

**Submission to**

**ALRC: Family Law Review**

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**Introduction**

Women’s Law Centre of WA (WLCWA) welcomes the opportunity to make a submission to the Australian Law Reform Commission in response to the request for submissions for the Family Law Review Discussion Paper.

**Who We Are**

The WLCWA is a not-for-profit community legal centre funded by the Commonwealth Attorney General’s Department to provide quality legal services to disadvantaged women in Western Australia.

We are a member of Women’s Legal Services Australia (WLSA) - a national network of community legal centres specialising in women’s legal issues, which works to support, represent and advocate for women to achieve justice in the legal system. We seek to promote a legal system that is safe, supportive, non-discriminatory and responsive to the needs of women, particularly those who have lived with domestic and family violence.

**What we do**

We provide legal advice and assistance predominantly in the areas of:

* family law (parenting);
* family violence restraining orders;
* care and protection proceedings;
* criminal injuries compensation for victim-survivors of family and domestic violence and/or sexual assault.

WLCWA also deliver training programs, community legal education sessions and community engagement workshops to share our expertise regarding effective responses to violence and issues arising from relationship breakdowns.

WLCWA contributes to policy and law reform discussions, primarily focused on family violence, to ensure that the law does not unfairly impact on women experiencing violence and relationship breakdowns. WLCWA is informed by a feminist framework that recognises the rights of women as central.

**Who We Help**

The WLCWA specialises in providing legal advice and assistance to women in need, particularly those who have experienced or who at risk of experiencing family violence. Most of our clients are women who are unable to participate fully and effectively in the legal system without legal and non-legal support, advice and assistance and who cannot afford to finance private legal representation.

**Why we are making this submission**

As a legal service provider, WLCWA lawyers and staff are experienced in assisting women from all walks of life, all ages and from diverse cultural and linguistic communities from all areas of Western Australia. While based in Perth, WLCWA assists women from all over Western Australia including outreach services delivered in self-managed remote Aboriginal communities. WLCWA in partnership with Relationships Australia also operate Djinda Services (an Aboriginal Family Violence Prevention Legal Service) to provide legal assistance to Aboriginal and Torres Strait Islander women living in the Perth metropolitan area. In addition, the WLCWA hosts a coordinator for the Domestic Violence Legal Workers Network, the network being a collaboration of legal practitioners who work in the area of family and domestic violence.

WLCWA notes with concern the lack of equality for women that is inherent in the community. A gendered financial disadvantage already exists. Mothers and – more frequently – grandmothers are more often than not the primary caregivers of children and are, as such, already unrecognised and their contributions to, and sacrifices for, their families under appreciated. All women are greatly overrepresented as victim-survivors of family and domestic violence (FDV), with Aboriginal women particularly so. In our experience, the current court practices result in further trauma and often serious long term disadvantages for women. The court should be instead assisting women during the trauma infused time of separation.

WLCWA is particularly concerned that the current family law system re-traumatised victim-survivors of FDV through overly cumbersome and convoluted procedures, and a failure to utilise trauma informed practice methodology or ensure that professionals are properly trained in FDV and trauma. Both children’s and financial processes are easily misused by perpetrators, and proceedings themselves can place both women and children at risk. The effects of FDV are not taken into account when making settlements, and many women do not get their rightful entitlements. Many women and children remain at risk in the aftermath, with long term adverse effects on safety and wellbeing.

All the above are augmented where women have poor literary skills or other disadvantage such as a disability or mental health issues. The system is extremely hard to navigate for Aboriginal and CALD women through a failure to recognise diversity or to employ culturally appropriate practices. Finally, WLCWA shares the concerns of WLSA about the absence of any reference to women in prison, who risk family disintegration through poor or non existent child contact processes, unchecked stigma, lack of court processes to enable them to fully participate in legal proceedings and a resulting risk of reoffending.

WLCA is concerned that to compound matters, women frequently frequent lack of legal representation available to women, who often cannot afford a private lawyer. Insufficient funding for both legal aid and assistance through Community Legal Centres have left many women attempting to navigate the system unassisted, from a misunderstood vantage point of trauma and substantial disadvantage.

WLCWA recognises that the above issues are complex and not capable of a simple resolution. We propose, however, that a simplification and streamlining of processes, proper training, further research and the establishment of well planned pilot projects could be a start to achieving justice and equality for women in the Family Court. To this end, women’s legal services should be properly resourced and funded, not only to provide safe and specialist assistance to women in their unique circumstances, but also to work with Government and agencies towards effective solutions. This is essential not only to justice for women but also for the social and therefore economic wellbeing of the community.

Our submission reflects academic theory, empirical evidence and what we at WLCWA have observed in practice and propose some practical measures by which justice (and access to justice) may be improved for women in the family law system.

**General Comments**

**Addressing the Terms of Reference**

The questions posed in the ALRC Discussion Paper are extremely comprehensive. As a small community legal centre, WLCWA does not have the resources to engage a staff member to draft a submission which addresses each question and term of reference individually. However, we consider it important that despite our limited resources and constraints the voices of our clients are heard in this review,. Our clients are the most vulnerable and who currently face additional barriers to even participating in, let alone achieving just outcomes in the family law system.

For these reasons, our submission will not address each question specifically but will rather focus on what we consider to be the key challenges our clients experience from the current family law system and WLCWA’s recommendations for change to make the family law system more accessible by those most in need of judicial intervention in our society.

**Terms and Language Used**

Consistent with the language in the *Family Law Act* 1975 (Cth) and Family Court Act 1997 (WA), WLCWA will use the term ‘family violence’ in this submission when referring to ‘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.’

We note that some people who experience violence prefer the term ‘victim’ and others prefer the term ‘survivor’. In this submission we use the term ‘victim-survivor’ which is intended to be inclusive of both victims and survivors.

In the large majority of cases, family violence is gendered, that is, it is perpetrated by men against women. We use gendered language in this submission. We acknowledge women can be perpetrators of violence and men can be victim-survivors.

**Summary of Recommendations**

For ease of reference, attached to this Submission and marked “A” is a Summary of the Recommendations referred to in this submission.

1. **Challenges of the Current System – General Comments**

**Accessibility and engagement**

The family law system is complex and confusing.

For victim-survivors of family violence, the family law system represents just one of many systems they are required to navigate to try and achieve outcomes for their families. As a private civil remedy, the family law system more so than the family violence system, relies on litigants or their legal representatives to understand and be in a position to comply with complex and detailed court documents, rules, practices and procedures.

In the Family Court of WA there is by and large consistency as between the judicial officers in relation to how family court cases are run which assists legal representatives to explain to their clients what to expect from the system. However, our clients’ experiences with the Family Court of Australia and Federal Circuit Court of Australia (where the other party is interstate) is that the procedure to expect from the court, including compliance with the rules and pre-action procedures, varies as between courts, registries and even individual judicial officers. This lack of consistency in court process creates a barrier for self-represented or unrepresented (not by choice) litigants who are expected to know what they should do, how to do it while many of them are also the primary care givers for children, trying to deal with their and their families ongoing trauma and deal with related issues, for example, financial support, contact visits, restraining order proceedings and often ongoing threats, violence and harassment from their former spouse etc. Many women in this situation find this overwhelming and impossible to navigate let alone participate in without intensive support – legal and non-legal.

To ensure the family law system is accessible, there needs to be increased funding and resources. WLCWA notes the Productivity Commission recommended in 2014 that the legal assistance sector, receive an annual $200 million increase in funding for civil law, including family law[[1]](#footnote-1) which is yet to be actioned.

The overwhelming statistics of women as victim-survivors of family violence requires a significant investment of funds and resources into support services for women to help them pursue safe care arrangements for themselves and their children. Funding for specialist women’s legal services in particular is important and should be a priority to ensure women can access support and legal advice in a safe space from people who are trained to understand their unique needs.

Staff of specialist women’s legal services understand the dynamics of violence, impact of trauma and use principles of empowerment and client centred approaches which are consistent with the best practice models identified by the inquiries like the Royal Commission into Family Violence (Victoria) for victim-survivors of family violence.

Specialist women’s legal services seek to identify and challenge gender bias, recognise and respond to intersecting and compounding forms of discrimination and advocate for substantive equality. This makes these services well-placed to meet the needs of women, particularly those facing gender-based violence, discrimination, vulnerability or disadvantage.

Specialist women’s legal services are also important to provide a forum to obtain help when the perpetrators actively seek to prevent them from accessing help by seeking initial advice from all available legal centres in order to ‘conflict them out’.

**Overly Procedural and Formal**

The current family court system is too formal and procedural.

Many of our clients are unable to understand what is required of them to engage with the system to pursue their legal rights. When they do understand what is required, many of them lack the time to do what is required of them without assistance.

Even when a party has legal representation, if costs are a significant concern to the client or their legal aid grant is limited and they are concerned not to ‘waste’ it, it is common for such clients to seek help from a community legal centre to understand the advice that their lawyer has given them or to understand what is required of them by court orders.

WLCWA operates a Legal Info Line which is staffed by law students and law graduates. Many questions that our clients seek assistance with are purely procedural questions about the family law system.

Our Legal Info Line predominantly assists such clients to understand the information that is on court websites and to help them understand how to undertake matters such as:

1. service of documents,
2. having a document signed and properly witnessed,
3. understand the difference between evidence and an application (this is something which many people don’t understand even when they do have legal advice).

The level of formality and procedure required by our current family law system is inconsistent with the types of matters being determined by the Courts. While many of the formalities of the family law courts are more relaxed than their commercial law court cousins, it has become overtime too procedural which has led to women disengaging from the system, increased costs and delays for those who do use the system and a perception by most that participate that the process required to resolve their family matters is not fair (regardless of the actual outcome).

A legal system that is intended to resolve private matters of family life should be more akin to a tribunal and have processes and forms that are trauma informed, easier for people to understand, less legal and more intuitive to reflect how most people speak and organise their family lives. It is WLCWA’s view that this would significantly increase the ability of victim-survivors of family violence and unrepresented litigants in general to use and understand the system which is determining the most private aspects of their lives and which, for victim-survivors of family violence, will determine their level of risk and contact with the perpetrator for the immediate and long term future.

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| **Case Study (De-identified)** WLCWA assisted a mother who had experienced horrific family violence including being: locked in a room for 6 days without food and only limited water (during which ordeal she lost 5 kgs). The client had a baby son who was less than 12 months old and she spoke no English having only arrived in Australia from a Middle Eastern country several years earlier with her husband. Her husband was educated and wealthy (his family owned several business based overseas). He was a a professional who spoke fluent English and who had traditionally run their household. The mother during her time in Australia was controlled by the husband and his family. She was not allowed to leave the house without permission, not allowed to be in environments where she was able to learn some English, had no independent access to money, was on his visa and was forced to work for free in her husband’s family’s business. The husband owned a couple of houses in Australia in his own name. She finally fled the relationship with her son with the support of a friend who did speak English and her own language whom she had met through women’s health services, and ended living in a refuge with her young son. She came to our service specifically to seek assistance with divorce, parenting and to secure some financial independence so she could obtain independent housing and pay for basic living expenses like food and clothing. After she left, the husband within days had vacated the house and placed it on the market for quick sale (his friend engaged as the real estate agent). The husband had also started to transfer his money overseas. She was concerned about the husband or his family abducting the child back to the Middle East where the rest of his family resided. WLCWA identified the client had a claim for:1. Child support;
2. Spousal maintenance;
3. Costs (litigation funding order)
4. Property settlement (interim and final)

However for her to preserve her claim she required urgent interim financial orders to prevent the sale proceeds from the sale of the former family home and freezing the remaining bank accounts to prevent the remaining assets in Australia being removed from the jurisdiction. She was required to file:1. Form 1 Initiating Application (seeking watch list orders, sole parental responsibility orders, live with orders as well as injunctions to preserve assets and seeking immediate financial relief and litigation finding order to finance a private lawyer to continue her claim)
2. Affidavit in support of her urgent orders sought;
3. Financial Statement;
4. Form 4 Notice of Risk;
5. Affidavit in support of Notice of Risk
6. Exemption form (as she had no funds and no means to pay any court fees)
7. Case Information Affidavit (as she was commencing court proceedings for parenting orders);
8. Exemption form (as she was seeking to commence court proceedings for parenting orders without the required pre-action FDR).

It took one of our family lawyers 2 weeks on this file alone to:* gather sufficient instructions from the client
* provide initial advice
* draft and finalise all of the court documents (an interpreter was required which further delays the matter
* draft letters to the other party and their lawyers requesting they cease in the sale of property and putting them on notice of the court application

The client had her son with her which made it difficult for her to be in an appointment for more than 1-2 hours at a time). She also had other appointments organised by her refuge case worker which she needed to attend, including counselling for her traumatic experiences, medical appointments for her and her son and appointments at Centrelink and with a migration lawyer about her visa. The client had no funds and no means to pay for disbursements required to find out more information, including land title searches, ASIC searches, subpoenas issued to husband’s employer and real estate agent and husband’s accountant. A letter was sent to the husband’s lawyers to put them on notice that our client did not agree to the sale of the house or to the removal of the sale proceeds from the real estate agent but the response from the lawyers (who were friends and from the same small community in WA as the husband) only colluded with the husband and accused the mother of herself posing a risk to the child. By the time the matter went to Court, the husband had sold the house and while orders were made requiring the husband to deposit the net sale proceeds in a joint account, the husband’s lawyers ignored the repeated requests from our Centre to open a joint account in the parties name as required by the Court order. To enforce the order already made, the client would have been required to prepare and file: 1. Contravention Application;
2. Supporting affidavit

In this case study, by the time that the client was able to get the orders from the Court the husband had already sold the property and removed the assets from Australia. He had moved back to his country of origin but without the child as our client was able to get Watch List orders. The client would not have been able to:1. Understand her legal rights;
2. Understand how to enforce her legal rights;
3. Complete the documents required to enforce her legal rights

without the intensive support and assistance from a specialist women’s legal centre family lawyer.  |

**Court forms (including Form 4 Notice of Risk)**

WLCWA is concerned that the current Form 4 Notice of Risk is predominantly designed for the benefit of the legal profession and the Court.

For vulnerable women and other parties who are self-represented or unrepresented (which in light of the trend to reduce legal aid commission funding will only rise) the Form is confusing, not intuitive and artificially seeks to organise the information to reflect the legislative framework instead of being designed from a court user perspective.

WLCWA acknowledges and appreciates the benefits of having a Form 4 Notice of Risk that makes it easier and quicker for the legal profession and the bench to glean at a glance the information in the form.

However, the legal profession and the bench are far more educated and skilled at this than the vast majority of people required to use the form without legal assistance, most of whom are experiencing stress, trauma as well as a variety of other complex needs including being family violence.

The Form 4 Notice of Risk should be designed to reflect how lay people naturally talk about their concerns about their children instead of trying to organise those concerns into how the Court and lawyers would then dissect and analyse that information to fit it into the current legal framework.

For example, the evidence in support of the Notice should not be in a separate affidavit but rather should be incorporated into the form itself. The form could include:

* a checklist style list of what behaviour is abuse and family violence so court users can easily identify which of the behaviours has occurred in their matter; and
* a check box to ask them if they are concerned about risk of future violence/abuse and a a text box for them to explain why;
* a text box asking the form user to provide more detail about any abuse or family violence that has happened.

Most of the time, the past abuse or violence is why they consider there is a risk. The segregation of the Form 4 Notice of Risk into the behaviours and then in a separate affidavit the evidence in support of this is repetitive and unnecessary.

WLCWA considers that the form should also not need to be signed and formally witnessed (which delays parties from being able to file such documents) but rather completed with a “Statement of Truth” (i.e. an explanation prior to signing warning the party signing the form that they are about to sign to confirm what they have said in the form is true and that if it is not true there may be adverse consequences for them including:

* possibly referral to a prosecutor for perjury,
* being held to be in contempt of court etc.

Most people don’t understand what an affidavit is without legal advice whereas a Statement of Truth can be understood and has a plain language meaning. Removing the formal requirements to swear or affirm the content of affidavits would create a more user friendly family law system which is more accessible to people and which would reduce the costs and delay for family violence matters.

WLCWA discusses the need for the family law system to be more trauma-informed further in this submission, however, changing the layout of the forms including the Form 4 Notice of Risk required to be filed by parties experiencing significant trauma, is but one example of how the family law system could become better trauma-informed and responsive to the needs of the parties who need to use the system.

**Family law system should not prioritise form over substance**

A consequence of the family law system being overly procedural is that it encourages a culture in which too much emphasis is placed on form and not the substance of parenting applications.

WLCWA is increasingly seeing women who are unrepresented (as opposed to self-represented by choice) preparing their own court documents and seeking urgent interim orders for children where there are significant family violence and safety concerns only to have their applications rejected for filing because they are not technically compliant.

This includes:

* A Case Information Affidavit describing family violence but not being accompanied by a Form 4 Notice of Risk (even if the Department of Communities (formerly the Department of Child Protection is already involved with the family)
* The documents not being properly witnessed (e.g. many clients confuse affidavits with statutory declarations and have them witnessed by a Pharmacist, Teacher or other professional qualified to witness Statutory Declarations in WA).

For an urgent application to be delayed because of a requirement to prepare, sign and file an additional document which just repeats what is already included in the parties’ affidavit and which is then used as grounds for the Court to prioritise that same matter is dangerous. It sends the message to those who are seeking the assistance from the system that their concerns aren’t important or significant enough.

WLCWA agrees with the submission made by Women’s Legal Services Australia (WLSA) that one of the key responsibilities of the family law system must be to keep women and children safe – especially when you consider that over 50% of children’s matters in the family law courts involve family violence and other safety concerns for children.[[2]](#footnote-2)

The primary aim of the family law system should be the safety of children which is currently being compromised in part due to the overly formalistic nature of the family court system.

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| **Recommendations:** To make the family law system more accessible to vulnerable women, WLCWA recommends the ALRC consider: * Abolishing the requirement for formerly signed and witnessed forms in the family court (unless specifically ordered by a judicial officer) and replacing them with “Statements of Truth”.
* Reducing the number of forms required to commence family court proceedings[[3]](#footnote-3).
* Incorporating into the form of application, template orders[[4]](#footnote-4).
* Simplify the Financial Statement (recognising it is extremely confusing for clients who don’t have legal assistance).
* Consider establishing ‘family financial reports’ in family law financial matters

(similar to the process in parenting matters).[[5]](#footnote-5) * Introducing standardised language across all family law courts for court procedures which is available on the court website for parties to view[[6]](#footnote-6).
* Ensuring all court forms include numbers (e.g. Form 4 Notice of Risk) so parties can understand what is required of them from the orders made[[7]](#footnote-7).
* Simplifying and relaxing the requirements for service of documents and/or creating a system whereby in family violence matters the police are able to serve family law initiating applications which seek orders in relation to children.
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**Use of technology and Decentralising family law court services**

In Western Australia in particular, the tyranny of distance makes it difficult for parties to physically attend the family law court. In cases of family violence, it is often not safe for both parties to physically attend.

There is the ability of parties to attend by electronic means but it can be difficult to organise. It requires a separate form to be completed and for the contacted details to be known in advance which is often not known by victim-survivors of family violence who may be temporarily living in refuges or sleeping on the couches of friend’s houses or whose access to technology is not safe or guaranteed.

Community legal centres currently lack the funding to have available webcams and private rooms in their premises for parties to attend in order to attend court by electronic means.

Many of our clients have their mobile phones taken off them and don’t have a permanent address at which we can contact them.

The use of technology in family court proceedings needs to be considered in the context of family violence and by reference to the needs of people and communities who currently experience difficulties accessing the system, in part, because of the reliance on technology. While technology can be used to increase the access of courts, many people who don’t currently engage with the family law system consider technology to be a barrier.

In some communities in remote WA, there is no internet. There may be hundreds of kilometres in between buildings with only one community building in a town that even has a computer or a pay phone. Clients may have a mobile phone but it often gets taken away from them by other community members. Many clients don’t have fixed addresses or receive mail care of another address.

It is difficult in these circumstances to communicate with a client, let alone try to arrange for them to work on electronic documents, or attend a meeting or court hearing by telephone or other electronic means.

In metropolitan areas, even when a client is technologically literate it can often not be safe for them to use the technology available to them, for example, where there is family violence it is common for the perpetrator to have their phone, computer and all accounts bugged to keep the victim-survivor under surveillance.

In the Eastern States, the family law courts have or are progressing to electronic filing. In the Family Court of WA, divorce application are e-filed although the FCWA does accept hard copy filing.

If the only way the family law courts accepted documents was by way of filing, it is WLCWA’s view that this would create an additional barrier to many women experiencing family violence who are seeking family law court orders.

Community legal centres like WLCWA are underfunded and lack the physical space and resources (computers, space and staff) to be assist women experiencing family violence to actually prepare their court material, file it electronically and attend court hearings electronically. The FCWA likewise is not providing additional computers for parties to use and it raises questions in relation to how people who are experiencing family violence, who don’t have permanent housing or who are not technologically literate are able to have access to and participate in the family law system unless they are able to finance private legal representation.

CLC’s also operate on short funding cycles and accordingly provide minor limited assistance which does not mean going on the court record. Without being on the court record, CLCs are unable to access CommCourts Portal on behalf of a client to assist them in their legal matter.

Court users from certain communities may also experience unfair outcomes if their access is restricted to attendance only by technologically means, for example, some of the non-verbal body language cues important to convey meaning to a culturally competent judicial officer may be lost altogether if that party was forced to attend court by electronic means.

Clients of WLCWA who consider over reliance on technology to be a barrier affecting their ability to participate in the family law system include women who are:

* Older if they are not technologically literate;
* Lack the English skills to understand how to become technologically literate in Australia and use the ComCourts Portal.
* Don’t have access (or safe access) to the required technology.

This could be because the perpetrator is using technology to keep the victim-survivor under surveillance, controls the technology or the lack of access to technology altogether.

The current e-filing system requires the court user to have access to a scanner. The forms are not online and there is no mobile phone version of the forms to increase the accessibility of the court system to those who only have access to a mobile phone.

The family law system needs to be flexible in how it accepts court documents for filing and conducts family law proceedings. There needs to be greater options for parties to attend by other than physical means but also decentralising the family law courts and ensuring if people need to physically attend court they can.

In Aboriginal communities, comments have been made to the effect that the absence of a physical family law court building or related service in remote areas is a contributing factor to the underrepresentation of Aboriginal families and parties in the family law system.

It is noted that the Federal Circuit Court of Australia has travelled to remote communities in the Northern Territory including the Tiwi Islanders and the Lands near the WA border to conduct family law court hearings in local buildings (circuits are conducted even when there are no court buildings).

There is not an equivalent in WA despite the significant Aboriginal populations in our state (compared with other states) who live in such communities. Bringing the court to the people is one way of increasing the access to justice and legal assistance to people in Australia regardless of where they live. It is an important step in trying to increase the use of the family law system by Aboriginal families where there are concerns about children to facilitate family and community members intervening to keep such children safe but still in their community and connected to country, culture and community and most importantly out of the child protection system.

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| **Recommendation:** * Consideration be given to introducing community justice centres in WA and in regional towns (similar to the Neighbourhood Justice Centre in Victoria) where parties can attend to get information and legal advice about their matters and if they or their children are in need of protection they can apply for a family violence restraining order and participate in family court parenting orders online at the centre with the support of a case worker and once they have had the benefit of on the spot legal advice.
* Increase funding to ensure that community legal centres, local community services including libraries and recreation centres can include safe and private room equipped with teleconferencing and webcam facilities to enable parties to attend court hearings by electronic means at scheduled times.
* Consider extending the circuits of the Family Court of WA to include more remote and regional communities.
* Increase the training of non-family law magistrates in WA so they can better exercise their family law powers in regional courts outside of when the Family Court of WA travels there on circuit.
* Make it easier for parties to attend procedural hearings by telephone or by electronic means and encourage the use of such means instead of in person attendance especially where there is family violence.
* Where there is family violence and risks of physical safety from a party, consider the Family Court ordering that the perpetrator is to attend a hearing by electronic means.

This would ensure the victim-survivor is not the party experiencing disadvantage, the Court has the ability to observe the victim-survivor first hand ensure they are linked in with the services required for the children, enable the victim-survivor to enter into meaningful discussions with the ICL about the children without being in fear of psychical harm. It would assist the family law system to make perpetrators more accountable for their behaviour and lessen the risk to lawyers and court staff being harmed or increasing their risk of being harmed by a perpetrator who is dissatisfied with an outcome in the family courts.  |

**Making the family law system more culturally safe for….**

**Aboriginal families**

The Family Law Council in 2012 identified a number of barriers experienced by Aboriginal and Torres Strait Islander families, including a lack of access to services that engage in culturally sensitive practice, the lack of a culturally-diverse workforce, and language and literacy issues.

In its 2016 Final Report (FLC Final Report), the FLC noted that its inquiry had received similar proposals in relation to Aboriginal and Torres Strait Islander families as in its 2012 review.

These included measures such as:

• embedding workers from Aboriginal and Torres Strait Islander services in the family courts and Family Relationship Centres as family liaison officers and Aboriginal Liaison Officers;

• working with Aboriginal and Torres Strait Islander communities and organisations to develop and deliver culturally appropriate post-separation parenting programs and family dispute resolution services;

• developing and resourcing tailored education programs about the family law and child protection systems for Aboriginal and Torres Strait Islander communities to enhance understanding of legal rights and awareness of how the family law system works; and

• ensuring ongoing cultural competency training for family law system professionals, including judicial officers, that builds an understanding of the multiple and diverse factors contributing to the high levels of family violence in Aboriginal communities, and an understanding of Aboriginal and Torres Strait Islander family structures and child rearing practices.

WLCWA supports these recommendations.

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|  **Recommendations:**WLCWA supports the National Family Violence Prevention Legal Services Forum recommendations that:* Reforms directly related to Aboriginal and Torres Strait Islander people should be Aboriginal and Torres Strait Islander led and co-designed (to this effect) including those concerning Cultural Reports/plans, Aboriginal and Torres Strait Islander Family Consultants, Aboriginal and Torres Strait Islander Liaison Officers and hearings processes.
* There be adequate funding of culturally safe, Aboriginal and Torres Strait Islander community controlled specialist legal services to assist Aboriginal and Torres Strait Islander women, and victim-survivors of family violence in particular, through the family law system.

This is particularly important given Aboriginal and Torres Strait Islander victim-survivors of family violence often face complex barriers to safely disclosing violence, obtaining support and utilising the family law system. * There be adequate funding of specialist women’s legal services to ensure that Aboriginal and Torres Strait Islander women have a choice of legal services (which is necessary both for clients’ sense of agency and empowerment) and to ensure they can still obtain legal assistance even if there are conflicts of interest in Aboriginal and Torres Strait Islander community controlled specialist legal services.
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**CALD families**

WLCWA agrees with WLSA that any re-development of the family law system should also be guided by an understanding and recognition of diversity.

Recognition of diversity is important to ensuring the system is able to respond to different cultures and family structures effectively and respectfully. The impact of adopting a culture and diversity lens when re-developing the family law system would require consideration of how the following could be achieved:

* all individuals and families could access appropriate and effective services across the family law system;
* that appropriate expert evidence was available to the courts in relation to cultural issues
* a nuanced and inclusive concept of family was adopted in the system.

The FLC in 2012 identified a number of barriers experienced by CALD families, including a lack of access to services that engage in culturally sensitive practice, the lack of a culturally-diverse workforce, and language and literacy issues. These barriers are similar to those which WLCWA has identified form our own experience with clients from CALD communities in WA.

In its 2016 Final Report, the FLC noted that its inquiry had received similar proposals in relation to CALD clients as in its 2012 review.

These included measures such as:

* working with family law service providers and CALD services to develop clear, practical and culturally linguistically appropriate information about the family law system’s services and how to access them which could be disseminated through a wide range of services that may be accessed by CALD clients. In addition, developing family law legal literacy and education strategies and provide information in a variety of community languages.
* ensuring ongoing cultural competency training for family law system professionals, including culturally responsive practice in relation to people from culturally and linguistically diverse backgrounds.
* A range of workforce development strategies to increase the number of CALD personnel working within family law system services
* increasing awareness about a right to an interpreter and training in family law be included in specialist accreditation for legal interpreters

WLCWA supports the recommendations of WLSA in this regard – namely that the recommendations from the FLC’s 2012 report be implemented as well as including CALD services in a court-based integrated services model and case managed integrated services in the family relationships sector; and implementing a process to support the convening of family group conferences for families from CLAD backgrounds in appropriate family law matters.

WLCWA considers that cultural competency training is an important first step to addressing these barriers and consideration should be given to requiring those working in the family law profession to undergo regular cultural competency training (ideally which is subsidised and provided by government departments to ensure that it is consistent with training already delivered in state based family violence and care and protection systems).

Training for family law professionals and family violence and care and protection professionals would also assist in ‘breaking down the silos’ by creating a forum where professionals in these related but in practice very distinct and separate areas of law can meet, build professional relationships, train together and strengthen the ability of the legal profession to provide holistic legal advice and responses.

**Women with disability**

It is the view of WLCWA that there is still attitudes and stereotypes towards women with disability including incorrect, prejudicial and ill-informed assumptions made about their disability and their capacity to parent which can significantly impede access to the family law system for women with disability.

Women with disability who are victim-survivors of family violence tend to experience family violence in additional ways to those without the same disability. It is common for the perpetrator to also be the woman’s carer and tactics which can be used to control the woman include withholding medication, control or restricting access to medical help or ‘gaslighting’ and encouraging a belief in others that their disability means they lack capacity and are unable to understand or think for themselves. They are often more vulnerable because of their reliance on the perpetrator and the unique ways in which violence and control is being exerted onto them.

Unfortunately, more often than not the focus in the parenting proceedings becomes the woman’s ‘disability’ in terms of whether or not she is able to parent rather than the focus being on the perpetration of family violence, the impact of the perpetration of such violence and the best interests of the child. This is particularly concerning when those in the family law (and care and protection system) misconstrue how the women with a disability acts and presents as evidence of impaired cognitive functioning rather than an informed understanding about the nature of her disability and the impacts of trauma on her and how this may be complicated by her disability.

For example, in WLCWA’s experience this has included the Department of Communities (child protection) intervening to remove the children from a women with a disability as they had misinterpreted her behaviour during meetings as signs of aggression rather than making the enquiries to find out the women as a result of an acquired brain injury found it difficult, particularly, when stressed, to control the volume of her voice and other behaviour such as twitching and jerky movements. Other clients with disabilities report feeling as though their reports of family violence are not being believed and they are treated by the system as though they are incapable of understanding what is going on or unable to be a good parent rather than as a person who requires additional support to communicate.

A key way to improve the accessibility of the family law system is through regular disability awareness and trauma-informed and family violence training across a range of disabilities for all involved in the family law system.

**Making the family law system more approachable for all families**

The current family court system and structure is similar to how our legal system has traditionally dealt with commercial law disputes. The rules, physical structure of the court assumes that the parties are like opposed commercial law litigants rather than parties deeply embroiled in highly stressful highly emotive conflicts to determine the most private aspects of their lives and who will continue to have an ongoing role in the life of the other party (in some way, particularly where there are children).

A less formalised court layout would assist to make the family law courts feel more like an environment approachable for parties seeking assistance to determine their private lives. The current layout very much emphasises the adversarial nature of our family law system which tends to escalate conflict and heighten any fear of the parties from engaging with the system. Considering that most of the matters coming before the courts are parties with complex needs and who already experience trauma or another handicap, such an environment is not conducive to reaching early outcomes or to assist people feel they have been heard and treated fairly by the system – regardless of the outcome.

Material in written format on the family law court websites is often not accessible to those with low literacy levels or people with a disability. Alternative formats should be considered, including information available in easy English, in visual format with captioning, in Auslan, and in other languages.

There is also an important role for community legal education in helping people to identify legal issues early and how to get help.

WLCWA and other CLCs working in family violence engage in extensive community legal education activities, including through online webinars for community workers to help community workers identify where there may be legal issues and how to make referrals to legal services as well as face-to-face training.

Further funding is required for community legal centres to continue to run community legal education in relation to family law, family violence and its intersection with care and protection and other systems which benefits not only consumers and court users but strengthens the relationship between the professionals working in family law and related systems with each other and leading to a more holistic service response.

**Less adversarial**

WLCWA agrees with WLSA in supporting the funding of health justice partnerships, and other pilot projects that address the needs of traumatised women and children through holistic, trauma informed and less adversarial processes. Such approaches may not only provide for more effective short and long term solutions, but also assist in identifying the training required for trauma informed practice, and ensure a greater level of understanding into overall court philosophy.

WLCWA would support the funding and resourcing of women’s services, both legal and non- legal, in development of these pilots, which have the potential for long term benefit to the health and wellbeing of women and children, and therefore of the community.

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|  **Recommendation:** * Consider a more relaxed, less adversarial and informal layout to the court rooms (i.e. a circular layout in a room where everyone is on the same level and seated would be more conciliatory)
* Introduce a mechanism by which a CLC is able to view and obtain copies of court documents from matters without needing to be on the court record as acting for that party. CLCs lack the resources to go on the record for clients in every matter and being able to view documents would assist in the assistance CLC lawyers can provide to their clients, particularly when the client’s are in a refuge or temporary housing.
* Increase funding for CLCs, especially for specialist women’s services to facilitate the provision of safe computers and audio-visual equipment technology to enable parties to participate in court hearings more by electronic means from the CLC or other community centre
* Consideration should also be given to making computers available at courts with a court employed staff person to assist people to use the computers and help people file documents, similar to what is available in Centrelink offices. Computers could also be available to the public in other settings, such as community centres or libraries with such computers being regularly screened for surveillance software and being made semi-private.
* Consider the development of online court forms made via an app which can be completed on a mobile phone (noting that in many remote parts of WA it is significantly more common for a person to have or get access to a mobile phone than a computer and there are programs such as the Telstra WESNET partnership which enables CLCs to provide new mobile phones to women experiencing family violence.)
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**B. Parenting Matters**

**Legal Framework for Parenting Matters is too complicated**

The current legislative pathway for determining care arrangements and parenting orders in the Family Law Act 1975 (Cth) (and the essentially mirrored provisions in the Family Court Act 1997 (WA)) are complicated and difficult for people to understand – even with legal representation.

There is a well-entrenched community misunderstanding and public perception that the presumption of ‘equal parental responsibility’ means that both parents have a right to equal time with the child.

WLCWA agrees with WLSA and it is also our experience that men who are violent are attracted to the concept of shared parenting as a means to exert ongoing power and control.

The public perception can also be dangerous as it creates an expectation of fathers that they have ‘a right’ to equal time or that the courts will order equal time. In matters where the father is a perpetrator of family violence this is dangerous as the mother seeking to protect the children effectively starts on the back foot and instead of her position being bolstered by a default legal starting point that the she, if she was their primary carer, remain as their primary carer after separation (unless a court determines it is not in the child’s best interest for that to occur) she is forced to go into significant detail about the family violence (which increases her risk and is re-traumatising) to rebut the presumption.

It is often difficult to prove violence/abuse to the satisfaction of the court because it occurs behind closed doors and usually is denied by the perpetrator who instead often alleges that the:

* victim-survivor has mental health issues and should not believed and/or is a unfit mother;
* that she has intentionally lied about the violence to alienate the children from him; and/or
* that the perpetrator is actually the victim-survivor of family violence in the relationship.

Members of the public generally don’t make a distinction between spending time with orders and issues about who makes ‘major long term’ decisions about the child. A lot of time is spent by lawyers explaining these concepts which for the most part are artificial constructs and which do not reflect how families in life manage and view arrangements for their children.

The time spent by lawyers (when clients can either afford legal representation are lucky enough to get some legal aid funding or are able to see a lawyer at a community legal centre) explaining these concepts and trying to ‘undo’ or change a mindset which has been fixed by this public perception is significant.

It is an exercise which often has to be repeated as clients get caught up in the stress and emotion of the (usually years) of proceedings and leads to increased need for resources both in community legal centres and courts clogged up by family law matters which are not settling (often in part as a result of this public perception/misconception).

Similarly, the concept that both parties have equal shared parental responsibility is not necessarily reflective of the way in which all families in Australia decide issues for the children. For example, for many Aboriginal and Torres Strait Islander families and families from culturally and linguistically diverse (CALD) background it is traditionally the mothers and/or grandmothers who have responsibility for raising the children.

Once the presumption is triggered, the requirement to then follow the pathway of considering equal time, and then if not in the child’s best interests or reasonably practicable substantial and significant time is also somewhat artificial and an additional step which usually only complicates and confuses the clients. It leads to judicial officers taking longer than otherwise would be necessary to deliver their judgements and it often aggravates or triggers hostile and aggressive reactions from a party, especially where the decision is that it is not in the child’s best interest to have either equal or substantial or significant time with the other party due to family violence.

The reality for many parenting matters is that the Court orders a continuation of the primary care arrangement that the family had been doing so as to not disrupt the lives of the children arising from the separation of their parents. A legislative framework which is consistent with this practice would be more logical and match what happens usually in practice.

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| Recommendation:To simplify and make the family law system safer for families , WLCWA suggests the ALRC consider removing the presumption of equal shared parental responsibility from the Family Law Act 1975 (Cth) and Family Court Act 1997 (WA) (“the Acts”).  |

**Family law system is not( but should be) trauma informed: Need for greater understanding of family violence, risk and abuse**

WLCWA agrees with WLSA’s submission that:

* To protect women and children, the family law system must place safety and risk at the centre of all practice and decision-making.
* Current barriers within the system place the lives of vulnerable children at risk and can re–traumatise women who have been victim-survivors of family violence; and
* Children’s safety and wellbeing must be a paramount principle of any redevelopment of the family law system
* When focusing on the issue of children’s safety, it is important to recognise that children’s exposure to family violence cannot be isolated from the family violence perpetrated against their caregivers.[[8]](#footnote-8)

As AIFS identified in 2015, safety risks for children and parents are often not identified within the family law system, and so are not responded to.[[9]](#footnote-9)

**Lack of emphasis in family law of effects of trauma on child hood development**

In the family violence sector, the effects of trauma on adults and children (especially women in the context of them being primary carers to their children) is more widely understood and known that it is in family law. For example, lawyers working in specialist family violence community legal centres or even private lawyers who mainly do children’s matters may be aware of the current findings about the neurological impact on a child’s brain from trauma and that exposure to trauma sets the scene for not only how that child will experience stress, trauma and relationships throughout their life but also determine their physical health and even their life expectancy. Studies suggest that the first 3 years of life are neurologically the most important period for children and emphasis should be given to creating a stable environment with their primary carer so they can create a solid neurological foundation, build and increase their capacity for resilience to better cope with trauma throughout their life – not just their childhood but also as adults.

This is, however inconsistent with the types of orders which tend to be made in parenting matters where there are very young children which emphasise frequent contact with the non-residential parent even where there is family violence and where the handover and contact of the child and their parent causes stress and re-traumatises the primary carer mother.

Similarly, in the family law system harm perpetrated against the adult victim-survivor is not by and of itself considered to be harm perpetrated against the child and the impacts on children exposed to family violence are minimised and considered through the lens of either physical safety (i.e. will he hit the children) or the risk of psychological harm of the children not seeing their father, even where there is significant family violence.

WLCWA agrees with WLSA that the family law system should recognise harm perpetrated against the adult victim-survivor as harm against the child. The significant impacts on children exposed to family violence as outlined in research like the PATRICIA project[[10]](#footnote-10) are not usually explored or well known in family law.

This is another example of an issue arising from the disconnect between family law and the response to family violence in other sectors.

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| **Recommendation:** * Require all professionals working in the family law system, including judicial officers and all court staff, lawyers and anyone engaged in preparing reports in parenting matters in the family law courts, to undergo regular accredited training in family violence, effects of trauma and childhood development.
* Consider introducing a minimum number of training undertaken with related professionals to help foster a multi-disciplinary and holistic response with such training to be subsidised.
* Reintroduce the requirement for all parties to attend as part of their pre-action (or if an application is urgent then after filing) procedure a court conducted Information Session. Expand the content to include information about family violence, effects of trauma on children and their development and parenting styles.
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**Lost in Translation: the Disconnect between the law and its interpretation (the role of social science in family law)**

There is currently a disconnect in the family law system between what the legislation states and what is influencing the actual interpretation and application of the law to the specific cases being heard in the family law courts.

*Attachment theory*

For example, despite not being mentioned in the legislation, attachment theory has in effect dictated how the family law courts and profession interpret the s60CC legislative framework.

Lawyers aren’t experts in this field and therefore are somewhat reliant on second hand commentary about how the results of studies should be interpreted and when relaying this in the context of legal arguments to courts there is a danger that the studies are held out to be (and used by the Court as) evidence that a certain care arrangement should be made for a child even where the circumstances of the children in the study bear no correlation to the circumstances of the children in the case before the Court.

This is despite concerns raised by those in social science fields that the studies behind attachment theory:

* has at its root a European centric understanding of family;

* were based on small studies of families in middle America (USA) from white Anglo-European background;
* are often misused by lawyers and those not familiar with the methodology of the research as evidence of theories which the research authors themselves consider is incorrect.

Some psychologists have argued that the findings of past studies emphasises that children have a primary attachment figure. This is very different from the experience of children and families in non-Anglo European heritage. It is not the experience of Aboriginal families in WA and how they have experienced family life and the rearing of children over the past 60,000 years. A family law system which is intended to be broad and discretionary enough to determine care arrangements for all children in Australia cannot be determined in a de facto manner by reference to extremely western understandings of attachment which may or may not be misused by lawyers in individual cases.

Our legal system is precedent based which creates a culture where legal professionals become conservative and which makes it difficult for the law to keep up with changes in social science. Social science needs to play a role in determine care arrangements for children. However, the current way in which social science is introduced as Court as evidence means that only those parties who can afford expensive legal representation and the additional costs to lead evidence from expert witness’s are able to safely put this evidence before the Court.

There should be increased multidisciplinary training to increase the understanding of lawyers, the Courts and related social science professionals in family law, family violence and care and protection matters of childhood development, effects of trauma and parenting.

*Men’s Behaviour Change Programs*

There is also a danger that arises to families from family law professionals (lawyers and judges) seeking orders for parties to attend certain programs without a detailed understanding (and/or a false belief) about what it taught in the programs. For example, it can be common for matters were there are allegations of family violence for a party to seek an order for the alleged perpetrator to attend a men’s behaviour change program on the assumption or presumption that that person will have more insight into their behaviour and the impacts that it has on their former spouse and children after they have attended. However, MBC differ considerably in their program focus, length and effectiveness.

The limitations of the MBC on offer in Victoria was the result of a lot of focus in the Victorian Royal Commission into Family Violence where concerns were raised about the lack of parenting skills in the programs (they aren’t designed as parenting programs) yet family lawyers were using them in some matters to argue that the perpetrator was taking active steps to address their behaviour and no longer poses a risk to children.

*Too many programs*

There are also a lot of different programs around which are aimed at achieving different outcomes. It can be difficult for lawyers to be aware of or keep up with what is being offered let alone for parties to consider which ones they should attend.

The below case study highlights an issue faced by many of our clients:

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| **Case Study**: This client was a mother of 5 children, the elder 2 from a former relationship and the youngest 3 with her current partner, who was only in Australia on a student visa prior to the relationship. The client had been diagnosed with autism (high functioning) and her two youngest children were also om the autism spectrum and had other special needs. At the start of their relationship, her partner had provided her with emotional support during traumatic experiences (unrelated to him) and he quickly became the person on whom she depended. He bought a house and promised to be a father figure for her children. They then had 3 children together. His promises of a happy family life seemed to be coming true.However over time, his behaviour slowly changed. Bit by bit he started to make it seem like it was her fault if the bills weren’t paid, the mortgage wasn’t paid and the chores weren’t done even though he was in a well earning high income job, continued to live in the house which was in his sole name and chose to travel overseas and spend money on extravagant purchases. What had just been his support of her and the children earlier in the relationship became conditional on her behaviour being acceptable to him.Every argument they had he made it seem like it was her fault. He blamed her autism on her not understanding and made it seem like what she had done would have produced that response from anyone. She struggled to understand how to not ‘make him angry and hit her’ - even when he physically struck her including while she was pregnant, harmed the children on multiple occasions including by driving off with the children hanging out of the car and then pushing them out of the moving vehicle. He also actively encouraging her to commit suicide. She felt she had no option but to deposit all of her savings (she had before the relationship) and her income (Centrelink) into his account to pay the mortgage for the house so she and the children had somewhere to live. Her elder children who had their own jobs were giving him money for his own personal loans for fear of what he would do to their mother if the money wasn’t there. By the time this client sought legal assistance from our community legal centre she already had had the police attend to her house on more than 80 occasions and the Department of Communities was already involved. She had even commenced family law property settlement proceedings in an effort to try and gain some financial independence which she saw as an essential requirement if their relationship was going to survive. He kept agreeing to transfer the house into their joint names on certain conditions, including her behaviour towards him as well as withdrawing her family law applications against him before he would agree to sign anything. Despite this, she and her partner were still together and trying to make it work. She had attended programs at an agency like Relationships Australia in the hope that by attending counselling her partner would recognise the effects of his behaviour on her and the children and change.Unfortunately, in this matter the counselling program the partner attended was not one where the counsellor was sufficiently trained or experienced in family violence. The client has entered the program hoping it will provide her partner with an opportunity to hear from someone else that his behaviour is unacceptable and dangerous for the children hoping her partner would then change his behaviour and obviate the need for the relationship to be terminated and to keep the family together. However, the client’s experience was that the counsellor in effect increased the risk to her and the children by encouraging both she and her partner to take responsibility for his violence behaviour which then justified and bolstered the attitude of the partner and increased his violence towards her. For our client she felt like the same system which she turned to in need of help and intervention for her and the children had turned against her and was in effect using the same ‘gas lighting’ and victim-survivor blaming techniques her partner had used against her. Outside the context of family violence this type of counselling may be acceptable, however, within the dynamic of a family violence relationship this type of behaviour is extremely dangerous as it serves as justification for the behaviour of the perpetrator and verifies their point of view that it is ultimately the victim-survivor’s fault for the violent behaviour of the perpetrator. In this matter, the client attempted suicide several times in the months after this and is facing the prospect of being homeless (as the partner has stopped paying the mortgage) and her children being removed from her care by the Department.  |

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| **Recommendation:** * Introduce a system of accreditation or categorisation whereby all programs offered by agencies such as Centrecare, Anglicare and Relationships Australia can be easily identifiable in terms of who they are suited for and what they aim to teach and include this information on the family law court’s websites.

This could include the use of standardised terms to describe such programs regardless of the individual agency providing the service.  |

**Lack of Perpetrator Accountability in family law**

Inquiries such as the Victorian Royal Commission into Family Violence have highlighted the need for the response to family violence to focus on perpetrator accountability instead of tending to focus on the behaviour of the victim-survivors.

There is a growing disconnect between the response to perpetrators in the family violence system to how they are treated in the family law system. For example, in Victoria it is now compulsory for a family violence magistrate hearing an application for an Intervention Order to include children on the application as there is a legal presumption that children exposed to family violence are at risk and in need of protection.

Yet in family law, it is still assumed that those same perpetrators will be able to seek orders requiring their children to live within a certain distance from their home, to spend time with and communicate with them. The de facto onus is on the victim-survivor of the family violence to prove to the Court why the orders she is seeking is for their protection, rather than operating from a presumption that where there are allegations of family violence the onus should shift to the alleged perpetrator to demonstrate that their behaviour is not family violence and that otherwise the orders sought by that parent are in the child’s best interest.

Women who do face concerns (even though they often are increasing the risks to them and their children from voicing their concerns) are often faced with allegations that they are alienating the children.

The focus needs to be on the perpetrators and not the victim-survivor.

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| **Case Study** The mother in this matter was originally from China and had met the father when she was 35 years old (he was 65 years old) when he was travelling in China. They came back to Australia and had 3 children together, who were 7, 5 and 2 years old over 8 years. During the relationship, the father controlled all of the family finances. The role of the client was very much the stay at home mother. The father restricted her ability to meet new people, make friends, learn English. They had arguments from time to time which often resulted in furniture being destroyed or physical assaults including her account of him choking her, punching her in the face and pulling out her hair. He claimed she was crazy and made her think she was crazy (gas-lighting techniques). He often accused her being unfaithful to him and that he was not the real father of their children.Despite being retired he did not assist with the care of the children and had little interest in them, choosing to spend his time with his friends (who were also retired) playing golf, fishing and other activities. The father ended up brining a young Philippine woman home one day and told the client that she was his new wife and that the client had no choice but get used to it. The mother then fled with the home with the parties’ 3 children to a family violence refuge in the city. The father remaining living in the family home some 60 kms away.The father filed family law proceedings seeking orders for him to spend more time with the children. He wanted the children to spend up to a week at a time with him, even though the youngest was only 12 months old and had never been more than a few hours away from the mother who had been the children’s primary carer and with them every day of their lives and that he was now living with someone who was total stranger to the children and didn’t speak the same language. The mother raised her concerns about the father’s violent behaviour and derogatory attitude towards women with the court but her experience was that she felt the Court minimised her concerns and didn’t take them seriously. She continued to raise them. Throughout the proceedings the father has asserted that he is the victim-survivor of family violence from the mother that she is mentally and emotionally unstable and unfit to care for their children. A single expert witness was appointed, unfortunately, instead of limiting his report to the terms of reference the single expert seemed to take on the role of the judge in the matter and made many comments which appear to be colluding with the perpetrator.For example, the report made comment to the effect of: * While speaking about the incidents [of family violence] the mother appeared angry and hostile towards the father, rather than anxious or fearful about him as I’d expect her to be if her version of the event was true.
* He found the fact that the children were quietly sitting with the father on one occasion to be inconsistent with the mother’s account of his violent behaviour.
* He found that the fact the children had not disclosed violent behaviour from their father as evidence of the fact that the violence must not have occurred as the mother has portrayed.
* Drawing adverse inferences from the mother’s now negative opinion of the father and focusing on the effect of this on the children’s perception of their father rather than focusing on the father’s violent behaviour and the likely effects this may have on the children.
* This is compared to the same expert not drawing any adverse inference about the father from the father stating in his Form 4 Notice of Risk that the mother’s mental health posed a risk to the children but then consenting to the children living primarily with her.
* The prospect of the father making this allegation as a further means of using the system to perpetrate violence does not seem to have even considered by the expert.
* The client trying to record handover for her own protection (following the previous handover in which the father assaulted her by shoving her away to get the children) as an action which was inconsistent with the ‘actions of an alleged victim-survivor of violence.’
* The mother displays a strong protective streak in her attitude to parenting. Her perception of risk from the father “seems to be founded on insufficient evidence in my view” to warrant the mother taking the actions which she did to limit their time with the father.
* The mother is prone to be oversensitive to the risks the children face from their father and her perception of risk significantly compromise her parenting.
* Despite stating her considered the children weren’t at risk in the care of either parent he went on to say that he ‘found’ that the children are significantly more likely to suffer harm in her care than his because of [his] concern that the mother unnecessarily influences the children’s perceptions of their father as an abusive character.
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WLCWA agrees with the WLSA submission that there needs to be better recognition that coercive and controlling behaviour can continue and can escalate post separation and that opportunities to spend time with children can provide the means to continue perpetrating such abuse, which in extreme cases can result in death.[[11]](#footnote-11)

**A man with a history of violence to the mother of his children is NOT a good father**

It is the view of WLCWA that the current family law system perpetuates the idea (and in doing emboldens family violence perpetrators) that is at odds with the concept that a

 man with a history of violence to the mother of his children is or can be a good father.

WLCWA strongly agrees with the WLSA submission that more needs to be done to ensure that the family law system realises that *‘maintaining relationship between children and abusive fathers is likely to be harmful unless the abusive behaviour ends’.*[[12]](#footnote-12)

As outlined in more detail in the WLSA submission, this is consistent with findings in inquiries in other jurisdictions, for example, Lord Justice Wall said in response to the first report by Women’s Aid cataloguing 29 children’s homicides[[13]](#footnote-13) in England and Wales from 1994-2004 in the context of formal and informal contact arrangements with their father who had perpetrated family violence:

*It is, in my view, high time that the Family Justice System abandoned any reliance on the proposition that a man can have a history of violence to the mother of his children but, nonetheless, be a good father.[[14]](#footnote-14)*

If the family law system sends the message that a violent man can be a good father, then it is the view of WLCWA that the family law system will increase risk to victim-survivors of family violence and their children and be in and of itself a vehicle for systems abuse by perpetrators.

**Dangers of Elevation of single expert and family reports to settlement documents**

A single expert or family consultant’s report can be extremely valuable in assisting the parties come to a resolution of their matter outside of court and/or to assist the parties gain an insight into a care arrangement that is in the best interests of their children. This is in part due to the significant weight the parties and the Court place on the reports.

It is the experience of WLCWA that in many of our clients family law matters, the single expert reports go beyond evidence in relation to the children and their relationship with each parent and step into the role of the judge.

This is dangerous particularly when the single expert is not sufficiently trained in family violence and misinterprets (or not even be open to the idea that) the way the victim-survivor presents as symptoms of the effects of trauma arising from family violence (and evidence of family violence rather than as evidence of the mental health concerns being used by the perpetrators to minimise her concerns. In cases where this happens it is important that the reports don’t mirror the same gas lighting techniques used by many family violence perpetrators and lead to systems abuse.

Reports like this embolden the perpetrators who use it as justification for his position which put the mother and children in more danger as his harassing and aggressive behaviour towards them increased. They place undue pressure the party alleging family violence into agreeing to an outcome which may not be in the child’s best interest and bolster the attitude of the family violence perpetrator who receives justification from the system (which they usually are better at understanding and manipulating the system than their victim-survivors).

It takes resources to obtain single experts’ reports and then to challenge them in cross-examination if they go beyond the expertise of the expert. This is simply too much for many victim-survivors of family violence who don’t have legal representation.

Without legal representation at trial, the mother as a self-represented litigant without legal aid funding would be required to lodge objections to the evidence and cross-examine the single expert witness about the report or risk the opinions of the expert influence the outcome at trial. Irrespective of the outcome at trial, the report compromised the ability of the parties to negotiate a safe outcome as it made the mother think that the family law system was not hearing or validating her concerns about the safety of the children.

The only way by which the women in such a scenario as the case study is able to challenge the findings of the report is to at trial object to those parts of the report on the basis that it opinion evidence outside the expertise of the witness and/or to cross-examine the single expert.

To do it effectively requires:

* The matter to actually get to a trial
* The party to have a solid grasp of the English language,
* a comprehensive understanding of the law and legal concepts such laws of evidence and the procedure for cross-examination
* quick wit to be able to understand what is required how the questions are being answered while thinking of your next question
* A comprehensive understanding of the dynamics of family violence to be able to challenge the parts of the report where the single expert has sought to ignore the fact that victim-survivors of family violence do not always appear as withdrawn and quiet (the stereotyped victim-survivor) and can be angry and the lack of consideration by the single expert that the mother’s account of family violence may be true (and if so that her protective behaviour towards the children are positive actions increasing the safety of the children rather than being used against her in a negative way).

It takes junior lawyers years to perfect their knowledge and skills to do this well. Yet the current family law system requires the same conduct from parties when they don’t have legal representation.

This is despite the findings of the Australian Institute of Family Studies in the Families with Complex Needs enquiries that over 95% of the matters being determined at trial in the family law courts are parties with two or more complex needs (and who require additional assistance).

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| **Recommendation:** * Any professionals writing reports for the family law courts (including family consultants and single expert witnesses) be required to have undertaken regular accredited family violence training including in the dynamics of family violence, risk assessment and trauma informed practice.
* More opportunities for cross-sector training of all professionals in the family law system in relation to family violence, social science principles such as risk assessment and trauma informed practice.
* Establishing a national accreditation and monitoring scheme for family report writers (court consultants and private experts) with mandatory training in family violence, child abuse and trauma informed practice, cultural competency and disability awareness.

WLCWA endorses NFVPLS recommendation for employment of Aboriginal and Torres Strait Islander Family Consultants within family law courts and processes and procedures initiated to ensure that all efforts are taken to ensure that, wherever possible, an Aboriginal or Torres Strait Islander Family Consultant is appointed in a case involving an Aboriginal or Torres Strait Islander child(ren). Noting these consultants should also have expertise in family violence and the complex barriers faced by Aboriginal and Torres Strait Islander victim-survivors, particularly women.  |

**Don’t force matters through to a final hearing**

The length of time for a parenting matter to be determined through the Family Court of WA can be 1-4 years.

During this time, it is natural and inevitable that changes will occur to the parties’ families and care arrangements for the children. It is common for matters to be hotly contested up until an interim hearing and for the parties to then settle into a status quo thereafter.

It can be unfortunate that this is a time when the tension and conflict between the parties escalates when they receive notice from the Court that their matter has finally been listed for a Readiness Hearing.

Where parties are close to negotiating an outcome, that process can be hampered by the Court requiring them to file their trial material and attend court.

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| **Case Study: Parenting Only Matter** In this matter, the parties had a brief relationship and never lived together. The client had been the primary carer for the parties’ child from birth to the age of 12 at which time both she was charged with an offence and imprisoned for 4 years. She and the father (who had himself just been released from prison) agreed informally that the child would live with him until her release. While imprisoned, he commenced court proceedings seeking orders for the child to live with him and that he have sole parental responsibility. Their matter went on for 2 years in the family court. By the time of the first Readiness Hearing the parties had agreed that the father have sole parental responsibility while the child was living with him and that the arrangement for the child to be reviewed once the mother was released (which would be when the child was 16 years old).The parties were negotiating directly about the wording of orders which provided for how the arrangement would be reviewed. These negotiations were hindered by the Court continuously relisting the Readiness Hearing which created unnecessary pressure on the parties, particularly as the father had private legal representation and perceived he had to pay significant legal costs when there was no urgency given the mother was imprisoned. Instead of just making interim orders for parenting and otherwise adjourning the hearing until after the mother’s release from jail (which was 12 months away from the second Readiness Hearing) the Court kept relisting the Readiness Hearing and insisted that the matter be prepared for trial (which neither party wanted) just to determine the mother’s final orders sought that the matter be adjourned until after she was released. ‘To force parties into the cost and stress of preparing trial affidavits just to argue whether or not there should be an adjournment is not an effective use of court resources and ignores the fact that the role of the family law courts should be to assist parties resolve their disputes and not be the cause of their conflict. In this case, the matter could have resolved more quickly by the Court adjourning the matter generally with liberty to either party to relist and if no written request to relist was received within 6 months of the mother’s release from prison the matter be dismissed with no orders as to costs.   |

The process of attending the Readiness Hearing itself is not the issue as this can be beneficial to the parties reaching a resolution. The issue is more the requirement to have completed your trial material as it is very common for one party to ‘pretend’ to be negotiating when they are actually preparing for trial and for the other party not to have prepared their trial material believing the matter is close to settling.

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| **Recommendation:** * Consideration be given to a mechanism whereby parties are able effectively ‘pause’ their parenting matter when both parties consent to allow time for them to negotiate an outcome. The ‘pause’ could be for a maximum period, at the end of which their matter if neither party has written to the Court to request the matter be listed for a Readiness Hearing then the applications are dismissed by the Court.
* Consideration also be given to a procedural hearing like the Readiness Hearing but without requiring that the parties have filed their trial material to provide another opportunity for the parties to be prompted into further action to progress their matter.
* Where a matter needs to be dealt with on an interim basis but adjourned for a long period (e.g. to allow for an event, such as the release of the former primary carer from jail) that this be accommodated by the final orders application being adjourned until after that time without the need for there to be a trial to determine this adjournment.
* Consider including a requirement for parties to file an updated document outlining their legal arguments of the case (similar to a Conciliation Conference Particulars) and their current position in terms of outcome for the Readiness Hearing but not requiring the filing of trial affidavits until a certain time period prior to trial.
* Develop a FDR and an ADR model in which parties experiencing (or at risk of) family violence can safely participate.
* Require all FDRP’s to undertake compulsory and ongoing family violence training.
* That in all cases involving dependent children, a family consultant with specified family violence training who is embedded within the court registry undertake a risk assessment with respect to child safety and provide recommendations in relation to interim care arrangements for children.
* Where family violence is alleged or identified, that a referral of any adult affected family member be made to an embedded family violence support worker within the court registry.
* Where the affected member is Aboriginal and/or Torres Strait Islander, a referral should be made to a specialised and culturally safe legal service such as a FVPLS.
* That following receipt of such a referral, the family violence support worker undertakes a risk assessment in relation to the adult affected family member(s), assisting her in preparing a safety plan, and making further referrals as necessary.
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**C. Family violence and family law financial matters (property settlement and maintenance)**

**Introduction**

In a family law matter, family violence concerns tend to be raised in parenting matters but not in property settlement and financial aspects of even the same matter.

The overly complex, procedural and legalistic nature of family law system has created one system for the wealthy (who can afford legal representation) and for those who cannot or who consider it is not safe to pursue their legal rights in the family law courts, their only recourse is to seek relief in consumer law, including relief from debts of the perpetrators.

Financial matters tend to be seen as ‘separate’ notwithstanding the definition in the family law act that includes financial abuse in the definition of family violence. This leads to a failure to give proper consideration to family violence in considering just and equitable settlements, both in terms of the trauma suffered by the victim-survivor, the subtleties of long term economic abuse in the relationship and the lasting effect of failure of such recognition.

Here are some practical measures that might improve the situation:

**Making spousal maintenance more accessible**

Most of WLCWA’s clients are women who have experienced family violence and who lack the means to finance legal representation. Most appear to have claims for spousal maintenance yet lack the financial resources to be able to produce the evidence (usually from a non-disclosing spouse who is also perpetrating financial abuse) to be able to successfully run their argument. Even where they are successful in obtaining orders for spousal maintenance, there are usually issues with contravention and the current system by which family law court orders are enforced are time consuming and ineffective.

A solution may be to treat spousal maintenance claims similarly to how child support applications are now processed to remove the burden from individual parties to pursue a private claim through the courts and make the process more simple, administrative (rather than legal) but retaining legal mechanisms by which to challenge and review such decisions.

A child-support like system whereby parties can more easily lodge a claim for spousal maintenance with an agency who has access to information including the respondent’s tax information and who has the power to garnish wages etc to repay what becomes a debt to the state where it is determined a party is legally required to support anot

her.

**Increase effectiveness and value of Conciliation Conferences and Active Case Management**

Conciliation conferences can be an extremely useful way of resolving matters when:

1. There is sufficient time available for the Registrar to convene the conference; and
2. Both parties have prior to the conference complied with their disclosure obligations and
3. Completed their Conciliation Conference Particulars (so both parties know the legal position of the other party)

Over the past 3-4 years in WA, Registrars are having too many conferences scheduled at once which limits their effectiveness.

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| **Recommendations:** * There be further funding for Registrars so they can conduct Conciliation Conferences for a minimum of a 2 hour period per matter.
* Consideration be given to a cost recovery model whereby parties over a certain income level are ordered to contribute towards the cost of the conference (when the matter does not settle at the conference or within 21 days thereafter).
* Consider the introduction of a diversion system whereby the family law courts have the power to require parties to undertake mediation or other form of ADR. This could be for matters where the Court considers there has not been a genuine attempt and pre-action resolution of proceedings and prior to their matter being listed for directions for trial.
* Judicial officers consider the implementation of the listing of compulsory judicial conferences for complex matters that are likely to take more than 4 days[[15]](#footnote-15).
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| **Case Study:** **Financial Matter** In a matter where the client had been the victim-survivor of extreme family violence, including active encouraging of the client committing suicide, choking, punching while the client was pregnant over many years, the client had commenced family law property proceedings in an attempt to seek some financial independence. For her to do so was putting herself in danger as the more the perpetrator perceived he was losing control the more he sought to inflict harm over the client. WLCWA formed the view that the client had claims for spousal maintenance, child support and a part property settlement and that she could argue that she retain all of the equity in the family home (the main asset) on the grounds of justice and equity but this would require a complicated argument in which claims of lump sum spousal maintenance and child support would be needed to strengthen her claim to retain the house. However, we also formed the view that if the client were to pursue these claims as identified by us that her partner may perceive that he if he lost ‘his’ house that he may feel he has nothing left to lose and then would be more likely to carry out his threats to ‘take out’ her and the children. All that the client wanted was for the house on an interim basis to be transferred from his sole name to their joint names to act as a de facto ‘bond’ or incentive for him to behave (i.e. not be violent to her or the children) whilst also giving her and the children some protection if he were to stop paying the mortgage. It took 6 months from the time she commenced proceedings to the time an interim order was made allowing her to even stay in the house. Each time the matter was delayed to allow further time for the parties to file additional affidavits about more recent family violence incidents (which kept happening and were increasing while the proceedings were on foot). In this matter, the Court kept listing the matter for interim argument even listing it for a 2 hour argument when the Court knew the client was self-represented and would be 8 months pregnant at the time of the hearing. Being heavily pregnant with a high risk pregnancy, the client was unable without legal representation to pursue her interim financial relief options even though all she was seeking was that her partner pay for the mortgage and expenses for the house that was his in sole legal name and was housing his children. There needs to be a more simply straightforward way to achieve this and one which puts the focus and onus on the perpetrator and not the victim-survivor. |

**Training of the family law profession**

The AIFS showed that 97% of matters in the family law courts were families with complex needs.

Yet, there is no mandatory training required of lawyers representing clients in family law proceedings to have undertaken any family violence training.

Too commonly, lawyers, judges and single expert witnesses who aren’t sufficiently trained in the dynamics of family violence inadvertently collude with the perpetrators or minimise the family violence which creates dangerous situations for women and children.

In cases of extreme family violence, women are risking their lives and that of their children’s to even come forward to disclose the violence. When the system responds to this by colluding with the perp, minimising their concerns the system in and of itself is silencing the women and sending them the message that their concerns aren’t real, aren’t recognised.

**Financial ramifications of divorce – women’s long term financial hardship**

WLCWA agrees with WLSA that gendered issues, including the division of paid and caring labour, unequal and gendered remuneration practices in the community and the greater impact of family violence on women as compared to men, must be recognised and effectively responded to within the family law system to ensure fair outcomes. Research tells us that women are at greater risk of poverty than men, and women are more at risk of post-separation financial hardship.[[16]](#footnote-16)

Addressing the systemic failures that cause complexity, delay and cost will significantly improve the overall financial situation of women post separation.[[17]](#footnote-17) Reform to existing provisions dealing with property matters, and including a specific requirement for courts to consider family violence in property disputes (as discussed below) would also assist in this regard.[[18]](#footnote-18)

In relation to promoting fair outcomes, research has consistently shown that family violence *‘significantly contributes to poverty, financial risk and financial insecurity for women, sometimes long after they have left the relationship’*.[[19]](#footnote-19) Research by ANROWS in 2016 suggested that a woman who was subjected to family violence over an extended period (i.e. at multiple points over the three year study) was more likely to experience adverse economic outcomes, including a decreased likelihood of being in paid employment.

For women experiencing disadvantage, the risk of poverty, homelessness and ongoing financial insecurity is heightened by the lack of fast, affordable pathways to resolve family law property disputes. Many women are simply walking away from their entitlement to a fair division of property.[[20]](#footnote-20)

WLSA has previously recommended[[21]](#footnote-21) that the FLA be amended to include a requirement for an early resolution process in small claim property matters. This process should be a case management process upon application to the Court for a property settlement rather than a pre-filing requirement.

As noted previously, WLSV’s recently launched a report titled *Small Claims, Large Battles*. The report detailed findings of the Small Claims, Large Battles project which investigated the barriers to fair financial outcomes in the family law system for vulnerable and disadvantaged women, many of who had experienced family violence. Free legal representation was provided to 48 women. The report made 15 recommendations for reform to law and policy to improve access to fair property settlements for disadvantaged women.

The recommendations focus on:

* Streamlining court processes
* Improving financial disclosure
* Superannuation
* Dealing with joint debts
* Responding to family violence
* Improving access to property settlements

WLCWA supports these recommendations.

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| **Recommendation:** * That family violence be a factor which the court must specifically take into account when determining a just and equitable property settlement entitlements.
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**Family Law and consumer law relief**

For parties who cannot afford to fund legal representation or for whom pursuing their own family law matter through the courts is not safe or a possibility, often their only legal recourse is to consumer law to relieve them from debts incurred as a result of the financial abuse and family violent relationship.

This has created ‘one system for the rich’ (i.e. the family law system) and another ‘for the poor’ (consumer law relief) which is illogical when you consider that the parties involved and the facts of their matter are the same.

Without assistance from a non-legal support worker, including financial counsellors, parties who can’t pursue their rights in the family law courts end up trying to negotiate with service providers individually and directly to seek relief from debts and financial liabilities that were incurred by the perpetrator.

If the court users had access to a government funded financial counsellor trained in family violence (assessment, dynamics and trauma-informed practice) the family law courts could be better be able to hold perpetrators to account by requiring they be liable for the financial consequences of their financial abuse of the other party. This would lessen the extent to which service providers are writing off these debts or alternatively pursuing the family violence victim-survivor for them (which is a contributing factor to the long term poverty of women experiencing family violence and lessens the extent to which they are able to become financial independent of government support as they age and into retirement).

**Conclusion**

The WLCWA notes with concern the disadvantage to women that is already inherent in the community. An unequal and gendered financial disadvantage exists. Mothers and – more frequently – grandmothers are more often the main caregivers of children and are, as such already unrecognised and under-rewarded. All women are greatly overrepresented as victims of family and domestic violence (FDV), with Aboriginal women particularly so. In our experience, far from assisting women during the trauma infused time of separation current court practices result in further trauma and often serious long term disadvantage.

WLCWA is particularly concerned that the current system re-traumatised victims of FDV through overly cumbersome and convoluted procedures, and a failure to utilise trauma informed practice methodology or ensure that professionals are trained in FDV and trauma. Both children’s and financial processes are easily misused by perpetrators, and proceedings themselves can place both women and children at risk. The effects of FDV are not taken into account when making settlements, and many women do not get their rightful entitlements. Many women and children remain at risk in the aftermath, with long term adverse effects on wellbeing.

All the above are augmented where women have poor literary skills or other disadvantage such as a disability or mental health issues. The system is extremely hard to navigate for Aboriginal and CALD women through a failure to recognise diversity or to employ culturally appropriate practices. Finally, WLCWA shares the concerns of WLSA about the absence of any reference to women in prison, who risk family disintegration through poor or non existent child contact processes, unchecked stigma and a resulting risk of reoffending.

WLCA is concerned that to compound matters, women frequently frequent lack of legal representation available to women, who often cannot afford a private lawyer. Insufficient funding for both legal aid and assistance through Community Legal Centres have left many women attempting to navigate the system unassisted, from a misunderstood vantage point of trauma and substantial disadvantage.

WLCWA recognises that the above issues are complex and not capable of a simple resolution.

We propose, however, that a simplification and streamlining of processes, proper training, further research and the establishment of well-planned pilot projects could be a start to achieving justice and equality for women in the Family Court.

To this end, women’s legal services should be properly resourced and funded, not only to provide safe and specialist assistance to women in their unique circumstances, but also to work with Government and agencies towards effective solutions.

This is essential not only to justice for women but also for the social and therefore economic wellbeing of the community.

**Endorsement and Support for Other Recommendations and Proposals**

1. **Women’s Legal Service Victoria “*Small Claims, Big Battles” - 2017[[22]](#footnote-22)***

Women’s Legal Service Victoria (WLSV) has recently published a report *Small Claims, Big Battles* which makes 15 recommendations for reform to improve access to fair property settlements for disadvantaged women.

WLCWA endorses these recommendations.

1. **Productivity Commission – 2014**

WLCWA supports the recommendation by WLSA (and others) that theAustralian Government, working together with the state and territory governments, implement the Productivity Commission’s 2014 recommendation for increased legal assistance funding;

* in particular, that the Australian, state and territory governments make $200 million additional annual funding (on 2014 levels) available to all legal assistance services, comprising: CLCs, including specialist women’s legal services and programs; Family Violence Prevention & Legal Services; Aboriginal and Torres Strait Islander Legal Services; and Legal Aid Commissions. This increase in funding should comprise specific increases in funding for family law matters;
* that the Australian Government encourage Legal Aid Commissions to amend their funding guidelines in family law to promote greater access to legal aid for women who are victim-survivors of family violence; and
* that the Australian Government implement and fund a national legally assisted family dispute resolution program appropriate for family violence cases that is supported by specialist family violence and trauma-informed lawyers and family violence and trauma-informed FDR practitioners. The role out of this program should be preceded by a legal needs analysis, to inform the Australian Government as to the scope of the service required to meet legal need..
1. **WLSA Ban on Direct Cross-examination by perpetrators**

WLCWA supports WLSA’s recommendations and advocacy that limits on cross-examination by alleged perpetrators of violence and the victim-survivor having to directly cross-examine their abuser be introduced by way of amendments to the *FLA* and corresponding legislative amendments to the *Evidence Act (WA*).

1. **Women’s Legal Service NSW - *Sense and Sensitivity: Family Law, Family Violence and Confidentiality***

WLCWA supports the recommendation made in WLS NSW’s report which discusses the need for family law professionals to commit to adopting victim-survivor centric practices which should include guidelines for seeking least intrusive forms of evidence first.[[23]](#footnote-23)

This would acknowledge that improving responsiveness to victim-survivors of family violence includes preserving therapeutic relationships.

1. **WLSA Submission to ALRC Family Law Review**

WLCWA is supportive of the recommendations in the WLSA submission to this Review. As a member, WLCWA has contributed to the submission but notes that the experience in WA arising from our state Family Court of WA is different and that WLCWA considers there are significant benefits to retaining a state family court, including but not limited to the ability to provide a more holistic response to family violence, care and protection (state law systems) and family law.

1. **Domestic Violence Legal Worker’s Network (DVLWN)**

WLCWA endorses the recommendations of the DVLWN in their submission to the ALRC Family Law Review.

**Acknowledgments**

The WLCWA wishes to thank Sarah Bright, Principal Legal Officer of WLCWA, for drafting the submission on behalf of WLCWA.

**Further Information**

WLCWA has prepared this submission on the basis that will be made public (i.e. it is not confidential) and we have no objections to our submission being uploaded on the website.

If you have any queries in relation to this submission please contact Sarah Bright, Principal Legal Officer of WLCWA at sarahb@wlcwa.org.au or Carrie Hannington, Senior Executive Officer of WLCWA at carrie@wlcwa.org.au or our office generally on (08) 9272 8800.

Yours Sincerely



Carrie Hannington

Senior Executive Officer

Women’s Law Centre of WA (Inc)

**Annexure “A”**

**ALRC Family Law Review: Summary of Recommendations**

1. Abolishing the requirement for formerly signed and witnessed forms in the family court (unless specifically ordered by a judicial officer) and replacing them with “Statements of Truth”.
2. Reducing the number of forms required to commence family court proceedings[[24]](#footnote-24).
3. Incorporating into the form of application, template orders[[25]](#footnote-25).
4. Simplify the Financial Statement (recognising it is extremely confusing for clients who don’t have legal assistance).
5. Consider establishing ‘family financial reports’ in family law financial matters:
	1. (similar to the process in parenting matters).[[26]](#footnote-26)
6. Introducing standardised language across all family law courts for court procedures which is available on the court website for parties to view[[27]](#footnote-27).
7. Ensuring all court forms include numbers (e.g. Form 4 Notice of Risk) so parties can understand what is required of them from the orders made[[28]](#footnote-28).
8. Simplifying and relaxing the requirements for service of documents and/or creating a system whereby in family violence matters the police are able to serve family law initiating applications which seek orders in relation to children.
9. Consideration be given to introducing community justice centres in WA and in regional towns (similar to the Neighbourhood Justice Centre in Victoria) where parties can attend to get information and legal advice about their matters and if they or their children are in need of protection they can apply for a family violence restraining order and participate in family court parenting orders online at the centre with the support of a case worker and once they have had the benefit of on the spot legal advice.
10. Increase funding to ensure that community legal centres, local community services including libraries and recreation centres can include safe and private room equipped with teleconferencing and webcam facilities to enable parties to attend court hearings by electronic means at scheduled times.
11. Consider extending the circuits of the Family Court of WA to include more remote and regional communities.
12. Increase the training of non-family law magistrates in WA so they can better exercise their family law powers in regional courts outside of when the Family Court of WA travels there on circuit.
13. Make it easier for parties to attend procedural hearings by telephone or by electronic means and encourage the use of such means instead of in person attendance especially where there is family violence.
14. Where there is family violence and risks of physical safety from a party, consider the Family Court ordering that the perpetrator is to attend a hearing by electronic means. This would ensure the victim-survivor is not the party experiencing disadvantage, the Court has the ability to observe the victim-survivor first hand ensure they are linked in with the services required for the children, enable the victim-survivor to enter into meaningful discussions with the ICL about the children without being in fear of psychical harm. It would assist the family law system to make perpetrators more accountable for their behaviour and lessen the risk to lawyers and court staff being harmed or increasing their risk of being harmed by a perpetrator who is dissatisfied with an outcome in the family courts.
15. Reforms directly related to Aboriginal and Torres Strait Islander people should be Aboriginal and Torres Strait Islander led and co-designed (to this effect) including those concerning Cultural Reports/plans, Aboriginal and Torres Strait Islander Family Consultants, Aboriginal and Torres Strait Islander Liaison Officers and hearings processes.
16. There be adequate funding of culturally safe, Aboriginal and Torres Strait Islander community controlled specialist legal services to assist Aboriginal and Torres Strait Islander women, and victim-survivors of family violence in particular, through the family law system. This is particularly important given Aboriginal and Torres Strait Islander victim-survivors of family violence often face complex barriers to safely disclosing violence, obtaining support and utilising the family law system.
17. There be adequate funding of specialist women’s legal services to ensure that Aboriginal and Torres Strait Islander women have a choice of legal services (which is necessary both for clients’ sense of agency and empowerment) and to ensure they can still obtain legal assistance even if there are conflicts of interest in Aboriginal and Torres Strait Islander community controlled specialist legal services.
18. Consider a more relaxed, less adversarial and informal layout to the court rooms (i.e. a circular layout in a room where everyone is on the same level and seated would be more conciliatory)
19. Introduce a mechanism by which a CLC is able to view and obtain copies of court documents from matters without needing to be on the court record as acting for that party. CLCs lack the resources to go on the record for clients in every matter and being able to view documents would assist in the assistance CLC lawyers can provide to their clients, particularly when the client’s are in a refuge or temporary housing.
20. Increase funding for CLCs, especially for specialist women’s services to facilitate the provision of safe computers and audio-visual equipment technology to enable parties to participate in court hearings more by electronic means from the CLC or other community centre.
21. Consideration should also be given to making computers available at courts with a court employed staff person to assist people to use the computers and help people file documents, similar to what is available in Centrelink offices. Computers could also be available to the public in other settings, such as community centres or libraries with such computers being regularly screened for surveillance software and being made semi-private.
22. Consider the development of online court forms made via an app which can be completed on a mobile phone (noting that in many remote parts of WA it is significantly more common for a person to have or get access to a mobile phone than a computer and there are programs such as the Telstra WESNET partnership which enables CLCs to provide new mobile phones to women experiencing family violence.)
23. To simplify and make the family law system safer for families, WLCWA suggests the ALRC consider removing the presumption of equal shared parental responsibility from the Family Law Act 1975 (Cth) and Family Court Act 1997 (WA) (“the Acts”)
24. Require all professionals working in the family law system, including judicial officers and all court staff, lawyers and anyone engaged in preparing reports in parenting matters in the family law courts, to undergo regular accredited training in family violence, effects of trauma and childhood development.
25. Consider introducing a minimum number of training undertaken with related professionals to help foster a multi-disciplinary and holistic response with such training to be subsidised.
26. Reintroduce the requirement for all parties to attend as part of their pre-action (or if an application is urgent then after filing) procedure a court conducted Information Session. Expand the content to include information about family violence, effects of trauma on children and their development and parenting styles.
27. Introduce a system of accreditation or categorisation whereby all programs offered by agencies such as Centrecare, Anglicare and Relationships Australia can be easily identifiable in terms of who they are suited for and what they aim to teach and include this information on the family law court’s websites. This could include the use of standardised terms to describe such programs regardless of the individual agency providing the service.
28. Any professionals writing reports for the family law courts (including family consultants and single expert witnesses) be required to have undertaken regular accredited family violence training including in the dynamics of family violence, risk assessment and trauma informed practice.
29. More opportunities for cross-sector training of all professionals in the family law system in relation to family violence, social science principles such as risk assessment and trauma informed practice.
30. Establishing a national accreditation and monitoring scheme for family report writers (court consultants and private experts) with mandatory training in family violence child abuse and trauma informed practice, cultural competency and disability awareness.
31. WLCWA endorses NFVPLS recommendation for employment of Aboriginal and Torres Strait Islander Family Consultants within family law courts and processes and procedures initiated to ensure that all efforts are taken to ensure that, wherever possible, an Aboriginal or Torres Strait Islander Family Consultant is appointed in a case involving an Aboriginal or Torres Strait Islander child(ren).
32. Noting these consultants should also have expertise in family violence and the complex barriers faced by Aboriginal and Torres Strait Islander victim-survivors, particularly women.
33. Consideration be given to a mechanism whereby parties are able effectively ‘pause’ their parenting matter when both parties consent to allow time for them to negotiate an outcome. The ‘pause’ could be for a maximum period, at the end of which their matter if neither party has written to the Court to request the matter be listed for a Readiness Hearing then the applications are dismissed by the Court.
34. Consideration also be given to a procedural hearing like the Readiness Hearing but without requiring that the parties have filed their trial material to provide another opportunity for the parties to be prompted into further action to progress their matter.
35. Where a matter needs to be dealt with on an interim basis but adjourned for a long period (e.g. to allow for an event, such as the release of the former primary carer from jail) that this be accommodated by the final orders application being adjourned until after that time without the need for there to be a trial to determine this adjournment.
36. Consider including a requirement for parties to file an updated document outlining their legal arguments of the case (similar to a Conciliation Conference Particulars) and their current position in terms of outcome for the Readiness Hearing but not requiring the filing of trial affidavits until a certain time period prior to trial.
37. Develop a FDR and an ADR model in which parties experiencing (or at risk of) family violence can safely participate.
38. Require all FDRP’s to undertake compulsory and ongoing family violence training.
39. That in all cases involving dependent children, a family consultant with specified family violence training who is embedded within the court registry undertake a risk assessment with respect to child safety and provide recommendations in relation to interim care arrangements for children.
40. Where family violence is alleged or identified, that a referral of any adult affected family member be made to an embedded family violence support worker within the court registry.
41. Where the affected member is Aboriginal and/or Torres Strait Islander, a referral should be made to a specialised and culturally safe legal service such as a FVPLS.
42. That following receipt of such a referral, the family violence support worker undertakes a risk assessment in relation to the adult affected family member(s), assisting her in preparing a safety plan, and making further referrals as necessary.
43. There be further funding for Registrars so they can conduct Conciliation Conferences for a minimum of a 2 hour period per matter.
44. Consideration be given to a cost recovery model whereby parties over a certain income level are ordered to contribute towards the cost of the conference (when the matter does not settle at the conference or within 21 days thereafter).
45. Consider the introduction of a diversion system whereby the family law courts have the power to require parties to undertake mediation or other form of ADR. This could be for matters where the Court considers there has not been a genuine attempt and pre-action resolution of proceedings and prior to their matter being listed for directions for trial.
46. Judicial officers consider the implementation of the listing of compulsory judicial conferences for complex matters that are likely to take more than 4 days[[29]](#footnote-29).
47. That family violence be a factor which the court must specifically take into account when determining a just and equitable property settlement entitlements.
1. Productivity Commission, *Access to Justice Arrangements: Productivity Commission Inquiry Report - Overview*, 2014, p. 63, Recommendation 21.4. [↑](#footnote-ref-1)
2. FLC Final Report at 22, referring to: R Kaspiew, R Carson, J Dunstan, L Qu, B Horsfall, J De Maio, S Moore, L Moloney, M Coulson & S Tayton, *Evaluation of the 2012 family violence amendments: Synthesis report*,Australian Institute of Family Studies, 2015, pp. 16-17. [↑](#footnote-ref-2)
3. For example, a Form 1 Initiating Application could include within it the required evidence to provide the Court and other party with an outline of the case in terms of parenting matters (care arrangements for children), identification of assets, contributions and adjustment and just and equitable factors.

It is more logical and intuitive for parties to say ‘what they want’ and ‘why they want it’ then to understand the difference between an order sought and their evidence in support of that order which those split between two or more different court forms. [↑](#footnote-ref-3)
4. This could be a check list which the parties can ‘tick’ with an ability to explain in a separate text box what outcome they are seeking to enable the judicial officer (and others) the ability to better understand the orders the party is seeking.

Most judges have preferred wording they use for their orders which are not publicly available and which are not known other than by family lawyers and barristers experienced at appearing before that particular judicial officer. Including template orders in the Application itself would make it easier, quicker and cheaper for parties to file Applications and make it easier for parties to understand the process and any orders made. [↑](#footnote-ref-4)
5. For example, a suitably qualified ‘Family Financial Consultant’ could be ordered by the Court to meet with the parties and who has the ability to obtain directly from third parties and government departments relevant information about the parties’ financial matters. This could include specific powers to request and receive information from Australian Tax Office, ASIC, Centrelink, Department of Human Services (child support). A report could be prepared which is then put before the Court as evidence (and able to be tested) at the first or second return date for financial matters.

Third parties could be compelled by the Family Financial Consultant to attend the Family Court of WA to give evidence in cases where there is a reasonable basis to believe they hold information relevant to the issues in dispute, e.g. accountants or third party family members where there are family businesses, trusts etc.

In cases of family violence, this type of process would reduce the burden currently on victim-survivors which is consistent with the recommendations in inquiries such as the Royal Commission into Family Violence (Victoria) in the family violence system. It would also greatly assist the victim-survivor and the Court to make meaningful and effective orders in cases where there is financial and systems abuse by the perpetrator (e.g. non-disclosure of assets is a commonly used tactic). [↑](#footnote-ref-5)
6. For example, if an order was made for a party to file ‘an affidavit of compliance’ the language used should be for the party to file ‘ a Form XX Affidavit explaining how they have complied with order XX made [date].’ There is no form called affidavit of compliance and this can be confusing to some clients, particularly when they are already experiencing significant stress and trauma. [↑](#footnote-ref-6)
7. This happens with Family Court of WA forms and WLCWA clients with interstate matters are confused by the similarly named but different forms used by FCA and FCCA without using a number for them to match them on the court’s website. [↑](#footnote-ref-7)
8. Ibid. [↑](#footnote-ref-8)
9. Ibid. [↑](#footnote-ref-9)
10. M. Macvean et al, *The PATRICIA Project: PAThways and Research IN Collaborative Inter-Agency Working: State of Knowledge paper,* (ANROWS), 2015 p 8-9; Child Family Community Australia (CFCA), *Children's exposure to domestic and family violence,* CFCA Paper No. 36 – December 2015;R. Thiara & C. Harrison*, Safe not sorry: Supporting the campaign for safer child contact. Key issues raised by research on child contact and domestic violence,* Women’s Aid, UK, 2016, p6. [↑](#footnote-ref-10)
11. K. Rendell, Z. Rathus, A. Lynch*, A un acceptable risk: A report on child contact arrangements where there is violence in the family,* 2002, p39; R. Thiara & C. Harrison, *Safe not sorry: Supporting the campaign for safer child contact. Key issues raised by research on child contact and domestic violence,* Women’s Aid, UK, 2016, p6, 15,25; Women’s Aid, *Nineteen Child Homicides: What must change so children are put first in child contact arrangements and the family courts,* (UK), 2015, p28. [↑](#footnote-ref-11)
12. R Kaspiew, B. Horsfall, L. Qu, M. Nicholson, C Humphreys, K. Diemer, J Dunstan, *Domestic and family violence and parenting: Mixed method insights into impact and support needs: Final report*,(ANROWS) 2017 p13. [↑](#footnote-ref-12)
13. H. Saunders, *Twenty-nine child homicides: Lessons still to be learnt on domestic violence and child protection* (*Twenty-nine child homicides*) (Women’s Aid UK), 2004, accessed at: <http://familieslink.co.uk/download/jan07/twenty_nine_child_homicides.pdf> [↑](#footnote-ref-13)
14. Lord Justice Wall cited in *Nineteen Child Homicides: What must change so children are put first in child contact arrangements and the family courts,* (UK), 2015 [↑](#footnote-ref-14)
15. Note that in WA Chief Justice Thackray in the Family Court of WA implemented a similar process whereby conferences were identified in the period following the Conciliation Conferences but before trial material is prepared (and when the position of parties can become more entrenched) and those which were identified as complex and potentially lengthy trials were listed before CJ Thackray for a Judicial Conference to see if it could be settled or at least issues in dispute narrowed. [↑](#footnote-ref-15)
16. Pru Goward, Human Rights and Equal Opportunity Commission and Sex Discrimination Unit, Striking the Balance: Women, Men, Work and Family: Discussion Paper 2005 (Sex Discrimination Unit, Human Rights and Equal Opportunity Commission, 2005) 54; Rosalie McLachlan et al, Deep and Persistent Disadvantage in Australia: Productivity Commission Staff Working Paper (Productivity Commission, 2013) 141. [↑](#footnote-ref-16)
17. Women’s Legal Service Victoria, Small Claims, Large Battles: Achieving Economic Equality in the family law system (2018) accessed at: [http://womenslegal.org.au/creating-change/small-claims%2c-large-battles.html](http://womenslegal.org.au/creating-change/small-claims%2C-large-battles.html) [↑](#footnote-ref-17)
18. See WLSV, *Small Claims, Large Battles*, 2018 [↑](#footnote-ref-18)
19. R Braaf & B Meyering, *Seeking Security: promoting women's economic wellbeing following domestic violence* 2011, Sydney : Australian Domestic and Family Violence Clearinghouse, 3. See also A George & B Harris, ‘Landscapes of Violence: Women Surviving Family Violence in Regional and Rural Victoria’ (Report, Centre for Rural Regional Law and Justice, Deakin University School of Law, 2014) 35; E Smallwood, *Stepping Stones: Legal Barriers to Economic Equality after Family Violence* (Report, Women’s Legal Service Victoria, 2015) 6; National Council to Reduce Violence Against Women and Their Children (Australia), *Background Paper to Time for Action: The National Council’s Plan for Australia to Reduce Violence against Women and Their Children*, 2009-2021 (Dept. of Families, Housing, Community Services and Indigenous Affairs, 2009) 44; I Evans, *Battle-Scars: Long-Term Effects of Prior Domestic Violence* (Centre for Women’s Studies and Gender Research, Monash University, 2007) 24. [↑](#footnote-ref-19)
20. WLSV, *Small Claims, Large Battles* p3 [↑](#footnote-ref-20)
21. WLSA submission to House of Representatives Committee 2017, Attachment A. [↑](#footnote-ref-21)
22. <http://womenslegal.org.au/files/file/WLSV%20Small%20Claims%2C%20Large%20Battles%20Research%20Report%202018.pdf> [↑](#footnote-ref-22)
23. Carolyn Jones, *Sense and Sensitivity Family Law, Family Violence and Confidentiality* (Women’s Legal Service NSW), May 2016, Proposal 7-8 accessed at: <http://www.wlsnsw.org.au/wp-content/uploads/WLS-NSW-Sense-and-Sensitivity-web.pdf> [↑](#footnote-ref-23)
24. For example, a Form 1 Initiating Application could include within it the required evidence to provide the Court and other party with an outline of the case in terms of parenting matters (care arrangements for children), identification of assets, contributions and adjustment and just and equitable factors.

It is more logical and intuitive for parties to say ‘what they want’ and ‘why they want it’ then to understand the difference between an order sought and their evidence in support of that order which those split between two or more different court forms. [↑](#footnote-ref-24)
25. This could be a check list which the parties can ‘tick’ with an ability to explain in a separate text box what outcome they are seeking to enable the judicial officer (and others) the ability to better understand the orders the party is seeking.

Most judges have preferred wording they use for their orders which are not publicly available and which are not known other than by family lawyers and barristers experienced at appearing before that particular judicial officer. Including template orders in the Application itself would make it easier, quicker and cheaper for parties to file Applications and make it easier for parties to understand the process and any orders made. [↑](#footnote-ref-25)
26. For example, a suitably qualified ‘Family Financial Consultant’ could be ordered by the Court to meet with the parties and who has the ability to obtain directly from third parties and government departments relevant information about the parties’ financial matters. This could include specific powers to request and receive information from Australian Tax Office, ASIC, Centrelink, Department of Human Services (child support). A report could be prepared which is then put before the Court as evidence (and able to be tested) at the first or second return date for financial matters.

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27. For example, if an order was made for a party to file ‘an affidavit of compliance’ the language used should be for the party to file ‘ a Form XX Affidavit explaining how they have complied with order XX made [date].’ There is no form called affidavit of compliance and this can be confusing to some clients, particularly when they are already experiencing significant stress and trauma. [↑](#footnote-ref-27)
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