



Submission to the Australian Law Reform
Commission's Issues Paper on
Review of the Family Law System

Prepared by
Domestic Violence NSW

About Domestic Violence NSW

Domestic Violence NSW Inc (DVNSW) is the peak body for specialist domestic and family violence services in NSW. DVNSW provides a representative and advocacy function for specialist services and the women, families and communities they support.

DVNSW's mission is to eliminate domestic and family violence through leadership in policy, advocacy, partnerships and the promotion of best practice. We work with our members, state and federal government and communities to create a safer NSW for all.

DVNSW member services represent the diversity of specialist services working in NSW to support women, families and communities impacted by domestic and family violence including:

- Crisis and refuge services
- Transitional accommodation and community housing providers
- Family support services
- Neighbourhood centres and drop in centres
- Specialist homelessness service providers
- Men's behaviour change programs and networks
- Community organisations working with high risk communities
- Specialist women's legal support services
- Women and children's support services
- Safe at Home programs

DVNSW members are all non-government organisations, some entirely government funded, others supported through philanthropic donations or partnerships with industry or the corporate sector. Many of our members have multiple government and non-government funding streams. DVNSW advocates for best practice, continuous system improvements and innovative policy responses to domestic and family violence including building workforce capacity and representation at all levels of government. We provide policy advice to multiple departments in the NSW Government on prevention and response. We work with communities and the media to increase awareness and represent the sector on a number of state and federal advisory bodies. We co-convene and provide a secretariat function for the NSW Women's Alliance with Rape and Domestic Violence Services Australia.

We acknowledge the work and practice wisdom of specialist women's services and domestic and family violence practitioners in the sector that underpin the recommendations in this submission. DVNSW thanks the specialist services that have developed best practice over decades of working with women and children and shared their expertise with us. We also pay tribute to those who have experienced domestic or family violence and to our advocates, colleagues and partners in government and non-government agencies.

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Endorsement of submissions

DVNSW endorses the submission of **Women's Legal Services Australia (WLSA)**, which provides WLSA's responses to many of the questions raised in the Issues Paper, in addition to some more general comments on key issues, and further issues raised by WLSA for the ALRC's consideration when developing the forthcoming Discussion Paper.

DVNSW endorses the submission of **No to Violence (NTV)**, which attempts to answer and provide guidance to several questions raised by the ALRC Issues Paper (2018).

Key concerns of DVNSW

Safety matters

Currently, there are serious safety concerns for women and children in the family law system. The risks include:

- There is wide-spread misunderstanding in the community that parents have “equal rights” to children even when there is violence and abuse. The focus must be on the best interests of the child. Remove the language of “equal shared time” and “equal shared parental responsibility” in the *Family Law Act 1975* to shift culture and practice towards a greater focus on safety and risk to children. (Term of reference: protection of the best interests of children and their safety; improving the clarity of the law – Issues Paper question 14)
- Victims-survivors of family violence can experience things like anxiety, depression, post-traumatic stress disorder, substance abuse, self-harm and cognitive and behavioural changes, which may affect their capacity to parent. (Roberts et al, 'Women's Experiences of the Processes Associated with Family Court of Australia in the Context of Domestic Violence: A Thematic Analysis' (2014) *Psychiatry, Psychology and Law*, p2). There is a growing recognition of the tactics that perpetrators of family violence use during litigation to intentionally disrupt the mother-child relationship. (ANROWS, *Domestic and family violence and parenting: Mixed methods insights into impact and support needs: State of knowledge paper*, 2016 p28, 30). There needs to be better recognition that harm caused by perpetrating family violence against an adult victim-survivor is also harm perpetrated against the child and that “maintaining relationships between children and abusive fathers is likely to be harmful unless the abusive behaviour ends”. (ANROWS, *Domestic and family violence and parenting: Mixed method insights into impact and support needs: Final report*, 2017 p13) (Term of reference: protection of the best interests of children and their safety; family violence and child abuse –Issues Paper questions 1, 2, 14, 15)
- The family law system is not always good at identifying family violence early. This means that safety risks for women and children may not be identified and managed early and throughout the process. Place domestic violence specialists in family court registries to undertake ongoing risk assessment and ensure all professionals within the family law system have ongoing training in domestic violence and trauma informed practice, cultural competency and disability awareness. (Terms of Reference: protection of the best interests of children and their safety; family violence and child abuse; best ways to inform decision-makers about the best interests of the child; skills required of professionals in the family law system – Issues Paper questions 2, 4, 13, 14, 23-25, 41-42)
- Domestic violence and family dispute resolution: Family dispute resolution (FDR) may proceed in circumstances where there is domestic violence and FDR is inappropriate which may lead to unsafe outcomes. Alternatively, cases may be screened out of non-legally assisted mediation due to safety concerns therefore they have little opportunity for early resolution. Early resolution of such matters may be possible through lawyer assisted mediation with practitioners who are domestic violence and trauma informed, culturally competent and disability aware—skills required of all professionals within the family law system. Where reforms are directly related to Aboriginal and Torres Strait Islander people they should be led and co-designed by Aboriginal and Torres Strait Islander people. (Term of reference: appropriate,

early and cost-effective resolution of all family law disputes; the protection of the best interests of children and their safety; domestic violence and child abuse and protection for vulnerable witnesses; skills required of professionals in the family law system – Issues Paper questions 14, 24, 25, 41-42)

- Abusers are able to directly cross-examine family violence victims in the family law courts (although this can't be done in most other courts across Australia). Implement legislation to ban direct cross-examination by an abuser or of an abuser. (Terms of Reference: family violence and child abuse, including protection for vulnerable witnesses – Issues Paper questions 11-12)
- Barriers to receiving fair property outcomes in the family law system need to be addressed. Family law property proceedings are so complex and expensive that they are unaffordable for many poor families. The difficulties in obtaining proper financial disclosure by uncooperative partners is a real problem, despite the law saying that full disclosure is mandatory. There also needs to be better recognition of domestic violence in property matters. See WLSV's *Small Claims, Large Battles report* (Term of Reference: rules and legal principles for parenting and property matters; family violence and child abuse – Issues Paper questions 2, 17, 22, 23, 24, 41-42)

Better funding of the family law system

- Funding should include: specialist domestic violence & trauma informed, culturally competent and disability aware support services; domestic violence & trauma informed, culturally competent and disability aware family dispute resolution services; gender based specialist domestic violence and trauma informed legal responses which are culturally competent and disability aware; specialist Aboriginal and Torres Strait Islander controlled legal service providers and additional funding for legal assistance services more broadly;

To be serious about family violence – we have to get serious about family law

- Family law helps women recover financially from family violence. If the family law doesn't work for family violence survivors – there is a serious problem.

Inclusivity & accessibility

- The family law system needs to be modernised and accessibility improved for Aboriginal and Torres Strait Islander people; culturally and linguistically diverse communities; people with disability; lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) people; people living in regional, rural and remote areas. The people for whom accessibility needs to be improved should have the opportunity to participate in these discussions and in decisions that affect them.