



House Standing Committee on Social Policy and Legal Affairs inquiry into family, domestic and sexual violence

Victoria Legal Aid submission

Acknowledgement of Country

Victoria Legal Aid would like to acknowledge traditional owners across Victoria and note that this document was developed on the lands of the Wurundjeri and Boon Wurrung people of the Kulin Nations.

Victoria Legal Aid recognise that the over-representation of Aboriginal and Torres Strait Islander families and children in the justice system, many of whom have experienced family violence, is in part a devastating consequence of colonisation, intergenerational trauma and ongoing experiences of systemic racism.

We pay our respects to the strength and resilience of Aboriginal and Torres Strait Islander peoples and cultures and to all Elders past, present and emerging and recognise their unceded sovereignty.

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Executive Summary

Victoria Legal Aid (VLA) welcomes the House Standing Committee on Social Policy and Legal Affairs' inquiry into family, domestic and sexual violence; as the horrific murder of Hannah Clarke and her three children reminded us earlier this year, violence against women is still far too prevalent in Australia. We know from reports already that the necessary but unprecedented public health measures to respond to the COVID-19 pandemic are causing an increase in incidents¹ and severity of family violence. While we can expect that this is likely to increase risks to safety and place demand on supports and services for many months and likely years to come, this inquiry provides a timely opportunity to develop a holistic, national approach to reducing and preventing family violence, particularly against women and their children.

VLA is the biggest legal service in Victoria, providing legal information, education, and advice for all Victorians – in both the State and Commonwealth jurisdictions. Our clients comprise a broad range of people involved in the justice system. We represent men and women, adults, and children. We represent people who have used family violence and people who have experienced family violence. Our clients often have a range of other life experiences such as being socially or economically isolated, experiencing a disability or mental illness, being from a culturally or linguistically diverse background or living in regional and remote areas.

Our experience is also informed by the significant change and service reform in the Victorian state family violence and child protection systems in recent years, notably thanks to the Royal Commission into Family Violence which occurred in 2015-16.

In making this submission, VLA focuses on the way in which the justice system can be an actor of safety and accountability in responding to family, domestic and sexual violence. Legal services have an important preventative as well as intervention role in the response to family violence. By ensuring that legal advice and assistance is available to people who use and experience family violence (as well as people charged with criminal offences in the context of family violence) we are more likely to achieve safer long-term outcomes and reduce the prevalence of family violence in the community.

Access to legal services also ensures people will receive legal support for the range of legal issues that may arise as a result of their family violence situation (including but not limited to child protection, criminal, tenancy, discrimination and family law legal support). We draw the Committee's attention to the omission of legal services from the National Plan to reduce Violence Against Women and their Children (National Plan) since the first action plan ended in 2013 and we recommend that any holistic response to family violence must include greater access to legal services.

We envision a family law system that is safe, accessible, inclusive, and that centres decision making on the best interests of children. It is well established that most family law matters that enter Australia's formal family law system, particularly the courts, involve family violence. Despite several inquiries over the last decade, we continue to see the way in which Australia's family law system can fail to respond adequately to the needs of, or even exacerbate harm to, children and victims of family violence. The resource constrained environment in which it is operating is not only a frustration, but it can also pose a genuine safety risk. We note that it is not uncommon for families to experience

¹ Boxall H, Morgan A & Brown R 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>

considerable delays at every point of interaction with the family law system. This can prolong conflict and compromise the safety of those involved in complex family law matters.

VLA sets out in this submission the opportunities we see to enhance the way that Australia's family law system operates to help separating families and support the best interests of children. We encourage the Australian Government to seek to strengthen justice system responses, including in Australia's family law system, in the next National Plan. Such a response should provide for culturally safe, well-resourced legal and non-legal services for Aboriginal and Torres Strait Islander families and children.

More broadly, we see opportunities for the Australian Government to better consider the impact of family violence through the Migration Act, social security law and federal, state and territory anti-discrimination laws, and through adequately funded and supported services such as housing and mental health.

Finally, we recognise that prevention of violence against women and children requires a holistic response including addressing violence supporting attitudes and behaviours. Underpinning this submission is our support for the Australian Government to provide ongoing, sustainable investment in dedicated primary prevention efforts to address the underlying gendered drivers of violence, discrimination, and sexual harassment.

Summary of recommendations*

The next National Plan to reduce Violence Against Women and their Children include a commitment to:

1. A safe, accessible, and inclusive family law system as an outcome, including actions such as:

- The early and appropriate prioritisation of responses to and decisions on family violence allegations in family law matters, including building on changes being implemented in the family law courts to respond to COVID-19 that have successfully prioritised urgent family law matters, particularly those with family violence allegations.
- Introducing compulsory training and regular professional development on the nature and dynamics of family violence for all professionals working in the family law and state child protection systems; and basic training for professionals involved in the information sharing process to help them to understand how to interpret information from each respective jurisdiction.
- Providing ongoing and sustainable funding for the Family Advocacy and Support Services (FASS) at the family law courts including to expand FASS to regional locations across Australia.
- Investing in expanding access to legally assisted Family Dispute Resolution (FDR) for families, including culturally-safe and specific services for Aboriginal and Torres Strait Islander families, to enable more families affected by family violence to resolve family law matters safely away from court. This expansion should include the promotion of greater use of legally assisted FDR at all stages of disputes.
- Implementing VLA's recommendations to the Joint Select Committee Parliamentary Inquiry into Australia's Family Law System that seek to reduce complexity and unnecessary cost in the child support and spousal maintenance systems.
- Introducing a national information sharing regime with appropriate safeguards to ensure women do not need to repeat their experiences of family violence multiple times.
- Ensuring the family law system and other legal services are culturally safe for Aboriginal and Torres Strait Islander peoples by first consulting with National Aboriginal and Torres Strait Islander Legal Services (NATSILs) and Aboriginal Community Controlled Organisations.

2. Ensuring legal services are available, accessible and adequately funded to support women and children who experience family violence by:

- Providing sufficient stable and long-term funding to enable Legal Aid Commissions and other legal assistance service providers to deliver essential family law services to the community and to fund court appointments of Independent Children's Lawyer (ICLs).
- Increasing funding from both State and Federal Governments to enable Aboriginal Legal Services to meet demand for specialist, culturally safe, frontline legal assistance services.
- Increasing funding for legal services for women on temporary visas to ensure women who experience family violence understand and can exercise their rights under migration laws.

- Ensuring that legal services tailored to the needs of women and children, particularly women who have experienced family violence, are integrated into disaster response and recovery planning.

3. Ensuring tailored services are available, accessible, and adequately funded to support women and children who experience family violence by:

- Increasing the supply of affordable long-term housing, including tailored housing and support programs directed at accessing and sustaining housing for people who experience, and people who use family violence.
- Requiring all aspects of the justice and mental health systems to improve their responses to people who use family violence and are experiencing mental health issues.
- Ensuring additional supports are made available to women with disability prior to attending court to ensure that they can understand and engage with family law and family violence proceedings. This support should also include referrals to specialised disability support services.

Beyond the National Plan, the Australian Government make the following changes to prevent and respond to violence against women and their children:

4. Prevent and address gender inequality, discrimination and sexual harassment that people experiencing family violence face by:

- Implementing measures to prevent discrimination and sexual harassment (e.g. reasonable adjustments and an enforceable positive duty for employers) and amending discrimination and sexual harassment laws to improve scope of protections, investigation and enforcement (see Term of Reference (TOR) (a) for full recommendations).

5. Always consider family violence and financial abuse in decisions regarding social security entitlements:

- Amending the Social Security Guide to ensure family violence is taken into account when making the following determinations:
 - whether a person should be treated as a member of a couple;
 - determining whether special circumstances apply when considering a waiver of a debt; and
 - when investigating an overpayment for potential referral for a prosecution.

6. Strengthen and simplify current family violence exception provisions within the Migration Act to support women who are on temporary visas who have experienced family violence to be able to remain legally in Australia.

*A note on recommendations in this report: This summary page provides VLA's recommendations for this inquiry. Throughout the document we have included more detailed recommendations we have made in previous submissions to provide context to the issues we are seeking to address, and the summary recommendations listed here.

About Victoria legal Aid

Victoria Legal Aid (VLA) is a Victorian statutory agency responsible for providing information, advice and assistance in response to a broad range of legal problems. VLA assists people with legal problems such as family separation, child protection, family violence, discrimination, criminal matters, fines, social security, mental health, migration and tenancy.

In 2018–19, VLA provided assistance to over 100,000 unique clients across Victoria. As the image (page 7) shows, our clients from the 2018–2019 financial year are diverse and experience high levels of social and economic disadvantage. Almost half of our clients are currently receiving social security and one in three of our clients receive no income at all. Over 25,000 people disclosed having a disability or experiencing mental health issues and a significant proportion live in regional Victoria or are from culturally and linguistically diverse backgrounds.

About VLA's family, youth and children's law work

VLA's Family, Youth and Children's Law Program plays a leading role in the coordination of family law, child protection and family violence legal services in Victoria. We provide:

- Information, legal advice and assistance via our Legal Help telephone line and WebChat, including a family violence priority phone line and webchat channel to provide safer and more immediate assistance;
- Duty lawyer, legal advice, representation and information services including in child support, parenting disputes, child protection and family violence intervention order matters across the state, to children and to parents;
- Lawyer-assisted and child-inclusive family dispute resolution to help settle disputes without going to court (through our Family Dispute Resolution Service);
- Independent children's lawyers who promote the interests of children at risk in family law proceedings;
- The Family Advocacy and Support Services (FASS) in Melbourne and Dandenong family law court registries – providing specialist duty lawyers alongside specialist family violence support workers;
- Support to people in the early stages of child protection involvement through non-legal advocates in our pilot Independent Family Advocacy and Support service (IFAS);
- A Family Violence to Family Law Continuity of Service Delivery program with a Victorian community legal centre, offering a continuing legal service from when parents first appear at the state Magistrates' Court for family violence intervention orders, through to addressing family law needs; and
- Legal advice and education in the community.

In the 2018-2019 financial year, the Family, Youth and Children's Law program provided²

- services to over 42,000 clients (including over 2,300 Aboriginal or Torres Strait Islander clients); and
- over 18,000 legal advice and minor assistance services, 21,000 duty lawyer services and 16,000 grants of legal assistance for ongoing representation.

² Victoria Legal Aid, *2018-2019 Annual Report Access to Justice for Victorians* (2019) p25
<<https://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-2018-19-annual-report.pdf> >

About VLA's civil law work

VLA's Civil Justice Program aims to contribute to a more inclusive and rights-respecting community. We help people with social security, mental health, guardianship and administration, infringements, migration, tenancy, National Disability Insurance Scheme, discrimination, sexual harassment and victims of crime issues. We provide:

- Legal information, advice, duty lawyer and ongoing representation services for clients with a range of state and federal civil law matters, including at:
 - the Victorian Civil and Administrative Tribunal in residential tenancy, discrimination, and guardianship and administration matters;
 - the Administrative Appeals Tribunal in migration, social security, and National Disability Insurance Scheme matters;
 - the Mental Health Tribunal; and
 - at the Federal Court in migration matters; and
- Non-legal advocacy services to consumers of mental health services through our Independent Mental Health Advocacy (IMHA) program.

Client stories

The client stories and case studies used throughout this submission are real cases but have been de-identified (names and other details have been changed to protect privacy and confidentiality). Client consent has been obtained to include each client story. Given this, client stories featured throughout this submission may not reflect the full diversity of clients that VLA provides services to.

Our clients

Clients at risk of homelessness

Our clients are among the most disadvantaged in Victoria
6,387 clients **↑21%**



Grants of legal assistance
45,180

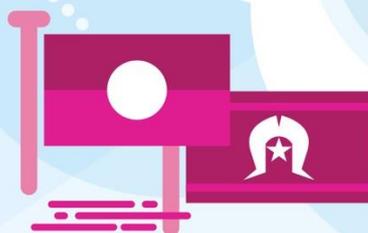
↑5%

Unique clients
100,061

↑6%

In-house duty lawyer services
86,272

↑4%

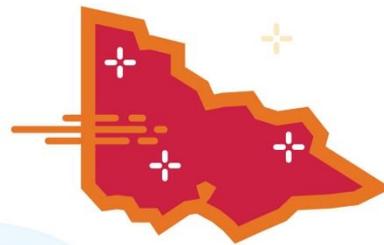


Aboriginal and Torres Strait Islander Clients

5,192 or **5.3%** of clients **↑10%**

Rural and regional Victoria

29,268 or **30%** of clients live in regional Victoria **↑8%**



Legal Help

Responded to **140,224** requests for help by phone, chat and in person

Response to the Terms of Reference

A) Immediate and long-term measures to prevent violence against women and their children and improve gender equality

Responding early and appropriately to family violence in family law proceedings

When the *Family Law Act 1975* (Cth) was introduced, it made a significant change to the family law system with the introduction of no-fault divorce. However, in the succeeding 45 years there have been significant changes in the type and demand of matters coming before the family law courts.

Most separating parents resolve their disputes without recourse to the formal processes of the family law system. Therefore, the cases that enter the formal system are generally the most complex and difficult to resolve. Recent studies by the Australian Institute of Family Studies indicates that family violence, including physical hurt and emotional abuse, is reported by approximately 60 percent of separated parents prior to and during separation³ while National Legal Aid data indicated that nearly 80 percent of legally aided matters in the family law system involve family violence.⁴

Evidence shows that women and children are at a heightened risk of experiencing family violence at the time of separation. Between 1 July 2010 and 30 June 2014, 36 percent of women who were killed by their male partner had recently separated, and another 17 percent of women had expressed an intention to separate.⁵ Separation however is often a protracted process that extends from the point of leaving the partner until parenting arrangements are finalised. During this time women and children are at a heightened risk of family violence occurring and, in our practice experience, are frequently subjected to the further perpetration of violence and control through use of the family court system.

Presently, there may be many months (even years) before an allegation of family violence made by a party in a family law proceeding is considered at final hearing and there is a determination about whether family violence had occurred. Without this finding, interim decisions – or final orders by consent between the parties which are then approved as orders by the court – are made without information that is vital to ensuring safety. Although increasingly a court priority, safety currently remains the subject of later determination. Responding effectively to the increasing complexity of cases in the family law system requires a more risk and trauma-informed, culturally safe approach that can identify and address non-legal needs, and a range of legislative and procedural changes.

Primarily, VLA envisions systems and processes at the family law courts that identify risk in the early stages of a family law matter and appropriately respond and manage the risk through the course of the matter. VLA supports triaging at the point of intake, with a single point of entry for both the Family Court of Australia and Federal Circuit Court of Australia, so that all applications to the family law

³ Australian Law Reform Commission 2019, *Family Law for the Future – An Inquiry into the Family Law System Final Report* ALRC Sydney Australia, viewed on 23 July 2020, < https://www.alrc.gov.au/wp-content/uploads/2019/08/alrc_report_135.pdf > pg.103-104.

⁴ National Legal Aid 2016 Media Release COAG commitment welcomed as new DV figures released <<https://www.nationallegalaid.org/resources/nla-media/>>

⁵ Australia's National Research Organisation for Women's Safety (ANROWS) 2019, *Domestic and family violence lethality: The facts about intimate partner homicide* ANROWS, Sydney, New South Wales and Australian Domestic and Family Violence Death Review Network Data Report 2018, *Australian Domestic and Family Violence Death Review Network Data Report 2018*, Sydney, New South Wales, viewed 8 July 2020 <<https://apo.org.au/sites/default/files/resource-files/2018-05/apo-nid174811.pdf>>

courts are appropriately case-managed according to their complexity and level of risk.⁶ This process would facilitate early ‘issue spotting’ to identify legal and non-legal need, service referrals, risk assessments, the implementation of safety planning, and triaging of families depending on the level of need and vulnerability. This process would also help to gather information required to assist with judicial decision-making in the best interests of the child (in parenting matters, for example).

VLA makes the following recommendations to improve immediate and long-term measures to prevent violence against women and children through the family law system:

Recommendations:

We recommend that the next National Plan include early and appropriate prioritisation of responses to and decisions on family violence matters in the family law system, ensuring that the family law courts are resourced to:

- 1) undertake ongoing family violence risk assessments for parties and children to manage and triage family law matters where there are allegations of family violence;
- 2) make early determinations on family violence allegations where identified as a risk and issue in dispute – this could be achieved through expanding the Lighthouse Project to other registries, and/or transitioning the COVID-19 list to an urgent specialist family violence list to identify risk matters that require interim judicial determinations earlier;
- 3) introduce ongoing case management to ensure that matters are ready for hearing dates and parties have complied with disclosure obligations; and
- 4) provide post-court support to parties to ensure compliance with court orders where necessary and to refer parties to receive ongoing support so that they can effectively co-parent.

Training in family violence for professionals working in the family law system

In our view, one of the most critical foundations of the family law system is a workforce with the knowledge and skills to assist all families, including those experiencing vulnerability. We see that in many family law court cases experiences of family violence are still minimised, deemed ‘historical’, or irrelevant to decisions about care arrangements for children. Responsibility is also placed on victim survivors of family violence to ‘prove’ that family violence has occurred, and emotional, financial, and psychological violence and abuse is often not viewed as seriously as physical or sexual violence.

We highlighted in our submission to the Australian Law Reform Commission (ALRC) review into the family law system⁷, the way in which VLA lawyers continue to hear comments from legal professionals demonstrating an insufficient understanding of the dynamics of family violence regularly made in court in front of family violence victims. For example, professionals may not

⁶ VLA welcomes the Commonwealth Government funding of \$13.5 million for a risk screening and triage pilot (The Lighthouse Project) in the Adelaide, Brisbane and Parramatta registries of the Family Court of Australia and the Federal Circuit Court of Australia. See, The Family Court of Australia 2020, The Lighthouse Project, viewed on 13 July 2020 <<http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/family-law-matters/family-violence/lighthouse-project/lighthouse-project>>

⁷ Victoria Legal Aid 2018, *Submission to the Australian Law Reform Commission Review of the Family Law System Issues Paper*, viewed on 8 July 2020 <<https://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-submission-alc-review-of-family-law-system-issues-paper.docx>>, pg. 42-44.

understand why a victim returns to a relationship in which family violence was used, or they may dismiss family violence concerns because a victim returned to a relationship with a perpetrator in the past. VLA lawyers also report comments made by judges and legal practitioners which suggest emotional and psychological violence and controlling behaviour is not viewed by them as seriously as physical family violence.

The view also persists across the family law system and other intersecting systems that family violence allegations are commonly fabricated to gain an advantage in family law cases. This view persists among family law professionals as well as among the public, despite a lack of evidence for the view and counter-evidence that family violence is under-reported in family law disputes.⁸

Our view is that to create the necessary shared understanding of the nature of family violence, education needs to be more systematised, less fragmented, and more consistent.

VLA has developed a Client Safety Framework in response to persistent misconceptions about family violence and to address capability gaps identified in our workforce.

VLA's Client Safety Framework

The Client Safety Framework (CSF) was developed to increase VLA staff awareness and understanding of safety risk indicators of family violence, and to improve staff confidence in working with victims and perpetrators of family violence. The CSF promotes the safety of clients and their families by supporting our staff's identification and response to family violence and suicide risk indicators.

By creating a tool that enhances and structures the professional judgement of our staff through training, VLA has created a new and innovative approach to family violence risk identification that is appropriate to the role of the legal professional. The Client Safety Framework is consistent with evidence-based risk indicators of family violence and is designed with VLA lawyers in mind, acknowledging that it is appropriate for lawyers to identify and respond to risk but not to comprehensively assess or manage risk.

While we believe that the Client Safety Framework is a positive development that has led to a more consistent approach to family violence across all VLA's practice areas, to date, CSF delivery has largely been limited to VLA staff given it is a resource intensive full day training session.⁹ A similar training package could be developed and delivered to all legal professionals working in the family law system to ensure that there is a consistent understanding of the nature of family violence and of evidence-based family violence risk indicators. This training would equip legal professionals to provide safety informed legal advice and to put in place procedures and policies that provide for an appropriate response where there are concerns that family violence has or is occurring in the context of a family law matter.

⁸ State of Victoria 2016, *Royal Commission into Family Violence: Summary and Recommendations*, viewed on 8 July 2020 < <http://rcfv.archive.royalcommission.vic.gov.au/MediaLibraries/RCFamilyViolence/Reports/Final/RCFV-Summary.pdf>>, pg.200-201.

⁹ VLA is currently working to transition CSF training delivery to online modules in response to the COVID-19 context, with the support of one-off funding for legal assistance providers to respond to COVID-19 provided by the Commonwealth and Victorian Governments.

We are also of the view that family violence education should be an academic requirement of the law degree and/or a professional legal training requirement of admission to practice as previously recommended by National Legal Aid,¹⁰ and that regular family violence education should be compulsory for all family law professionals, including judges, lawyers, registrars, family dispute resolution practitioners and family report writers.

The professionals participating in this education need to include child protection practitioners and police. This was noted by the Family Law Council in its 2015 report, which found that professionals involved in family violence, child protection or family law all need to understand each of the three jurisdictions.¹¹

In response, VLA developed new “intersections” training that explores the links between crime, child protection, family law and family violence. The training is delivered via highly interactive online modules and aims to improve learners’ understanding of the intersections between family violence and related legal matters in everyday practice. Lawyers who have completed the training report that it has helped to influence the way in which they advise their clients.

Recommendations:

As part of reforming the family law system, we recommend:

- 1) Introducing compulsory and regular professional development for all professionals working in the family law system including on family violence risk indicators.
- 2) Ensuring that professionals working in family law, child protection and family violence understand the different purpose of each jurisdiction and have basic training in and knowledge of each system.

Gender inequality, sex discrimination and family violence

There is a strong link between gender inequality, sex discrimination and family violence. The causes of family violence are deeply embedded in community attitudes about power and the role of women in our society. To stop family violence, we also need to address the gendered attitudes that lead to sex discrimination, sexual harassment, and gender inequality.¹²

In Australia, one in five women have been stalked, one in three women have experienced physical violence, one in five have experienced sexual violence, and one in four have experienced emotional abuse from a partner.¹³ Two thirds of women affected by family violence are in paid employment,¹⁴

¹⁰ National Legal Aid 2018, *Australian Law Reform Commission Review of the family law system discussion paper 86 Submission 3*, pg.72.

¹¹ Family Law Council 2015, *Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems: Interim Report – June 2015*, Chapter 9.2, viewed on 8 July 2020 <<https://www.ag.gov.au/sites/default/files/2020-03/Families-with-Complex-Needs-Intersection-of-Family-Law-and-Child-Protection-Systems%E2%80%93Interim-Report-Terms-1-and-2.pdf>>.

¹² Our Watch, Australia’s National Research Organisation for Women’s Safety (ANROWS) and VicHealth 2015, *Change the story: A shared framework for the primary prevention of violence against women and their children in Australia*, Our Watch, Melbourne, Australia

¹³ Australian Bureau of Statistics 2012, *Personal Safety Survey*, Catalogue No 4906.0.

¹⁴ Australian Bureau of Statistics 2005, *Personal Safety Survey*, Catalogue No 4906.0.

and one in three women have been sexually harassed at work.¹⁵ While protections exist in relation to sex discrimination, victims of family violence are not expressly protected from discrimination related to their experience of family violence, including at work.

Our discrimination lawyers and family law practitioners have reported several instances of clients being discriminated against (directly and indirectly) at work because of circumstances outside of their control caused by family violence. Our clients have reported a reluctance to report family violence to their employers for fear of being treated differently, in the absence of clear legal protections from discrimination. There need to be clear legal protections against family violence-related discrimination in circumstances where the person's treatment does not fall within an existing protected attribute.

Social isolation and employment related difficulties are a social cost of family violence.¹⁶ Employment plays an important role in reducing the impact of family violence by affording a measure of financial security, independence, safety and confidence. These elements are essential to enable people to leave violent relationships. Workplaces therefore have the potential to play a key role in supporting and protecting the safety of people experiencing family violence.

Ensuring people who are experiencing family violence do not face ongoing financial hardship, socioeconomic disadvantage, or social isolation because of discrimination is important. Protection from discrimination based on an irrelevant criminal record¹⁷ is also necessary in the context of ongoing family violence, as sudden job loss for a person using family violence is a risk indicator for further incidents of family violence or the escalation of family violence.¹⁸ Given that more than 1.6 million Australians now have access to family violence leave through negotiated workplace agreements,¹⁹ many businesses are already well-placed to provide flexible work arrangements for people who are experiencing or have experienced family violence.

Section 65 of the *Fair Work Act 2009* (Cth) provides some legal precedent for the proposed protection, as it affords employees experiencing family violence the right to request flexible working arrangements. However, there is no requirement for an employer to agree to a request made pursuant to this provision. An employer can refuse a request based on reasonable business grounds and there is no mechanism to enforce an employer to accommodate a request, even if the refusal is unreasonable.

¹⁵Australian Human Rights Commission 2018, *Everyone's business: Fourth national survey on sexual harassment in Australian workplaces*, Sydney NSW.

¹⁶ VicHealth, *Violence against women in Australia. An overview of research and approaches to primary prevention*, Victorian Health Promotion Foundation, Melbourne, Australia, 2017, citing Ayre, J, Lum On, M, Webster, K, Gourley, M & Moon, L 2016, *Examination of the burden of disease of intimate partner violence against women in 2011: Final report*, ANROWS, Sydney.

¹⁷ An irrelevant criminal record includes a record relating to an offence, or alleged offence, where a person has been charged but where proceedings have not been finalised or the charge has lapsed or been withdrawn. It also includes a record where a person has been acquitted of the alleged offence; or where the person has had the conviction quashed or set aside; or where the person has been served with an infringement notice; or where the person has a conviction, but the circumstances of the offence are not directly relevant to the situation in which discrimination arises; or where the person has a spent conviction.

¹⁸ Victorian Government 2012, *Family Violence Risk Assessment and Risk Management Framework and Practice Guides 1-3*, Department of Human Services, Melbourne, Australia, April 2012.

¹⁹ Lily Partland, ABC News 2015, *Telstra's introduction of domestic violence leave welcomed by ACTU*, viewed 8 July 2020 <<http://www.abc.net.au/news/2015-01-14/actu-welcomes-telstradomestic-violence-leave/6016212>>

Recommendations

To appropriately prevent and address gender inequality, discrimination and sexual harassment, to reduce violence against women, we recommend that:

- 1) Federal, state and territory governments should amend anti-discrimination laws to:
 - protect against discrimination on the grounds of family violence and irrelevant criminal record;
 - require employers to consider reasonable adjustments for people experiencing family violence in alignment with existing reasonable adjustment obligations around disability and family responsibilities;
 - impose an enforceable positive duty on employers to prevent discrimination and sexual harassment, supplemented by guidelines for compliance; and
 - grant federal, state and territory human rights commissions increased powers and resources to effectively address sexual harassment (including greater investigation powers, the power to enter into enforceable undertakings, the power to issue compliance notices and the power to prosecute for breaches of discrimination laws), and provide training to employers about family violence and reasonable adjustments.
- 2) The Australian Government should provide ongoing and long-term investment sufficient to support the dedicated long-term primary prevention efforts needed to address the underlying gendered drivers of violence, discrimination, and sexual harassment. These efforts should be part of a holistic strategy to prevent violence against women and promote gender equality in line with [Change the story: A shared framework for the prevention of violence against women and their children in Australia](#).

B) Best practice and lessons learnt from international experience, ranging from prevention to early intervention and response, that could be considered in an Australian context

The Victorian state family violence and child protection systems have both undergone significant change and service reform in recent years, notably thanks to the Royal Commission into Family Violence which occurred in 2015-16. The findings and recommendations of Victoria's Royal Commission into Family Violence make a significant contribution to best practice and lessons learned that we encourage the committee to refer to.

The central pillar of the legal response to family violence in Victoria is the *Family Violence Protection Act 2008* ("the Act"). VLA supported the introduction of the Act and continues to support its objectives of:

- maximising the safety of people who have experienced family violence;
- preventing and reducing family violence to the greatest extent possible; and
- promoting the accountability of perpetrators of family violence for their actions.

The Act aims to achieve these objectives through the provision of an effective and accessible system of family violence intervention orders and family violence safety notices. It also creates offences for

contravention of family violence intervention orders and family violence safety notices to promote the accountability of perpetrators for their actions.

A number of elements of the current legal response are recognised as best practice²⁰. This includes:

- guiding principles in the Act that recognise the nature, prevalence and impact of family violence in the community;
- a broad definition of family violence that includes coercive and controlling behaviour and economic abuse as well as physical and sexual violence;
- an accessible system of family violence intervention orders;
- a legal response that contemplates the intersection between the family law and family violence intervention order jurisdictions;
- measures to reduce system trauma for victims, such as preventing cross examination of an applicant directly by a respondent;
- specialist courts and dedicated support services for applicants and respondents; and
- specialist training and resources for the judiciary on the nature of family violence.

C) The level and impact of coordination, accountability for, and access to services and policy responses across the Commonwealth, state and territory governments, local governments, non-government and community organisations, and business

Through our experience we see that there is a small but notable number of clients who have legal issues that cut across the family law, child protection and family violence jurisdictions.²¹ Families who have intersecting legal issues frequently also have an array of complex challenges in their lives, such as disability, mental illness or substance issues that can compound their ability to navigate complicated legal systems. VLA's recommendations in this section are aimed at providing practicable solutions to improve the outcomes for families who are needing help across multiple jurisdictions and particularly for the children at the centre of these matters.

VLA's submissions to several recent family law inquiries (see TOR (k)) have highlighted system fragmentation as a critical issue that impacts on the ability of families, including those with allegations of family violence, to quickly, easily, and safely resolve their legal problems.²² VLA is supportive of introducing measures that will alleviate the burden on families to navigate multiple legal systems.

²⁰ Victoria Legal Aid 2015, *Submission to the Royal Commission into Family Violence*, pg.11.

²¹ Victoria Legal Aid 2015, *Families with Complex Needs - Submission to the Family Law Council's terms of reference: Number 1* <<https://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-families-with-complex-needs-submission-family-law-council-terms-of-reference.docx>> pg.9.

²² Victoria Legal Aid 2015, *Families with Complex Needs - Submission to the Family Law Council's terms of reference: Number 1* <<https://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-families-with-complex-needs-submission-family-law-council-terms-of-reference.docx>> and Victoria Legal Aid 2015, *Families with Complex Needs- Submission to the Family Law Council's terms of reference: Number 2* <<https://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-submission-to-the-family-law-councils-terms-of-reference-number-2.docx>> , Victoria Legal Aid 2018, *Submission to the Australian Law Reform Commission Review of the Family Law System Discussion Paper* <<https://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-submission-to-the-alrc-review-of-the-family-law-system-discussion-paper.docx>> and Victoria Legal Aid 2018, *Submission to the Australian Law Reform Commission Review of the Family Law System Issues Paper* <<https://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-submission-alrc-review-of-family-law-system-issues-paper.docx>> and Victoria Legal Aid 2017, *Submission to the Parliamentary Inquiry into a better family law system to support and protect those affected by family violence – A Better Family Law System* <<https://www.legalaid.vic.gov.au/node/610#a-better-family-law-system>>.

Introducing a national information sharing regime

Information sharing can be used to minimise the need for people to repeatedly re-tell their experience of family violence and can also result in better decision making about risks, reducing the burden on victim-survivors to manage their own risk. VLA supports current efforts, led by the Council of Attorneys-General's Family Violence Working Group to improve information sharing between jurisdictions, including the development of a national information-sharing regime.

However, it is critical that only appropriate information is shared and shared safely, and that the receiver of information understands its relevance to the decision they are making.

We have previously outlined in our submissions²³ to the ALRC's family law system review and the Joint Select Committee (JSC) Parliamentary Inquiry into Australia's family law system, the need for a national information sharing regime to be underpinned by appropriate principles including:

- safeguarding against inappropriate sharing of information, particularly where family violence is present;
- providing training to professionals in all jurisdictions to help them to understand how to interpret information from each respective jurisdiction; and
- acknowledging and recognising in any information sharing regime the impact of colonisation and historical government policies of dispossession, dislocation, systemic racism/discrimination, and child removal experienced by Aboriginal and Torres Strait Islander peoples and their ongoing impact on Aboriginal and Torres Strait Islander clients.

We do not repeat the detail of our previous submissions on information sharing here in the interests of conciseness but would be very happy to provide more detail or discuss information sharing further with the committee.

Coordinating non-legal and legal supports: adopting a multidisciplinary approach to responding to family violence and associated legal need through the Family Advocacy and Support Services (FASS)

VLA's delivery of the Family Advocacy and Support Services (FASS) at both the Melbourne and Dandenong family law registries, discussed in detail under TOR (d), highlights the benefits of coordinated, multidisciplinary approaches to delivering legal services and non-legal support services to people experiencing family violence. Not only do coordination approaches result in a better experience for families involved in the family law system, they also help to keep victim survivors of family violence at the centre and minimise the burden on victim survivors to seek out help for family violence or family law assistance, see for example Angela's story on page 19.

²³ Victoria Legal Aid 2019, *Submission to the Joint Select Committee on Australia's Family Law System*, <<https://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-submission-to-joint-select-committee-on-australias-family-law-system.pdf>> and *Australian Law Reform Commission Review of the Family Law System Discussion Paper* <<https://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-submission-to-the-alc-review-of-the-family-law-system-discussion-paper.docx>> and Victoria Legal Aid 2018, *Submission to the Australian Law Reform Commission Review of the Family Law System Issues Paper* <<https://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-submission-alc-review-of-family-law-system-issues-paper.docx>>

Recommendations:

- 1) Introduce a national information sharing regime with appropriate safeguards to ensure women do not need to repeat their experiences of family violence multiple times.
- 2) See page 20 for recommendations related to FASS.

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

Through our legal practice experience, we see the way in which the availability and access to a range of services intersect with the legal issues people seeking to escape a violent relationship may experience, including the way in which this can exacerbate or alleviate the risk of experiencing further family violence and/or being propelled into poverty.

Legal needs and services for people who experience and use family violence

As discussed under TOR (c), we see the way in which family violence connects to a range of legal problems that can include family law, child protection, discrimination, housing and tenancy, and debt. Despite this, there is an increasing gap between those who qualify for legally aided assistance and those who are able to pay for a private lawyer²⁴: while 14 percent of Victorians live below the poverty line only 8 percent are eligible for legal assistance.²⁵

In the last financial year, Commonwealth legal assistance funding represented 30 per cent of total government funding VLA received for legal assistance (for both legal aid and community legal centres (CLCs)) in Victoria.²⁶ Around two thirds of Commonwealth funding for legal aid in Victoria supports family law assistance. Commonwealth funding levels are now at a stage where the viability of providing legal assistance in core areas such as family law (which is largely family violence-related work) is very constrained. Access to publicly funded legal assistance is an essential element of a fair and accessible justice system. It is especially critical for the most vulnerable members of our society, who are more likely to have interactions with our legal system, and who are least resourced to be able to access the help they need.

Eligibility for legal assistance in Victoria is based on a combination of factors, one of which is a means test. VLA uses the means test to assess the financial situation of most people who apply for a grant of legal assistance and decide whether a person can afford the full costs of the legal services from a private lawyer.

Women who have experienced family violence are often unable to afford private legal representation for family law proceedings yet in VLA's experience are usually most likely to require legal assistance. See, for example, Sara's story below.

²⁴ Productivity Commission 2014, *Access to Justice Arrangements Inquiry Report No. 72 Appendix H*, viewed on 8 July 2020 <<https://www.pc.gov.au/inquiries/completed/access-justice/report/access-justice-overview.pdf>> pg 640-642.

²⁵ Ibid.

²⁶ Victoria Legal Aid 2018-2019, *Annual Report Access to Justice for Victorians* viewed on 8 July 2020 <<https://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-2018-19-annual-report.pdf>> pg.30.

Sara's story

When Sara first contacted VLA she was living in a refuge with her three young children after experiencing ongoing family violence perpetrated by her former partner. Sara was not receiving Centrelink benefits and received little to no child support from her ex-partner. Sara was trying to find casual work however this was difficult to manage with three young children in her care.

Sara's ex-partner had conceded that she needed financial assistance post-separation but claimed to not have the means to provide spousal maintenance payments or child support. Sara could not navigate the complex process of applying for spousal maintenance herself but knew that her ex-partner was receiving significant sums of money from family and friends living overseas and had money available to support Sara and their three children.

The court found that Sara's ex-partner had access to significant amounts of money from overseas and had received in excess of \$250,000 in recent years. The court decided that Sara's ex-partner had the financial resources to pay spousal maintenance and ordered an initial lump sum payment and then a weekly payment of \$500.

Without the assistance of a lawyer to navigate complex financial disclosure processes and represent her at court, Sara would have struggled immensely to provide for her and the three children's basic needs such as housing, food and clothing. Sara would also never have been able to afford private legal representation thus highlighting the importance of legal assistance to women who are experiencing family violence.

Other measures that VLA currently has in place to manage limited legal aid funds for family law assistance include caps on funding per grant, eligibility criteria that a person must have a "substantial issue in dispute" and be a "priority client", a forum test, a contravention test and three separate tests about the merits of funding their case. A victim of family violence living below the poverty line will not necessarily be eligible for ongoing legal aid representation for family law proceedings in Victoria under the current guidelines.

Our ability to fund Independent Children's Lawyers (ICLs) for Victorian children caught up in the family law system is also under pressure. The Commonwealth family law courts make orders appointing an ICL in complex cases, usually involving allegations of harm, abuse or risk to children, and request that Legal Aid Commissions fund these appointments. We have little control over the level of court appointments, and the Commonwealth has never provided specific funding for this purpose, with appointments having to be funded from general legal aid funding.

CLCs also play a critical role in providing family violence and family law advice and assistance, including through the 40 centres VLA funds across Victoria. We know from a detailed analysis of family law legal need across Victoria, conducted together with Women's Legal Service Victoria and soon to be finalised, that there are hotspots of higher family law legal need in the Local Government Areas across regional and rural Victoria. However, current funding means family law assistance currently remains necessarily limited and with limited opportunity for expansion.

Given the anticipated flow-on impacts of COVID-19, including an increase in people without legal aid representation needing to seek alternative family law advice and assistance, this is likely to place further demand on an already pressured CLC sector.

Improving access to and engagement in the family law system for families requires more than just increasing legal assistance. It also requires system design that is not contingent on the ability of an individual to access a lawyer, whether privately funded or legally aided. For example, self-represented litigants are a feature of about half of all family law trials in the Federal Circuit Court of Australia. As such, it is important that processes to effectively support self-represented litigants to navigate the family law system (such as case management functions and simpler procedures) are embedded within the family law courts. We have discussed some of these recommended processes in other sections of this submission.

Funding and access for culturally safe legal services for Aboriginal and Torres Strait Islander peoples

A range of previous reports and submissions²⁷ have recognised that a lack of access to culturally appropriate services presents a barrier for Aboriginal and Torres Strait Islander women and children accessing the family law system. This is particularly concerning given the over-representation of Aboriginal women and children among victim survivors of family violence. These reports emphasised the need for funding for separate Aboriginal and Torres Strait Islander legal services to be maintained. However, we note that funding to Aboriginal and Torres Strait Islander Legal Services (ATSILs) has been declining in real terms for several years, while demand for ATSILs services has been rising²⁸. We discuss culturally appropriate services in more detail under TOR (h).

We note an inclusion in the first National Plan was Outcome Five – Justice responses are effective – which included enhanced legal aid funding and enhancing the family law system’s response to family violence as key strategies²⁹ of that plan. These objectives remain equally relevant today as detailed above.

Recommendations:

- 1) Provide sufficient stable and long-term funding to enable Legal Aid Commissions and other legal assistance service providers (such as community legal centres) to deliver essential family law services to the community and to appoint more Independent Children’s Lawyer (ICLs).
- 2) Increase funding from both State and Federal Governments to enable Aboriginal Legal Services to meet demand for specialist, culturally safe, frontline legal assistance services.
- 3) Include legal services as a key action of effective justice responses in the next National Plan.

The role of Australia’s family law system in responding to family violence

VLA envisions a family law system that is safe, accessible, inclusive, and that centres decision making on the best interests of children.

²⁷ National Aboriginal and Torres Strait Islander Legal Services (NATSILS) 2018, *Submission to the Australian Law Reform Commission inquiry into Australia’s Family Law System*, <http://www.natsils.org.au/portals/natsils/submission/NATSILS%20Family%20Law%20Issues%20Paper%20Submission.pdf?ver=2018-06-04-171709-003> pg.6

²⁸ Ibid pg.2

²⁹ Department of Social Services 2010, National Plan to Prevent Violence against Women and their Children including the first three-year action plan <https://www.dss.gov.au/sites/default/files/documents/08_2014/national_plan1.pdf> pg.26-29.

In addition to the early and appropriate prioritisation of responses to and decisions on allegations of family violence in the family law system and training on the dynamics of family violence for professionals in the family law system (discussed at TOR (a)), and improving information-sharing across jurisdictions (discussed at TOR (c)), VLA sees a number of other ways in which the family law system could be reformed to improve safety for victim survivors including children and prevent exacerbating their risk of financial distress or going into poverty. We discuss these below.

- Expansion of the Family Advocacy and Support Services (FASS)

The Family Advocacy and Support Services (FASS) operate successfully at both the Melbourne and Dandenong family law court registries in Victoria and provide integrated legal and non-legal supports to families affected by family violence.³⁰ In each FASS location in Victoria there are specialised VLA and alternate community legal centre duty lawyer services, two family violence non-legal support services (one for each party) and an Information Referral Officer (IRO) to triage FASS clients at court. FASS is available five days a week.

FASS was established during the 2016-17 year through pilot funding provided by the Commonwealth Government to Legal Aid Commissions to establish FASS in each state and territory. In 2018 an independent evaluation commissioned by the Government made very positive findings about the effectiveness of the integrated service model present on the ground at court locations,³¹ and funding was extended for a further three years to June 2022.

Angela's story below illustrates how the multidisciplinary and coordinated way that FASS is delivered can help to provide timely and critical support to vulnerable women in urgent need of legal and non-legal support.

Angela's Story

Angela was brought to court late in the afternoon after being stopped at the airport from leaving Australia with her baby. Without her knowledge, Scott, Angela's ex-partner and father of the baby, had obtained an urgent court order to prevent their baby leaving the country after their separation.

Angela, Scott and their baby were not residents of Australia, however Scott split his time between Australia and another country where Angela lived.

During the relationship, Angela, her parents and baby had travelled to Australia from their country of origin on tourist visas for a short visit at the request and arrangement of Scott. The parties were together at this time.

Angela spoke no English and had only been in the country for a week before the relationship broke down. She used her savings to buy plane tickets for her, her parents and baby to return home, but at the airport they were stopped by the Australian Federal Police.

³⁰ Inside Policy 2018, *An Evaluation of the Family Advocacy and Support Service Final Report* <<https://www.ag.gov.au/Publications/Documents/fass-final-evaluation-report.pdf>> pg.13.

³¹ As above. The evaluation found that 'the FASS was an effective and important program that fills a gap in legal and social service provision to family law clients with family violence matters'.

Angela was distraught and had travelled directly to the court from the airport. Through an interpreter Angela told the FASS duty lawyer about a history of significant family violence, including financial control and being assaulted when pregnant.

The FASS duty lawyer successfully negotiated an agreement with the father's lawyer for the removal of the airport watchlist order and the payment of travel costs, while the FASS family violence support worker supporting Angela arranged emergency accommodation for her and their baby and ensured Angela understood what was happening.

At court the next day Angela told the FASS duty lawyer that Scott had sent multiple messages throughout the night trying to find out where she was staying. He also threatened not to pay any travel costs unless Angela met him in person to hand over the money. Angela told the duty lawyer that the advice and support she had been given the previous day helped her to recognise that Scott was trying to coerce her, and she refused to meet him or disclose her address.

In delivering the judgment, the judge was very critical of the father's application and made the agreed orders. Angela is now safely in her home country with her parents and baby.

By working together, the FASS duty lawyer and FASS family violence support workers assisted Angela through a very stressful and foreign process, to achieve a safe outcome for herself and her baby.

While highly regarded, currently in Victoria FASS is only funded to be present in the permanent registries of the family law courts at Melbourne and Dandenong. This means in Victoria FASS does not provide its services to the courts sitting on circuit in regional areas including Ballarat, Morwell, Mildura, Shepparton, and Geelong.

This provides for inequitable access to important services and supports for families across Victoria. Both the ALRC's review of the family law system and the FASS Final Evaluation Report recognised this and recommended that FASS be expanded to regional locations across Australia where the Federal Circuit Court of Australia sits.

VLA welcomed the announcement of an additional \$22.6 million over 2019 – 2022 to extend the FASS program. This provides for continuity of the program and will allow Legal Aid Commissions to continue to provide a high quality integrated service response to parents who need family law help who are also experiencing family violence. This funding however is finite, and we would welcome a commitment to ongoing sustainable funding of the FASS that would ensure this essential service, which provides a tailored response to family violence victim survivors and to those who use violence, can continue to operate.

Recommendations

1) Provide ongoing and sustainable funding for the Family Advocacy and Support Services at the family law courts including to expand FASS to regional locations across Australia.

- Expanding the use of legally assisted Family Dispute Resolution (FDR)

Under the *Family Law Act* parties generally cannot issue family law parenting proceedings in a court unless they have first attempted FDR. FDR is a qualitatively different process from court. It supports

parties to resolve their parenting disputes through a conversation outside the adversarial court process using a facilitative approach.

Most FDR in Australia is undertaken without the parties being legally represented, and this is generally effective and appropriate. However, many cases will be appropriately screened by FDR services as unsuitable for mediation due to risks such as a history of family violence, safety risks for one or more parties or unequal ability to negotiate. Unfortunately, this means that often it is victim survivors of family violence who have no other option but to proceed to more expensive and lengthy court proceedings if living and care arrangements for their children cannot be agreed.

Legally assisted FDR achieves high rates of settlement and plays a key role in preventing matters from reaching court, thus reducing cost, delay and stress for families. The legally assisted model involves the parties having legal advice and representation, supported by case management for clients and mediation by experienced chairpersons. These additional features enhance safety and fair negotiation and can therefore expand eligibility of FDR to parents screened out of non-legally assisted models of FDR and support parents to resolve family law matters in the best interests of the children and without recourse to court. This includes parents who have been victims of family violence or where other risk factors have been identified but cannot be mitigated by a non-legally assisted FDR service provider.

In 2018-19, VLA's legally assisted Family Dispute Resolution Service (FDRS) delivered 1,010 conferences, with a settlement rate of 81 percent.³² In the last two years, FDRS has had a higher percentage of cases referred from court – 38 percent of total conferences, compared with 30 percent in 2016-17. The settlement rate for these litigation intervention conferences was still high at 78 percent even with these matters having progressed to court proceedings already, whereas the early intervention conference settlement rate was even higher at 83 percent.³³ Based on case management assessments, a history or risk of family violence was present in approximately 90% of FDRS cases for the year 2018-2019.

Legally assisted FDR in Australia is primarily available through Legal Aid Commissions in each state and territory. This means that eligibility for the service is currently constrained by limited legal aid resources, discussed earlier in this TOR (d).

Recommendations

- 1) Invest in expanding access to legally assisted Family Dispute Resolution (FDR) for families, including culturally-safe and specific services for Aboriginal and Torres Strait Islander families, to enable more families affected by family violence to resolve family law matters safely away from court.
- 2) Promote greater use of legally assisted FDR at all stages of disputes, so that even if some issues require court determination, others can be resolved at FDR through a referral from court back to the FDR service.

³² The settlement rate is based on settlement of some or all issues in a dispute on an interim or ongoing basis.

³³ Above n 27, pg.26.

- Ongoing support to help women affected by family violence access an equitable property settlement

Women are more likely than men to face economic hardship following separation and women affected by family violence may be especially vulnerable to financial stress.³⁴ For VLA clients in particular, a property settlement can be crucial to preventing entrenched poverty following the end of a relationship, particularly where there has been family violence.

VLA welcomes the Commonwealth Government's commitment toward simplifying the process for separating families to resolve their small property disputes.³⁵ The Commonwealth's funding support for a two year trial of lawyer-assisted mediation in family law small property disputes and for a one year small property claims court pilot aims to provide separating families with a streamlined, cost-effective way of accessing a small property settlement.

Prior to the Commonwealth Government's funding for a mediation trial, VLA could only provide legal assistance for family law property matters in very limited circumstances. In our experience being able to quickly and affordably reach a fair property settlement can mean the difference between financially recovering from separation or the beginning of poverty. Layla's story below illustrates the importance of a small property settlement to the financial security of vulnerable women and children post separation.

Layla's story

Our client Layla is the primary carer of her three-year-old child after she separated from the child's father. When Layla sought legal help, she was unemployed, experiencing mental illness, spoke limited English, and required an interpreter to communicate.

Layla's marriage had been arranged while she was living overseas. After Layla migrated to Australia to live with her husband, there was family violence in the relationship and a family violence intervention order was ultimately made to protect Layla.

At separation, Layla's husband had stable employment, \$60,000 in superannuation and owned a property in his name with equity valued at over \$50,000. Layla had little in the way of assets or income and had few family supports of her own.

VLA assisted Layla to apply for child support and obtain consent orders to receive a superannuation split of nearly \$20,000 and \$50 per week spousal maintenance for two years. This made a significant difference to Layla being able to re-establish herself and her child post-separation.

Without legal representation, Layla would likely not have pursued her entitlements as there were no joint assets of the marriage and the husband had accrued significant credit card debts post separation.

³⁴ Women's Legal Service Victoria 2015, *Stepping Stones: Legal barriers to economic equality after family violence*, viewed on 23 July 2020 < <https://www.womenslegal.org.au/files/file/1.%20Final%20-%20Stepping%20Stones%20Report.pdf> > pg.36

³⁵ Australian Government 2018, *Greater Choice for Australian Women, Women's Economic Security Statement*, viewed on 8 July 2020 <<https://www.pmc.gov.au/sites/default/files/publications/womens-economic-security-statement-2018.pdf>> pg.6.

See VLA's extensive recommendations regarding equitable property settlements in our submission to the JSC Parliamentary Inquiry into Australia's family law system.³⁶

- Reducing complexity of spousal maintenance and the child support system

VLA provides legal assistance in spousal maintenance cases including for the enforcement of spousal maintenance orders. The application of a stringent income and asset test to eligibility for legal aid means that VLA is assisting low-income parties. In 2018-19, VLA provided 886 spousal and child maintenance and child support legal assistance services.³⁷

Our practice experience shows the court process does not provide timely outcomes by way of interim or final orders for applications for urgent spousal maintenance. Even urgent spousal maintenance applications take many months for an order to be obtained. We act for clients who are in crisis accommodation having fled the matrimonial home due to family violence with no access or entitlement to Centrelink, or other funds under control of the other party, and who risk homelessness, whereby the court process is inadequate in providing urgent or interim payments. For these clients, access to timely payment is crucial.

From VLA's experience spousal maintenance decisions better align with the child support regime, including the special circumstances (administrative departure) process, and an administrative process would redirect these matters away from the family law courts and provide timely resolution for parties.

By assisting men and women through our dedicated Child Support legal service, we see the way in which complexity and cost can inadvertently be a barrier to fair outcomes, causing financial stress and inequity, particularly for women.

Anna and Phoebe's story

VLA assisted Phoebe, the mother of an adult child, Anna, who has a disability requiring 24-hour care. Phoebe lives in public housing and is not able to engage in paid employment due to her caring responsibilities for Anna. Child support payments received by Phoebe through Child Support ceased when Anna turned 18.

Anna receives benefits and some assistance through the National Disability Insurance Scheme (NDIS) which covers expenses such as a psychologist, and some medical costs. However, on a carer's pension, Phoebe could not afford all of Anna's day to day living expenses and activities such as swimming, medications, equipment to assist with mobility, transport costs and home heating so she sought adult child maintenance.

The father agreed that he should pay maintenance but disputed the payment amounts.

The court found that Anna's disability was permanent and that an ongoing order for adult child maintenance of \$400 a week was appropriate for the out-of-pocket expenses not covered by NDIS, and for reasonable living expenses such as food, housing, utilities, clothing.

³⁶ Victoria Legal Aid 2019, Submission to the Joint Select Committee on Australia's Family Law System <<https://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-submission-to-joint-select-committee-on-australias-family-law-system.pdf>>.

³⁷ This includes grants of aid, legal advice, legal information, duty lawyer, and minor work legal assistance.

The ongoing child maintenance that Anna's father will pay, will ensure that Phoebe can properly care for their daughter. Had an administrative process been in place, this would have been an easier process for Phoebe to navigate and would have likely avoided the matter going to court.

There are only a few situations in which it is necessary for a person to apply to Court to resolve a child support dispute, however, we also see the child support system being used to perpetuate systems and economic abuse. Some parties try to bypass cost effective non-litigious, internal review processes through the Commonwealth Department of Human Services Child Support (DHS CS) and issue court proceedings inappropriately, constituting an abuse of process.

Libby's story

Our client Libby suffers from physical and cognitive disabilities and is the mother of two teenage children with special needs. Libby experienced emotional, verbal and physical abuse throughout the relationship with her former partner, and economic abuse post separation.

Initially post separation, child support was paid directly to Libby but when her former partner became more controlling, Libby registered the case for collection with DHS CS. Due to business debts the father went bankrupt, however, he resumed business as a sub-contractor. The father earned three times as much as Libby in the previous year. The child support debt owed by him had grown to \$19,000, by the time DHS CS found an income source and started collecting payments.

Within a month of DHS CS resuming collection of child support, Libby was served with court documents by a male process server one evening causing stress and fear to her and the children.

The father was seeking Libby's bank statements and tax returns for the past five years. He falsely asserted that the information Libby had provided to DHS CS about her income was inaccurate, and therefore his child support payments were too high.

The application was not served on the Child Support Registrar as it was issued in the Victorian Magistrates' Court and was not caught by the Federal Circuit Court Rules. VLA acted on behalf of Libby to oppose the application, which was dismissed as the court found that all reasonable enquiries had not been made by the father, who failed to exercise the more appropriate and non-litigious review processes through the DHS CS that were available to him.

To improve the interaction between the family law and child support systems, minimise economic abuse, and assist vulnerable parties by making the system as easy as possible to navigate, we made the following recommendations in our submission to the JSC Parliamentary Inquiry into Australia's Family Law System:³⁸

³⁸ Victoria Legal Aid 2019, *Submission to the Joint Standing Committee Parliamentary Inquiry into Australia's Family Law System* <<https://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-submission-to-joint-select-committee-on-australias-family-law-system.pdf>> pg.31-36.

Recommendations to reduce the complexity of the child support system*:

- Amend the Child Support (Assessment) Act to ensure that child support can continue to be paid until a child ceases full time secondary education, even if this is beyond their 18th birthday.
- Amend the Child Support (Assessment) Act to allow the Child Support Registrar to accept an application for administrative assessment of child support using accredited DNA evidence, without needing a declaration of parentage under s106A.
- Amend the Child Support (Assessment) Act to allow the Child Support Registrar to end an administrative assessment of child support using accredited DNA evidence.
- Introduce an administrative process for adult child maintenance payments.
- That the Department of Human Services – Child Support (DHS CS) provides clear and timely reasons to receiving parents, while maintaining privacy obligations, on their decision to not enforce a child support debt.
- Undertake the review of the child support formula, with a view to it being updated to reflect current costs of raising a child in Australia.
- Where an individual is seeking review of child support arrears and has been wholly in receipt of Centrelink payments, the DHS CS should review the child support arrears administratively. This could be achieved by invoking the minimum annual rate of child support. To minimise systems abuse, require the Child Support Registrar to be served with applications in any State or Federal Court that purport to directly or indirectly relate to child support.
- Empower the Child Support Registrar to take a proactive role to intervene in litigation, to provide relevant and timely information to the Court about child support cases and monitor and provide statistics about patterns of systems abuse.

**Further context and explanation of these recommendations can be found in VLA's submission to the JSC Parliamentary Inquiry into Australia's Family Law System*

Housing

VLA sees through our practice experience that a lack of available and affordable housing can exacerbate or contribute to further exposure to family violence and risk of criminalisation. For example, a person who uses family violence may still try to return to the family home in contravention of a family violence intervention order due to a lack of alternative accommodation, or the person experiencing family violence may be unable to find alternative accommodation to enable them to leave.

Court-based family violence legal services provide a vital link between the justice system and non-legal support services such as homelessness, crisis and medical support. As noted in a report looking at family violence perpetrators from the Centre for Innovative Justice, the justice system can be an “active and involved participant that can interrupt”³⁹ the use of family violence. Contact with the legal system and other systems such as mental health and child protection provides an opportunity to

³⁹ Centre for Innovative Justice 2015, *Opportunities for early intervention: bringing perpetrators of family violence into view* cited in Victoria Legal Aid, Submission to Victorian Royal Commission into Family Violence 2015, pg.58.

refer a person who uses family violence to non-legal support services that address violence supporting attitudes and related problems such as housing, drug and alcohol abuse and mental health. However, despite these referrals being made, there is often no accommodation or services available.

Further, while there are various victim support services and housing options, they are not always suitable, are not long-term or stable or there is limited availability, particularly in regional areas. This puts a person experiencing family violence in the precarious position of being at risk of homelessness, remaining/returning to a violent relationship or moving to another precarious and potentially violent, situation.

Recommendation

We recommend that the Federal Government should invest in increasing the supply of affordable long-term housing, including tailored housing and support programs directed at accessing and sustaining housing for:

- people who experience family violence: more options for people and families escaping family violence, including emergency accommodation services with clear pathways to obtain long-term, secure accommodation, and
- people who use violence: when referrals are made, services should have sufficient housing supply to prevent people who have used violence from becoming homeless or being at risk of breaching an intervention order that excludes them from the family home.

Economic independence and social security

In our experience, the administration of the social security system inadequately responds to the complexities of family violence and financial abuse. Key decisions such as whether a person should be considered to be a member of a couple, and whether a debt should be waived, are not exercised within frameworks that properly take into account the experiences of those who are experiencing or have experienced family violence. This is amplified by the fact that most family related payments are paid to the primary carer – most commonly a woman – so the impact of the failure to comply with social security laws or regulations in the context of family violence will commonly be felt by women and their children.

The consequences can include:

- Significant social security debts borne by the person experiencing family violence that are incorrectly premised on the abusive partner sharing income and contributing to family expenses, or which understate the impact of family violence when determining whether to treat the person as being a member of a couple. It is the person experiencing family violence who will usually bear all of the responsibility for paying back these debts and not the person using family violence, amplifying the financial impact of the violence or financial abuse.
- Social security prosecutions of people experiencing family violence where failures to report income or changes in circumstances are attributable to duress or financial abuse.
- Where there is no prosecution, a threat of disclosing social security fraud or underreporting to Centrelink is often used to threaten a person experiencing family violence if they try to leave.

Recommendation

We recommend that the Department of Social Services should amend the *Social Security Guide* to ensure that family violence and financial abuse are always taken into account when making the following determinations:

- whether a person should be treated as a member of a couple;
- determining whether special circumstances apply when considering a waiver of a debt; and
- when investigating an overpayment for potential referral for a prosecution.

The experience of mental health issues

Through our work, we see the way mental health is treated in the family law, family violence and child protection systems, including a lack of adequate access to appropriate mental health supports and services in the community for both those who use and experience family violence, which contributes to increased risk.

Many VLA clients and consumers experiencing mental health issues have also experienced family violence. We see the way family violence and the experience of trauma is under-recognised and too frequently responded to solely as an individualised mental health issue. This can lead to clients missing out on early access to legal and non-legal support and family violence services and can cause or exacerbate mental health issues, putting women⁴⁰ in particular at greater risk of developing legal problems, including child protection involvement, not engaging with the family law process, and the continuation of family violence.⁴¹

A better understanding of the dynamics of family violence may prevent people entering the mental health system and keep them safer. VLA client experiences demonstrating the ramifications of a poor understanding of family violence, include:

- As part of their control or abuse, a person who uses family violence can make allegations that the person experiencing the family violence is experiencing mental health issues. We have seen women admitted to mental health units solely on the basis of their partners' reports of their behaviour or mental state.
- Partners and family members may be given information and placed in a carer role when they are also users of violence, despite the person experiencing the violence informing the relevant services of this.
- Reports of family violence can be dismissed as symptomatic of mental health issues, therefore not properly addressed or responded to.

When experiences of family violence are not recognised or appropriately responded to in mental health settings, it can retraumatise people who have experienced family violence, jeopardise therapeutic relationships and quality of care and represent a missed opportunity for intervention and support by specialised services.

⁴⁰ VLA notes that men also experience family violence, and require safe and responsive services, but acknowledges that family violence is overwhelmingly experienced by women and children.

⁴¹ We note that many families who experience child protection intervention also experience family violence.

Adequate training and support for mental health service staff and a trauma informed service system is necessary to ensure that family violence understandings and responses are a core element of the mental health system and that the presence of family violence and its effects are not unnecessarily missed or misdiagnosed.

If legal and health systems and interventions do not acknowledge the co-existence of both mental health issues and the use of family violence, the capacity for the mental health of people who use family violence to be supported and the behaviour addressed is limited. Where a person who uses family violence is experiencing mental health issues, a combination of justice, therapeutic and family violence responses may be required (depending on the circumstances) to better ensure safety on one hand and fair treatment on the other.

Recommendation

We recommend that all aspects of the justice and mental health systems (e.g. mental health services, police, courts) should improve their responses to people who use family violence and are experiencing mental health issues.

E) All forms of violence against women, including, but not limited to, coercive control and technology-facilitated abuse

As we have discussed under TOR (a), pregnancy and separation (or attempted separation) are examples of times of heightened risk for the onset or exacerbation of intimate partner violence. Often the violence continues after separation: either directly, through continued stalking, assaults or harassment, or in more indirect ways—for example, by withholding child support, delaying a property settlement or dragging out legal proceedings⁴².

VLA recognises the pervasiveness of coercive and controlling behaviour and that victims of family violence frequently refer to this as the most damaging abuse they experience. The Victorian *Family Violence Protection Act* acknowledges that family violence is gendered, that it is ‘predominantly committed by men against women, children and other vulnerable people’ and, as we discussed in TOR (b) includes ‘threatening and coercive behaviour’ and ‘behaviour that in any other way controls or dominates a family member and causes them to feel fear for their safety or wellbeing or for that of another person’, in its definition of family violence.

The Victorian *Family Violence Protection Act* provides an example to other jurisdictions which do not currently broadly define or reflect the gendered dynamics of family violence or coercive control in their legislation. The recognition of coercive control in a Victorian Family Violence Intervention Order ensures a person can be held criminally accountable where that intervention order is breached.

However, we also note that while the safety of victims is paramount, a criminal law response may not always be the most effective way of ensuring safety and holding perpetrators accountable. In our practice experience a legal response does not necessarily and in-and-of-itself lead to a change in behaviour or more safety for women. For example, where there are serious criminal repercussions it

⁴² State of Victoria 2016, *Royal Commission into Family Violence: Summary and Recommendations*, <<http://rcfv.archive.royalcommission.vic.gov.au/MediaLibraries/RCFamilyViolence/Reports/Final/RCFV-Summary.pdf>> pg.17.

may have the effect of women being less likely to report their experience of violence for (realistic) fear of the repercussions from their partner.

Further, as the Victorian Royal Commission into Family Violence noted, any laws are only as effective as those who enforce, prosecute, and apply them⁴³. As happened in Victoria, there needs to be extensive and ongoing police training to increase understanding of the nature and dynamics of family violence. Similarly, while the definition of family violence in the Commonwealth *Family Law Act* is quite broad,⁴⁴ it is not always well applied. We refer the committee to our recommendations under TOR (a) for mandatory and ongoing training for professionals in the family law system on the nature and gendered dynamics of family violence.

The inconsistency in definitions of family violence from one state to another can also create inconsistencies and safety risks for families in the federal family law system.

F) The adequacy of the qualitative and quantitative evidence base around the prevalence of domestic and family violence and how to overcome limitations in the collection of nationally consistent and timely qualitative and quantitative data including, but not limited to, court, police, hospitalisation and housing

VLA makes no further comment or recommendation to this term of reference.

G) The efficacy of perpetrator intervention programs and support services for men to help them change their behaviour

Legal services that are safety informed and delivered by staff who are trained in identifying risk indicators of family violence are a fundamental part of preventing and reducing family violence, keeping survivors of family violence safe, and ensuring that perpetrators of family violence are visible and held accountable.

VLA provides legal advice and representation to perpetrators of family violence across multiple jurisdictions – including in family violence intervention order, family law, child protection and criminal proceedings and in a range of civil law issues such as employment, housing and debt. We see the way in which the provision of legal assistance to perpetrators of family violence is an opportunity for intervention – the first interaction that a perpetrator has with their lawyer might, for many perpetrators of family violence, be the first time that their behaviour has been identified as family violence and that they have had involvement with the legal system.

Where a perpetrator does not understand the law, engagement with legal services is more likely to increase understanding and encourage conduct that is compatible with compliance. As part of our role in a justice system response, we provide training that supports staff to deliver legal services in a way that does not tolerate or excuse family violence. For example, in legal proceedings, we seek to uphold the rights of perpetrators to a fair hearing, while seeking to ensure that they understand the

⁴³ State of Victoria 2016, *Royal Commission into Family Violence: Report and Recommendations, Vol III, p189*, <http://rcfv.archive.royalcommission.vic.gov.au/MediaLibraries/RCFamilyViolence/Reports/Final/RCFV-Vol-III.pdf>

⁴⁴ Family violence means violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the family member), or causes the family member to be fearful (Section 4(1); and A child is exposed to family violence if the child sees or hears family violence or otherwise experiences the effects of family violence (Section 4AB).

consequences of legal proceedings and recognise the importance of engaging with support services so they can address the behaviour that has resulted in the commencement of legal proceedings.

We consider that the best way to keep victims safe in the long term and reduce the prevalence of family violence in the community is to address the causes of violence. For example, in family law proceedings, there may be parenting orders in place that rely on the ability of the parents to co-parent children from the relationship. In these circumstances, it is essential that legal responses also involve pathways to assist clients to gain access to support services that will help them to address the underlying causes of their behaviour.

Promoting multidisciplinary interventions to respond to perpetrators of family violence

As discussed under TOR (d), VLA delivers the Family Advocacy and Support Services (FASS) in Victoria, at the Dandenong and Melbourne family law court registries. FASS provides support not only to victims of family violence but also provides support services to people who use violence.

Victoria was amongst the first two states to introduce specific support to men who use violence in its FASS model. In recognising the importance of supporting those who use violence find help to change their behaviour, VLA engaged a full-time support worker from the time of establishment of FASS in May 2017 at both registries to provide assistance to clients who identify as male and are affected by family violence.

Based on the findings of Inside Policy's evaluation⁴⁵ of FASS commissioned by the Commonwealth Government, this model has now been extended to all FASS programs across Australia. In Victoria, we have partnered with No to Violence (NTV) who provide a men's support worker at each FASS location.

The primary role of the men's support worker is to engage with and provide non-legal support to clients who identify as male and who are affected by family violence. This includes those who are victims of family violence, as well as those who have allegations of family violence made against them in their family law matter.

The workers undertake risk assessments, safety planning, assess non-legal support needs and make referrals to other support services. Referrals to other services focus on helping with non-legal problems like drug and alcohol abuse, mental health, homelessness, and/or financial hardship. Many referrals made by the NTV support workers are to men's behavioural change programs. The NTV support workers are often requested in court by members of the judiciary to provide advice on available programs and the appropriateness of referrals to these programs.

The NTV support workers help clients engage with family law court processes safely and in a child-focussed manner. John's story illustrates how NTV support workers assist men to understand and engage with legal and non-legal supports:

John's story

John is a father of one who was facing significant allegations of family violence. Largely due to his limited English he appeared unrepresented at court for his family law matter.

⁴⁵ Inside Policy 2018, *An Evaluation of the Family Advocacy and Support Services - Final Report* viewed on 23 July 2020 <https://www.ag.gov.au/sites/default/files/2020-03/fass-final-evaluation-report.pdf>

The Independent Children’s Lawyer in John’s case asked the FASS family violence support worker to speak to John about his use of family violence and how to engage with a men’s behaviour change program, which he had been previously ordered to do by the court but had failed to comply.

John told the FASS support worker that he was told by the organisation running the men’s behaviour change program that he was not able to participate in the program due to his difficulty in speaking and understanding English. The FASS support worker provided John with a referral to a different organisation and contacted the organisation’s team leader to discuss his enrolment in the program. As the men’s behaviour change program may not have been the most appropriate program for John due to language difficulties, the team leader suggested that John could instead complete 20 sessions of one-on-one counselling.

Through an interpreter, the FASS support worker was able to relay the information from the team leader to John and explain to John the importance of completing the counselling to improve his relationship with his child, be more child-focussed and demonstrate his willingness to comply with the directions and orders of the court. The FASS support worker also assisted John to link in with the FASS duty lawyer for legal assistance at court on the day.

See TOR (d) for our recommendations on maintaining and expanding FASS more generally, which includes maintaining a dedicated men’s support worker as an integral part of the service model.

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

As we have already discussed, there is a need for improved understanding of gender dynamics across all services and supports, nationally. This should include training on intersectionality to improve understanding and responses to the intersections between family violence, racism, ableism, classism and sexism that many women experience. As noted under TOR (a) VLA’s Client Safety Framework provides a good model of family violence training for the legal sector.

Evidence shows that Aboriginal and Torres Strait Islander women, women who are from a culturally and linguistically diverse background, women have a disability or those who live in a regional or remote area face greater barriers to seeking help when experiencing family violence and therefore require additional supports.

We discussed at TORs (c), (d) and (g) the important role the expansion of FASS could play in improving access to legal and non-legal services for families affected by family violence in rural and regional areas. We also note the potential ongoing benefits, also for people in regional and remote areas, of changes made by the Family Law Courts in response to COVID-19, including measures such as electronic signatures and remote hearings.

In our practice we also see other ways in which the justice system can be improved to better support women and children experiencing family violence:

Women on temporary visas

In our experience, women on temporary partner visas experiencing family violence face limited access to legal advice, and a lower knowledge of Australia’s legal processes and systems. Family

violence exceptions in the *Migration Act 1958* (Cth) are also complicated and difficult to navigate without legal assistance – making it even more challenging for women on temporary partner visas to receive help. They are also limited to western constructions of relationships and family.

Difficulties also arise from applicants being traumatised, confused and unable to articulate sufficiently their experiences of family violence. For some communities, the discussion of family violence – especially where it involves sexual abuse – is considered to be shameful. Together with the psychological effects of violence, work and family commitments, family pressure and isolation, this stigma contributes to a reluctance to report experiences of family violence in the first place or to adequately articulate it in the face of a potential visa cancellation.

Apart from violence, control is often exerted on women who hold temporary visas by the constant threat of being reported and sent back to their country of origin. Women who are dependent on their partner's visa (other than women on partner visas) are no longer eligible for the visa if the relationship breaks down due to family violence. This is because the family violence provisions in the *Migration Act* only apply to limited visa classes (i.e. spouse visas). This leads to an under-reporting of family violence and leaves women vulnerable to abuse.

Threats of potential visa cancellation of a partner's visa can also lead to women not reporting violence – especially if the person using family violence is the sole 'bread-winner' and the person experiencing family violence has children to financially support.

Recommendations

We recommend that the Federal Government:

- 1) provide additional funding for legal services for women on temporary visas to ensure women who experience family violence understand and can exercise their rights under migration laws; and
- 2) amend the *Migration Act 1958* (Cth) and *Migration Regulations 1994* (Cth) to strengthen and simplify current family violence exception provisions to ensure women who hold temporary visas who have experienced family violence can legally remain in Australia.

Women with disability

In cases involving family violence, data and research shows that women with disability face a heightened risk of experiencing intimate partner violence and may face additional challenges in leaving a violent relationship. This is reflected in the service-delivery experience of our Independent Mental Health Advocacy non-legal advocates, who see that women with disability are likely to be more dependent on a partner for support and parenting. They are also more likely to be already socially isolated, which poses challenges in how to seek help from others to leave a violent relationship.

Family violence legal assistance is also generally not tailored to the needs of individuals with disability. VLA recommends that additional support should be required prior to attending court and at courts to help women and children with disability to understand family violence and family law proceedings, and to assist with making referrals to specialised disability support services. This support should include communication assistance and support as difficulties with communication can

be a barrier for people to understand the process, their rights and the possible implications of decisions that affect them.

Recommendation

We recommend that the Commonwealth and State Governments ensure that additional supports are made available to women with disability prior to attending court to ensure that they can understand and engage with family law and family violence proceedings. This support should also include referrals to specialised disability support services.

Culturally safe legal services and the family law system for Aboriginal and Torres Strait Islander women

In 2018-19, VLA's Family, Youth and Children's Law program provided 5.5 percent of its services to clients who identify as Aboriginal or Torres Strait Islander⁴⁶ while less than 1 percent of Victoria's population identify themselves as Aboriginal or Torres Strait Islander. This reflects broader evidence of the continued over-representation of Aboriginal and Torres Strait Islander women in the justice system.⁴⁷

An underlying mistrust of the child protection and family law systems by Aboriginal and Torres Strait Islander families due to the continuing impact of historical government policies of child removal and intervention in Aboriginal and Torres Strait Islander families' and communities' lives⁴⁸ can impact on the likelihood of Aboriginal and Torres Strait Islander families to access or engage with family law services or related services.

Furthermore, many of the difficulties that affect family members who are advised to seek family law parenting orders by a state child protection agency are likely to be exacerbated for Aboriginal families. For example, the Family Law Council has found that clients involved in the child protection system are commonly affected by chronic disadvantage, with little capacity to afford legal representation, and many also have low levels of literacy, impeding their ability to engage with the legal process as a self-represented litigant.⁴⁹ Addressing this link and mistrust will be critical if the system is to improve engagement of Aboriginal and Torres Strait Islander peoples.

A critical first step is to ensure that legal systems are culturally safe for all Aboriginal and Torres Strait Islander people, acknowledging the vast diversity among Aboriginal and Torres Strait Islander communities in Australia.

The family law and child protection systems should support specialist Aboriginal and Torres Strait Islander services while ensuring mainstream services are providing a culturally safe service so that Aboriginal and Torres Strait Islander clients have good quality options about the services they

⁴⁶ Victoria Legal Aid 2019, *Annual Report 2018-19 Access to Justice for Victorians*, viewed on 9 July 2020 <<https://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-2018-19-annual-report.pdf>

⁴⁷ Australian Institute of Health and Welfare 2019, *Family, domestic and sexual violence in Australia: continuing the national story 2018*, viewed on 8 July 2020 <<https://www.aihw.gov.au/getmedia/b0037b2d-a651-4abf-9f7b-00a85e3de528/aihw-fdv3-FDSV-in-Australia-2019.pdf.aspx?inline=true>>

⁴⁸ Fiona Allison et al 2012, *Indigenous Legal Needs Project: NT Report*, viewed on 9 July 2020, <https://www.jcu.edu.au/_data/assets/pdf_file/0014/122126/jcu_113496.pdf> pg.137.

⁴⁹ Family Law Council 2015, *Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems: Interim Report – June 2015*, viewed on 8 July 2020 <<https://www.ag.gov.au/sites/default/files/2020-03/Families-with-Complex-Needs-Intersection-of-Family-Law-and-Child-Protection-Systems%E2%80%93Interim-Report-Terms-1-and-2.pdf>> pg.35.

access. Due to the limited availability of specialist legal services, there is also a likelihood of legal conflicts arising when Aboriginal and Torres Strait Islander clients seek to use specialist Aboriginal legal services. It is therefore important that there is a wide availability of a range of culturally safe legal services, including mainstream and community-led services.

VLA supports the need for any system and legislative redesign and reform to recognise the experiences of Aboriginal and Torres Strait Islander peoples and communities. Creating a culturally safe and appropriate family law system requires redesign and reform to be developed in close collaboration with Aboriginal and Torres Strait Islander peoples.⁵⁰

Recommendations

Ensure the family law system is culturally safe for Aboriginal and Torres Strait Islander peoples by consulting with National Aboriginal and Torres Strait Islander Legal Services and other Aboriginal Community Controlled Organisations, including on the following potential measures:

- 1) Expanding the Nullyjeering Gah-Gook List to all Federal Circuit Court locations across Australia, including providing sufficient resourcing and cultural awareness training for all professionals working in the list.
- 2) Employing Aboriginal Family Liaison Officers at each family law registry to provide a culturally appropriate support person within the family law system.
- 3) Expanding access to Indigenous Family Consultants at family law courts. This would support the preparation of culturally appropriate and relevant family reports informed by a sound understanding of the systemic challenges facing Aboriginal and Torres Strait Islander peoples, including the reasons why a family may be reluctant to interact with family law services and justice systems arising from the history of forced removal of Aboriginal and Torres Strait Islander children and contemporary experience with the criminal justice system.

Preventing the criminalisation of women, particularly Aboriginal and Torres Strait Islander women, who have experienced family violence

Aboriginal women are the fastest growing prison population, many of whom have experienced family violence and often have multiple legal needs⁵¹. Aboriginal women in Australia are incarcerated at a rate of more than 21 times that of non-Indigenous women and 1.5 times the rate of Indigenous men⁵².

While the justice system can be an 'active and involved participant that can interrupt the use of family violence⁵³' there is growing evidence⁵⁴ that a large portion of women misidentified as the primary aggressor in a family violence incident are Aboriginal or Torres Strait Islander.

⁵⁰ VLA thanks Djirra for their assistance in the development of VLA's recommendations in response to this question.

⁵¹ The Department of Justice and Regulation 2016, *Access to Justice Review (Full report)*, Melbourne, Victoria.

⁵² Australian Law Reform Commission 2017, *Pathways to justice – Inquiry into the incarceration rate of Aboriginal and Torres Strait Islander peoples: Final Report*. Sydney: ALRC

⁵³ State of Victoria 2016, Royal Commission into Family Violence: Summary and Recommendations, viewed on 8 July 2020

⁵⁴ Women's Legal Service Victoria 2018, *Policy paper 1, Misidentification of the 'primary aggressor in family violence incidents in Victoria*, May 2018, accessed 12 July 2020

<https://www.womenslegal.org.au/files/file/WLSV%20Policy%20Brief%201%20MisID%20July%202018.pdf>

There is a need for greater focus on addressing misidentification including understanding the intersectional experiences of Aboriginal and Torres Strait Islander women.

I) The impact of natural disasters and other significant events such as COVID-19, including health requirements such as staying at home, on the prevalence of domestic violence and provision of support services

There is strong evidence⁵⁵ to show that natural disasters such as the Victorian Black Saturday bushfires of 2009 and other significant events such as the COVID-19 pandemic increase or exacerbate the risk of family violence including as families experience the aftermath of such a disaster.

In a series of interviews with women affected by the Black Saturday bushfires, a significant majority interviewed reported that family violence escalated in the aftermath of the bushfires, while another group of women, who had never previously experienced family violence, reported that following the bushfires their partners began to use violence in their relationship.⁵⁶

It is also now well-recognised that legal assistance is an important element in the recovery of disaster-affected communities, including for people who experience family violence. Empirical research demonstrates the strong link between legal problems and social problems. It shows that legal needs, if left unmet, tend to lead to other social and legal problems⁵⁷ including the increased risk of family violence.⁵⁸

People who experience family violence will usually experience a range of legal issues and require legal support, which may include housing, child protection, family law, tenancy, and discrimination.

Summer bushfires of 2019/20

During the recent and devastating bushfires of 2019/20, Disaster Legal Help Victoria (DLHV), a joint initiative of Victoria Legal Aid, the Federation of Community Legal Centres Victoria, the Law Institute of Victoria, the Victorian Bar and Justice Connect,⁵⁹ provided an array of legal support to Victorian communities impacted by the bushfires. This included:

- In person advice, information, and casework for people in affected communities in East Gippsland and North East Victoria;
- Telephone information and advice through the Disaster Legal Help telephone advice line; and
- Online and hard copy legal information distributed throughout Victoria and on the dedicated DLHV website.

The rapid establishment of DLHV to assist communities recovering from bushfires highlights the increasing awareness of the role of legal assistance in supporting disaster affected communities.

⁵⁵ Gender & Disaster Pod 2015, *'The way he tells it...'* Relationships after Black Saturday', Research Report <<http://www.genderanddisaster.com.au/wp-content/uploads/2015/06/Doc-005-The-Way-He-Tells-it.pdf>> pg.105.

⁵⁶ Gender & Disaster Pod 2015, *'The way he tells it...'* Relationships after Black Saturday', Research Report <<http://www.genderanddisaster.com.au/wp-content/uploads/2015/06/Doc-005-The-Way-He-Tells-it.pdf>> pg.105.

⁵⁷ Pleasence, P., Balmer, N. & Sandefur, R 2013, *Paths to Justice: A Past, Present and Future Roadmap*, UCL Centre for Empirical Legal Studies, London.

⁵⁸ Disaster Legal Help a joint initiative of Victoria Legal Aid, the Federation of Community Legal Centres, the Law Institute of Victoria, the Victorian Bar and Justice Connect, *Letter to the Royal Commission into the Black Summer Bushfires* (April 2020).

⁵⁹ Disaster Legal Help Victoria 2020 <www.disasterlegalhelp.org.au>.

However, there is still some way to go in ensuring that free legal assistance is integrated seamlessly into local networks and community recovery plans, and in ensuring that those plans are implemented in a way which gives people affected by disasters timely access to legal advice and assistance.

COVID-19

The transition and recovery period out of the COVID-19 pandemic will be long and unpredictable. While there has been broad recognition of the risk of stay-at-home measures for victims of family violence, risk of family violence is not limited to this. The subsequent economic fallout of the COVID-19 response measures, including rising unemployment, are also factors that will increase risk of family violence.

During the COVID-19 pandemic response period, VLA has observed changes in how people are seeking legal information and advice for family violence queries in particular, with an increased demand for phone and webchat assistance with family violence matters. The changes in demand and service patterns we are observing accord with reports more generally within Victoria, Australia and worldwide of an increase in family violence incidents and the negative impact of self-isolation and social distancing restrictions on people experiencing or at risk of family violence within the home.⁶⁰

VLA implemented a priority phone line for callers with family violence queries in late May 2020 due to the increasing number and severity of family violence calls VLA's Legal Help service was receiving. We also implemented a similar priority webchat channel. To support the effective operation of both priority family violence channels we also implemented additional family violence training for front-line staff to respond to family violence in a COVID-19 environment focussing on family violence risk.

Further, COVID-19 measures are likely to have an ongoing impact on legal demand in the family law system and courts for some time beyond the easing of lockdown restrictions.

As we said in our submission to the Senate Select Committee on COVID-19, we welcome the Australian Government's May 2020 announcement of additional one-off funding to legal assistance service providers to respond to COVID-19, including that 40 per cent is to be used for matters involving family violence.

We also commended the rapid and constructive response by the family law courts – including in transitioning to virtual hearings, establishing a specialist COVID-19 list and making several practice changes that have simplified processes and forms⁶¹.

While this response has been important in enabling the courts' rapid response to the impact of COVID-19 on families, the likelihood is that the family violence risk we have been observing during the lockdown period will continue. This will place more demand on a system that was already under great pressure. As such, further measures will be needed to give timely and appropriate prioritisation

⁶⁰ Pfitzner, N., Fitz-Gibbon, K. and True, J 2020, *Responding to the 'shadow pandemic': practitioner views on the nature of and responses to violence against women in Victoria, Australia during the COVID-19 restrictions*, Monash Gender and Family Violence Prevention Centre, Monash University, Victoria, Australia, viewed on 9 July 2020 < <https://apo.org.au/sites/default/files/resource-files/2020-06/apo-nid306064.pdf> >

⁶¹ The introduction of this list is in response to an increase in the number of urgent applications filed in the Courts over a four week period in March and April, with a 39 per cent increase in the Family Court of Australia and a 23 per cent increase in the Federal Circuit Court. We have in turn moved quickly to provide a duty lawyer service for self-represented parties in these lists.

to dealing with family violence issues in cases before the family law courts and to respond to other issues arising in the family law system caused or exacerbated by COVID-19.⁶²

Recommendations

We recommend that the Australian Government build on changes being implemented in the family law courts to respond to COVID-19 to ensure an early and appropriate response to urgent family law matters, particularly those with family violence allegations by:

- 1) sufficiently resourcing the COVID-19 list to avoid diverting resources from existing court matters;
- 2) transitioning the COVID-19 list into a specialist family violence list at an appropriate time; and
- 3) providing funding for an expansion of pilots such as the risk screening and triage pilot (the Lighthouse project) into an ongoing process for the courts, taking into account any findings from the running of the pilot.

J) The views and experiences of frontline services, advocacy groups and others throughout this unprecedented time

VLA makes no further comment or recommendation to this term of reference.

K) An audit of previous parliamentary reviews focussed on domestic and family violence

VLA has highlighted the importance of legal services for people who use and experience family violence and the increasing prevalence of family violence matters in the family law system in submissions to several commonwealth and state inquiries over the last decade.

- Joint Select Committee inquiry into the family law system (2020)⁶³
- Australian Law Reform Commission (ALRC) review of the Family Law System (2018)⁶⁴
- Parliamentary inquiry into a better family law system to support and protect those affected by family violence (2017).⁶⁵
- Victorian Royal Commission into Family Violence (2015)⁶⁶

⁶² Victoria Legal Aid 2020, Submission to the Senate Select Committee on COVID-19, *Preventing the escalation of legal Problems during COVID-19*, < <https://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-submission-covid-19-senate-inquiry-29-may-2020.pdf> > pg.3-4.

⁶³ Victoria Legal Aid 2019, *Submission to the Joint Select Committee on Australia's Family Law System* <<https://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-submission-to-joint-select-committee-on-australias-family-law-system.pdf>>.

⁶⁴ Victoria Legal Aid 2018, *Submission to the Australian Law Reform Commission Review of the Family Law System Issues Paper* and Victoria Legal Aid 2018, *Submission to the Australian Law Reform Commission Review of the Family Law System Discussion Paper* <<https://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-submission-to-the-alrc-review-of-the-family-law-system-discussion-paper.docx>>.

⁶⁵ Victoria Legal Aid 2017, *Submission to the Parliamentary Inquiry into a better family law system to support and protect those affected by family violence – A Better Family Law System* <<https://www.legalaid.vic.gov.au/node/610#a-better-family-law-system>>.

⁶⁶ Victoria Legal Aid 2016, *Submission to the Royal Commission into Family Violence* March 2016 < <https://www.legalaid.vic.gov.au/about-us/strategic-advocacy-and-law-reform/more-effective-responses-to-family-violence/royal-commission-into-family-violence> >

- Family Law Council review of Families with Complex Needs (2015)⁶⁷

VLA has also provided advice on the establishment of several key legislative reforms aimed at enhancing the safety of victim survivors of family violence, including the Family Law Amendments (Family Violence and Cross-examination of Parties) Bill 2018⁶⁸, the Federal Circuit and Family Court of Australia Bill 2018, Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Bill 2018⁶⁹ and the Family Violence Protection Amendment (Information Sharing) Consultation Draft Bill 2017.

⁶⁷ Victoria Legal Aid 2015, *Submission to the Family Law Council's terms of reference: number 1* April 2015 < <https://www.legalaid.vic.gov.au/about-us/strategic-advocacy-and-law-reform/more-effective-responses-to-gender-inequality-including-sex-discrimination-and-family-violence/families-with-complex-needs>> and Victoria Legal Aid 2015, *Submission to the Family Law Council's terms of reference: number 2* October 2015 < <https://www.legalaid.vic.gov.au/about-us/strategic-advocacy-and-law-reform/more-effective-responses-to-gender-inequality-including-sex-discrimination-and-family-violence/families-with-complex-needs>>

⁶⁸ National Legal Aid 2018, *Family Law Amendment (Family Violence and Cross-examination of Parties) Bill 2018* Submission to the Senate Standing Committee on Legal and Constitutional Affairs 19 July 2018.

⁶⁹ National Legal Aid 2018, *Federal Circuit and Family Court of Australia Bill 2018, Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Bill 2018* 6 December 2018.