rights Alliance (ERA). We refer to and endorse the ERA's submission to this inquiry which addresses issues relating to housing.

Legal services

33. Legal assistance services include Legal Aid Commissions, Community Legal Centres, Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services.

34. In December 2013, the new Commonwealth Government announced a funding cut of \$43.1 million for legal assistance services over four years from 2013-14.²⁴ Since then further funding cuts have been announced to legal assistance providers generally,²⁵ as well as in relation to specific programs.

35. WLS NSW is greatly concerned by the significant funding cuts to legal assistance services. There is already a gender bias in the allocation of legal aid which preferences criminal law. Men are more likely to be charged with an offence that could likely result in imprisonment and are therefore more likely than women to seek

²¹ See Transforming rhetoric into reality at footnote 25.

²² UN Women, *Good Practices in National Action Plans on Violence against Women, Report of the Expert Working Group*, 2010 at 72-73.

²³ Submission to the Senate Standing Committee on Economics inquiry into affordable housing (25 March 2014); Submission to the NSW Legislative Council Inquiry into social, public and affordable housing (7 March 2014)

²⁴ Mid-year Economic and Fiscal Outlook 2013-14, December 2013.

²⁵ For example, Attorney-General Portfolio Budget Statements 2014-15 at 19, 29;

assistance in criminal law matters. For example, a recent study found 75% of the highest users of Legal Aid in NSW were men and all participants in the study had accessed criminal law services.²⁶ On the other hand, women are more likely to require assistance in relation to being a victim/survivor of domestic and family violence, particularly in the family law system and/or civil law system.

36. WLS NSW submits that the loss of liberty and life arguments that result in the prioritising of criminal law are just as pertinent in matters where family violence is present. This is highlighted in the high number of domestic and family violence homicides.
37. The Productivity Commission has recommended that there should be separate funding for civil and family law matters in addition to adequate funding for criminal law matters.²⁷ We support this recommendation.
38. Further, we are concerned that gender bias also arises in the application of family law legal aid policies and guidelines. For example, a family report writer may be appointed to comment on the care, welfare and development of a child in a family law matter. NSW works with women victims of domestic and family violence who report that a legal aid grant is terminated if a party does not agree with a family report writer's recommendations.²⁸ This is problematic in circumstances in which domestic and family violence is present and the family report writer has not understood the nature and dynamics of domestic and family violence. Noting the gendered nature of domestic and family violence, this impacts disproportionately on women.
39. In situations where the family report writer has not understood the nature and dynamics of domestic and family violence, the victim/survivor of violence (usually the woman) should not be denied legal aid to challenge the report, so the evidence can be tested in court.
40. WLS NSW further supports the development of a specialised domestic and family violence funding pathway in Legal Aid Commissions for family law that is developed with domestic and family violence experts to guide internal decision-making regarding the merit of legal aid applications would go some way to addressing the gender bias discussed above.
41. It is also essential that there be adequate and sustainable funding for women's legal services, including Aboriginal and Torres Strait Islander women's legal services. Such services focus on empowering and supporting women and helping women pursue their legal rights. They have a thorough understanding of the nature and dynamics of domestic and family violence and why such violence is primarily perpetrated against women and children. They are also able to recognise the intersecting and compounding forms of disadvantage that women face.
42. It is also important that women have a choice of legal assistance services from which

²⁶ Cited in Productivity Commission, *Access to Justice Arrangements – Productivity Commission Draft Report*, April 2014 at 857-858.

²⁷ Productivity Commission, *Access to Justice Arrangements – Productivity Commission Draft Report*, April 2014, Recommendation 21.1, at 632

²⁸ For example, Women's Legal Services Australia (WLSA), a national network of community legal centres specialising in women's legal issues in the *WLSA submission to the Productivity Commission's Access to Justice Inquiry*, 4 November 2013 at 18.

to access support. This is important to ensure women can exercise agency. It is also required for situations where a conflict of interest arises such that a service is unable to help the woman.

43. The Commonwealth Indigenous Women's Program funding in the Community Legal Services Program (CLSP) area has only been funded until 31 December 2014 and is subject to a review. This directly affects our Indigenous Women's Legal Program (IWLP). We have been given very little information either as to the timing or scope of the review. Most of this funding is used to employ Indigenous community access staff. This enhances the capacity of our service to practice in a culturally appropriate manner. Specialist Indigenous staff also increases the intensity of the service offered to Indigenous women. These are some of our most vulnerable and disadvantaged clients, with the more challenging issues to deal with, not least of which is needing additional time and attention to develop relationships of trust.
44. We therefore recommend an increase of funding for all legal assistance services, including specialist women's legal services, to an adequate and sustainable level.

Limitations on law reform and advocacy work

45. Restrictions have been placed on legal assistance services with respect to the use of Commonwealth funding for law reform, policy and advocacy work.²⁹
46. It is of grave concern that the Commonwealth Government may receive only limited input from the voices of socially, culturally and economically disadvantaged people through legal assistance services.
47. We ask the Committee to acknowledge the benefit of Community Legal Centres, including WLS NSW, and other legal assistance services around Australia doing law reform work such as responding to government requests for submissions to inquiries. Any limit on our ability to speak for our clients - the most vulnerable members of the community - is not only a loss for them but a loss for the government and the people of Australia.

Economic independence

48. The 2011 *National Domestic Violence and the Workplace Survey* undertaken through the Safe at Work, Safe at Home Project found that domestic/family violence impacts upon workers in a number of ways including: restricting workers' ability to get to work; the continuation of violence in the workplace through abusive phone calls and emails and the perpetrator attending the workplace. This may result in workers feeling tired, distracted or unwell, undermining performance.³⁰
49. Important work has been undertaken to improve access to domestic violence leave through 'domestic/family violence clauses' in enterprise agreements and awards.³¹ Significantly, 1 million Australian employees have access to domestic violence leave as a consequence of the inclusion of such clauses in their enterprise agreements

²⁹ For further information see NACLC and WLSA submission to the Inquiry into Domestic Violence in Australia.

³⁰ Ludo McFerran, *National Domestic Violence and the Workplace Survey*, Australian Domestic and Family Violence Clearinghouse, December 2011 at 18.

³¹ See Safe at Home, Safe at Work, Domestic and Family Violence Clauses.

and awards.³² However, this does not replace or reduce the need for specific discrimination protection.³³

50. Paid leave is an entitlement to take leave where required, for example, where time off is needed to go to court. It does not address negative treatment, attitudes and stereotyping that lead to unfair treatment. Anti-discrimination laws have traditionally been used to address stigma and challenge barriers posed to equal participation in public life.³⁴

51. Leave entitlements are only available to employees with 'secure' jobs, contract and casual workers generally have no access to paid leave and research shows victims and survivors of domestic or family violence are more likely to be employed on a casual basis. This leaves the most marginalised workers without protection.³⁵

52. This is why it is important to include domestic violence as a protected attribute. We further submit that including domestic violence as a protected attribute would play an important role in educating and raising awareness within the wider community about domestic and family violence.³⁶ It would also serve an important normative function, acknowledging that the harm experienced by victims can be exacerbated by negative attitudes and inflexible policies.³⁷

53. It is also consistent with the National Plan which aims to engage all in the community to address violence against women³⁸ and advance gender equality including through developing workplace measures to support women experiencing and escaping from domestic violence.³⁹

54. It is also important that the Australian Law Reform Commission's (ALRC) recommendation to fund research, monitoring and evaluation of family violence related developments in the employment law sphere occur.⁴⁰

55. We welcome the amendments to the *Fair Work Act 2009 (Cth)* providing victims of family violence and those caring for victims of family violence with the right to request flexible work arrangements. However, it is important that the Australian Government also amend the National Employment Standards to include additional paid domestic

³² 'Domestic Violence Leave Comes of Age,' Media Release, 30 November 2012 accessed on 5 August 2014 at: <http://newsroom.unsw.edu.au/news/social-affairs/domestic-violence-leave-comes-age>

³³ See examples available on the Safe at Home, Safe at Work Project website.

³⁴ Tashina Orchiston and Belinda Smith, 'Empowering Victims of Family Violence: Could Anti-Discrimination Laws Play a Role?' *Australian Review of Public Affairs*, March 2012.

³⁵ Suzanne Franzway, Carole Zufferey and Donna Chung, 'Domestic Violence and Women's Employment', paper presented at *Our Work, Our Lives: National Conference on Women and Industrial Relations*, Adelaide, 20-21 September 2007, citing earlier studies.

³⁶ See Andrea Durbach, 'Domestic violence discrimination and the consolidation of Commonwealth anti-discrimination laws,' Safe at Home, Safe at Work Conference, 5 December 2011, accessed on 5 August 2014 at:

http://humanrights.gov.au/about/media/speeches/sex_discrim/2011/20111205_domestic_violence.html

³⁷ Tashina Orchiston and Belinda Smith, 'Empowering Victims of Family Violence: Could Anti-Discrimination Laws Play a Role?' *Australian Review of Public Affairs*, March 2012.

³⁸ *National Plan, Strategy 1.1.*

³⁹ *National Plan, Strategy 1.3* We note with disappointment that funding for the Safe at Home, Safe at Work Project an initiative of the Australian Domestic and Family Violence Clearinghouse which is a project of the University of NSW Centre for Fender Related Violence Studies ceased in June 2013

⁴⁰ ALRC, *Family Violence and Commonwealth Laws: Improving Legal Frameworks, Report 117*, 2012, Recommendation 15.5

and family violence leave for victims/survivors and their carers.

56. Additionally, there is also a need for adverse action protection relating to being a victim/survivor of domestic and family violence. The need for stronger protections for victims/survivors of domestic and family violence in the *Fair Work Act 2009* has been advocated by several organisations.⁴¹

e) How the Federal Government can best support, contribute to and drive the social, cultural and behavioural shifts to eliminate violence against women their children

Domestic and family violence death reviews

57. While welcoming actions in the Second Action Plan, such as Action 19: 'Drive continuous improvements in systems through reviewing of domestic and family violence related deaths and child deaths', it is concerning that domestic and family violence death reviews do not take place in every state and territory. This was a recommendation in the ALRC and NSW Law Reform *Family Violence – A National Legal Response Report*.⁴²

58. It is particularly concerning that the NSW Domestic Violence Death Review Team has not met in over 12 months despite a requirement to meet at least four times a year;⁴³ and the 2012-13 annual report is yet to be tabled in parliament.⁴⁴

Reforms to laws

1) Remove the presumption of equal shared parental responsibility in the *Family Law Act*

59. We commend the Australian Government on the passage of the *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* (Cth), which amended the *Family Law Act 1975* (Cth). However, the amendments did not include removing the presumption of equal shared parental responsibility and we support further change to the law. We refer the Committees to the joint submission made by NACLC and WLSA for further comment on this.

2) Vulnerable witness protection required in family law proceedings

60. Australia's due diligence obligation to prevent, punish, investigate and redress harm as a result of acts of violence should extend to providing protections for vulnerable witnesses in justice processes other than in the criminal jurisdiction and limited civil proceedings in some Australian jurisdictions.

61. Legislation protecting vulnerable witnesses from direct cross-examination by the alleged perpetrator in sexual offence trials has been passed in every state and

⁴¹ See ADFVC, *Submission to the Senate Standing Committee on Education, Employment and Workplace Relations Inquiry into the Fair Work Amendment Bill 2013*; National Network of Working Women's Centres, *Submission to the Senate Standing Committee on Education, Employment and Workplace Relations Inquiry into the Fair Work Amendment Bill 2013*.

⁴² ALRC and NSW Law Reform *Family Violence – A National Legal Response Report, 2010*, Recommendation 31.6.

⁴³ *Coroners Act 2009* (NSW) Schedule 3, cl 8(2)

⁴⁴ *Coroners Act 2009* (NSW) section 101K

territory jurisdiction within Australia.⁴⁵

62. In five of the eight state and territory jurisdictions, specific protections are also included in legislation to prevent a vulnerable witness from being directly cross-examined by an unrepresented alleged perpetrator of violence in family violence trials, which is a civil jurisdiction.⁴⁶
63. It is recognised that such protections prevent the evidence given by the victim /survivor from being compromised due to retraumatisation caused by interacting with their perpetrator.
64. The extent of domestic and family violence in the family law system is significant. In their study, *Allegations of family violence and child abuse in family law children's proceedings*, the Australian Institute of Family Studies identified that over half of the family law files they examined contained allegations of family violence.⁴⁷
65. It is also well recognised that some violent and controlling perpetrators will use litigation against their former partners as a way to continue to control and/or punish them after separation.
66. There are currently no specific provisions in the family law jurisdiction that prevent perpetrators of violence who are unrepresented 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. Noting the gendered nature of domestic and family violence, it can also lead to poorer outcomes for women and children.
67. Cross-examination by an alleged abuser has a devastating impact when experienced and can also lead to some 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.
68. In addition to a family violence priority for legal aid funding in family law, part of a solution is an amendment to the *Family Law Act 1975* (Cth) to provide protection from being directly cross-examined by an alleged perpetrator of violence. Where this protection occurs in criminal and civil jurisdictions as referred to above, the court can 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 interest of the child.

⁴⁵ *Criminal Procedure Act 1986* (NSW) s 294A; *Criminal Procedure Act 2009* (Vic) ss 356-357; *Evidence Act 1977* (Qld) s 21N; *Evidence Act 1906* (WA) s106G; *Evidence Act 1929* (SA) s 13B; *Evidence (Miscellaneous Provisions) Act 1991* (ACT) s 38D; *Sexual Offences (Evidence and Procedure) Act 1983* (NT) s 5; *Evidence (Children and Special Witnesses) Act 2001* (Tas) s 8A.

⁴⁶ *Domestic and Family Violence Protection Act 2012* (Qld) s 151; *Family Violence Protection Act 2008* (Vic) ss 70-71; *Restraining Orders Act 1997* (WA) s 44C; *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s 29(4); *Domestic and Family Violence Act 2007* (NT) s 114.

⁴⁷ Lawrie Moloney, Bruce Smyth, Ruth Weston, Nicholas Richardson, Lixia Qu and Matthew Gray, Australian Institute of Family Studies, *Allegations of family violence and child abuse in family law children's proceedings*, Australian Institute of Family Studies, 2007 at 66-67.

Implement outstanding ALRC/NSWLRC Family Violence – A National Legal Response recommendations

69. We call for the implementation of outstanding recommendations made in the ALRC/NSWLRC *Family Violence – A National Legal Response Report*.

Yours faithfully,
Women's Legal Services NSW

Janet Loughman
Principal Solicitor