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AUSTRALIA'S NATIONAL RESEARCH
ORGANISATION FOR WOMEN'S SAFETY

to Reduce Violence against Women & their Children

Professor Helen Rhoades

Commissioner in Charge, Review of the family law system

Australian Law Reform Commission

Level 40, MLC Centre, 19 Martin Place

SYDNEY NSW 2000

By email: familylaw@alrc.gov.au

Re. Submission in response to the Australian Law Reform Commission's discussion paper on the family law system

Dear Professor Rhoades

Australia's National Research Organisation for Women's Safety (ANROWS) is pleased to make a submission in response to the Australian Law Reform Commission (ALRC) discussion paper on the review of the family law system.

Please do not hesitate to contact me if you require further information about the content of this submission.

Yours sincerely



Dr Heather Nancarrow

Chief Executive Officer

12 November 2018

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Review of the family law system

Submission to the Australian Law Reform Commission's
discussion paper

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Introduction

Australia's National Research Organisation for Women's Safety Limited (ANROWS) is an independent, not-for-profit organisation established as an initiative under *Australia's National Plan to Reduce Violence against Women and their Children 2010-2022* (National Plan). ANROWS is jointly funded by the Commonwealth (federal) and all state and territory governments of Australia. ANROWS was set up to establish a national level approach to systematically address violence against women and their children. Our mission is to deliver relevant and translatable research evidence which drives policy and practice leading to a reduction in the incidence and impacts of violence against women and their children.

Every aspect of our work is motivated by the right of women and their children to live free from violence and in safe communities. We recognise, respect and respond to diversity among women and their children and we are committed to reconciliation with Aboriginal and Torres Strait Islander Australians.

Our strategic goals include to:

1. Deliver high quality, innovative and relevant research.
2. Ensure the effective dissemination and application of research findings.
3. Build, maintain and promote collaborative relationships with and between stakeholders.
4. Be an efficient, effective and accountable organisation.

To achieve these goals, we work with a wide range of stakeholders. These include: funders; policy-makers; domestic, family and sexual violence service providers and practitioners; primary prevention organisations; peak bodies; and researchers.

In this submission, we consider four issues raised in the discussion paper:

1. Education, referral and support
2. Definition of family violence
3. Workforce capability
4. Children and young people

This submission is based on the evidence produced from ANROWS's published research. It builds on the information provided in ANROWS's [submission](#) to the ALRC Issues paper in May 2018.

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Education, referral and support

Education and awareness raising

ANROWS supports the creation of a public education campaign and notes its importance for women and children experiencing violence and the spectrum of services that work with them.

A significant proportion of parental relationship breakdowns involve violence. Research by Bagshaw et al. (2010) found that more than half of 677 women surveyed identified abuse by their partner as a reason for their relationship breakdown. ANROWS commissioned research examining data from the Longitudinal Survey of Australian Children also found that one quarter of mothers reported experiencing physical abuse before separation and two-thirds reported experiencing emotional abuse before separation (Kaspiew et al. (2017). It is therefore essential that the family law system embed processes to address domestic and family violence (DFV) in all aspects of its work. Any education program that is developed for the public should include information about the processes offered by the family court to safeguard women and children from further violence, such as the availability of safe spaces and options for remote participation. This will help to ensure that victims/survivors who are self-represented litigants are aware of the mechanisms available to protect their safety.

Victims/survivors may seek help in accessing the family court system through a variety of pathways, not necessarily directly through the courts or legal services. Some women prefer to engage with support services (Putt, Holder and O'Leary, 2017). In other cases, less traditional avenues are used. For example, there have been cases where interpreters have needed to negotiate the court system for clients with limited English skills and without lawyers (Vaughan et al., 2016). In regional and remote areas, legal advice for victims/survivors may also be limited and help may be sourced from other informal networks (Wendt et al., 2017). Therefore, the education campaign should use a broad dissemination strategy that does not only target the obvious stakeholders. This will allow the family court system to better support vulnerable women and children, rather than allowing them to fall through the service gaps.

Support services may also benefit from a better understanding of the court's processes. In particular, priority should be given to improving awareness of family law within the child protection system. The PATRICIA project found that connections between the DFV and child protection systems and the family law courts were "disturbingly absent" (Humphreys, Healey & Connolly, 2017). An increased awareness of the role of the court may help workers to better assist their clients in navigating the often complex pathways between the two.

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Referral pathways

ANROWS commends the ALRC for proposing a new approach for the family court system that emphasises the importance of early intervention and support for families at risk. Involvement in the court system can have a negative economic impact on many victims/survivors of domestic violence, particularly where financial abuse is involved. However, if there is an increased emphasis on improving referral pathways to legal services, we are concerned that these services (particularly low cost services) will be unable to meet the increased demand with their current levels of funding. Research by Cortis and Bullen (2016) found that many women had difficulty accessing legal representation, as they could not afford private services and had sufficient income that they were ineligible for legal aid. Women from migrant and refugee backgrounds have particular difficulty accessing services that assist with migration and visa matters because of their resourcing constraints (Vaughan et al., 2017). Women with disabilities can also face accessibility issues when trying to engage legal services (Maher et al., 2018). ANROWS recommends that consideration be given to increased funding for these services so that they have greater capacity to offer advice and support to vulnerable communities.

Legal and case management support for families impacted by violence

We endorse the Women's Legal Services Australia "[Safety First in Family Law](#)" 5 Step Safety Plan and refer specifically to step 1b – that a process should be created in family courts to manage domestic violence cases with an emphasis on early decision making, triaging and case-management.

ANROWS strongly supports the recommendation that the Family Advocacy and Support Service (FASS) be expanded, subject to the results of the evaluation by the Attorney-General's Department. The co-location of legal advice and case management for clients with complex needs will allow the service to offer a greater level of support for vulnerable women and children and a more coherent service response. There may also be benefits for the organisation. A meta-evaluation by Breckenridge, Rees, Valentine & Murray (2016) found that integrated interventions produced some promising results, with increased collaboration and professional respect and knowledge between staff. Additionally, an expanded FASS may help to reduce the number of self-represented litigants appearing before the court, which can create serious challenges in cases where there is DFV (Carson, Qu, De Maio & Roopani, 2018).

An expanded FASS may benefit from having officers with expertise in financial matters and the dynamics of economic abuse. Our research found that there is a need for better identification of, and support for, women experiencing financial abuse (Cortis & Bullen, 2016). One valuable way of doing this is to provide early specialist advice for victims/survivors separating from their partner to secure property and funds and help to prevent economic loss (Cortis & Bullen, 2016).

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Definition of family violence

Fear and coercion

The *Family Law Act 1975* (FLA) includes the concept of coercive control as an overarching context in its definition of family violence, rather than simply one of a list of behaviours. Coercive control is motivated by a desire, aided by a sense of entitlement and structural inequality, to achieve general control over the life of another, thus denying them “autonomy, liberty and equality” (Stark, 2007; 2006, p. 1023). It is coercive control that makes intimate partner violence particularly insidious and distinguishes men’s and women’s violence in intimate partner relationships.

The seriousness of abusive men’s use of non-physical, coercive controlling tactics against women has traditionally been underestimated, while women’s use of physical aggression against men, without the intent, or means, to deny them autonomy, liberty and equality has been over-estimated. This has resulted in men who cause harm to women and their children avoiding legal accountability, and women being unfairly dealt with in the legal system for their resistance to coercive control.

The current FLA definition is a result of a comprehensive review aimed at harmonising relevant state, territory and federal laws, jointly conducted by the Australian and New South Wales Law Reform Commissions in 2010. We understand the definition was intended to *include* the harms caused by an ongoing pattern of coercive control, and *exclude* incident-based aggression that does not represent coercive control and which is often used in response to coercive control. That is, the definition tried to introduce a conceptualisation of domestic violence that reflects its gendered nature—to achieve gender equity in the legal process.

Research (e.g. Flood, 2003, Wangmann, 2009) has consistently shown that abusive men manipulate definitions to further control their ex/partners resulting in ‘systems abuse’ (Kaspiew et al., 2017). We note that the ALRC is seeking to address systems abuse in its current review and we commend that development (see below). However, we are concerned that removing the mandatory requirement of coercive control in the definition may inadvertently facilitate such systems abuse.

On the other hand, Zoe Rathus (2013) is concerned that the mandatory requirement of coercive control in the definition represents an unacceptable barrier for women seeking redress through the Family Court. In this scenario, the definition would disadvantage women.

We are not aware of any available evidence on how the current definition is being interpreted and applied in the Family Court, and whether our concerns, or others’ concerns, are being realised in Family Law matters. We recommend a specific investigation of the interpretation and application of

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the current definition before any change, and that any change in definition should seek to enhance clarity about the gendered nature of domestic violence and its motivations and impacts.

Family violence and intersectionality

ANROWS welcomes the recommendation that further research is undertaken on the strengths and limitations of the definition of family violence in the *Family Law Act 1975* (Cth) for Aboriginal and Torres Strait Islander people, people from culturally and linguistically diverse backgrounds and LGBTIQ people. Our research has told us that there are a range of understandings of family violence within these communities.

In 2014 we commissioned a literature review on understandings of violence against women in Australian Indigenous communities. The researchers found that commonly used terms such as family violence are not always used by Indigenous people due to language differences and using “language of minimisation” to protect families from further outside intervention (Olsen & Lovett, 2016). For Aboriginal and Torres Strait Islander women, violence may be “best understood in intersectional terms, as it exists at the junction of multiple, rather than singular, forms of domination, coercion, and conflict” (Blagg et al., 2018). Our research has also confirmed findings by Nancarrow (2016) that coercive control is not a necessary element for violence against Aboriginal and Torres Strait Islander women, as it does not capture other forms of interpersonal violence, such as “couple fighting” (Blagg et al., 2018).

ANROWS will be producing further research on family violence in Aboriginal and Torres Strait Islander communities in future. We have recently contracted Professor Marcia Langton for a new project that aims to identify the barriers and enablers for Indigenous women who have experienced family violence from engaging with the justice sector. The final report from this project is expected to be released in 2020.

While some elements of domestic and family violence may cut across communities, culturally and linguistically diverse women can experience unique forms of violence. The ASPIRE project documented some of these experiences in Victoria and Tasmania. The researchers found that definitions of family violence should acknowledge that it may include “multi-perpetrator violence, immigration-related abuse, ostracism from community, and exploitation of interfamilial financial obligations” (Vaughan et al, 2016).

The dynamics of DFV in the LGBTIQ community is still an emerging topic of research in Australia. In 2017, ANROWS commissioned a research project that aims to generate more information about the nature of violence in LGBTIQ relationships, including the role that gender plays in characterising DFV. This research is intended to be released in 2019.

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ANROWS also notes that unique forms of domestic and family violence may be experienced by women with a disability. For example, perpetrators may withhold medication, refuse physical assistance or hide physical mobility aids (Harpur and Douglas, 2015). Threats or harm to pets can also be particularly traumatic for women with a disability, especially when they rely on these animals for physical assistance. Our research suggested that definitions of violence “require considerable attention and expansion if we are to effectively address the needs, and embed the human rights of women with disability into service delivery models” (Maher et al, 2018). There has been limited research on the prevalence of violence against women with disabilities in Australia due to the current national data collection practices (Didi et al, 2017). One of the areas of action identified by the Stop the Violence national symposium was that family law legislation “acknowledge the particular impact of domestic and family violence on marginalised and vulnerable groups of people with disabilities...” We therefore recommend that further research should also be undertaken on the relevance of the definition of family violence for people with a disability.

Systems abuse

ANROWS strongly supports the inclusion of systems abuse into the definition of family violence. A common theme in several of our commissioned research projects is a concern that perpetrators are able to inflict further harm on victims/survivors by manipulating systems. This concern was expressed by both victims/survivors themselves (Kaspiew et al., 2017) and the service providers working with them (Cortis & Bullen, 2016). In the current family law system, women's livelihoods can continue to be threatened even in cases where there may not be in direct contact with the perpetrator. For example, in one case recounted by an interviewee who worked in a domestic violence service:

...he has denied her access to any financial documents. The court's ordered that he has to provide them to her solicitor, but that was 12 months ago and he still hasn't provided them. So she keeps getting dates to go to court then it's put off. And then in all this time she's got no money at all because he has everything in his name. He's living in the house, driving the car, not paying for the children in any way, so she's had to bear all the financial expense and he's dragging the whole thing out further and further. And also while this is all happening he's merrily disposing of assets as much as he can, so by the time they go to court you know there is less than perhaps she might have been entitled to initially... (Cortis & Bullen, 2016)

Forthcoming research commissioned by ANROWS also documents women's vulnerability to systems abuse in the social security system, through the administration of the couple rule under the *Social Security Act 1991* (Cth).

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Workforce capability

ANROWS agrees with the list of core competencies suggested by the ALRC in Proposal 10-3. We particularly note the importance of professionals within the family law system understanding trauma-informed practice. Our commissioned research found that women who had experienced mental health problems and sexual violence placed great importance on being able to easily access appropriate ongoing trauma-informed services (Hegarty et al., 2017). This research also provides a framework to promote and embed a trauma-informed organisational service model, responsive to women and practitioners that could be applied across the family law service system. Research that ANROWS commissioned in 2017 is currently looking at how services can improve collaboration to meet the needs of women with complex trauma.

We also support the recommendations that all legal practitioners should complete at least one unit of family violence training annually and that federal judicial appointments should consider the candidate's knowledge of family violence.

Law professionals' understanding of family violence should include an understanding of risk factors associated with further violence. A study commissioned by ANROWS on domestic and family violence orders in Australia surveyed 836 police, magistrates, lawyers and victim advocates who work with victims or perpetrators. Almost half of the survey respondents believed that "sometimes" legal professionals had an understanding of the risk factors that predict future DFV. A third of victim advocates and around one-fifth of the police and lawyers surveyed indicated this was "rarely" or "never" the case (Taylor et al., 2017). To support this understanding ANROWS has recently published the [National Risk Assessment Principles](#).

Furthermore, we endorse the Women's Legal Services Australia's recommendation in "[Safety First in Family Law](#)" that a national accreditation and monitoring scheme be established, with mandatory training for all practitioners who prepare family reports.

Children and young people

ANROWS commends the inclusion of a child-centred principle in the conceptual framework and the recommendations in Section 3 that propose a greater emphasis is put on children's safety within the legislation. Our commissioned research has indicated that this is a concern for many women impacted by DFV who navigate the family court process. For example, Kaspiew et al.'s (2017) interviews with 50 mothers found that a majority had a negative experience in the family court, largely because they did not feel theirs and their children's safety was prioritised (Kaspiew et al., 2017). Clearer judicial guidance on the importance of children's safety may also help reduce the disconnection between the child protection system and the court system (Humphreys et al., 2017). The child protection

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system's emphasis on child safety and the court's current focus on shared parental care has meant mothers impacted by DFV can be trapped in the middle of two systems that are designed to be working in their children's best interests (Kaspiew et al., 2017). The findings of ANROWS's research on the impact of domestic violence on children has been summarised in a [recently released paper](#) (ANROWS, 2018).

Concluding remarks

The ALRC's discussion paper has demonstrated the complexity of the issues surrounding family law reform and the diverse opinions about how to best address these. This review comes at an opportune time, as the Federal Government begins development on the Fourth Action Plan of the National Plan to Reduce Violence against Women and their Children 2010-2022. These [consultations](#) offer an insight into the improvements needed in the justice system to respond to families that are impacted by violence.

We commend the discussion paper's emphasis on advancing the safety of women and children. This theme is consistent with the National Risk Assessment Principles that were produced by ANROWS, in particular Principle 1, that "survivors' safety is the core priority of all risk assessment frameworks and tools" (Toivonen and Backhouse, 2018).

The period following separation is when women are in the most danger from a violent partner. We know from the growing body of research that the court system can be a traumatic process for many women and children who have experienced domestic and family violence. The review of the family law system offers a unique opportunity to embed best practice principles for improving safety throughout the system. By recognising the issue of systems abuse, the court can start taking steps to minimise its impact in the court's policies and procedures. The review is also an opportunity to create a system that better responds to the diverse communities it services and the forms of family violence they experience.

We welcome the opportunity to undertake any further research that assists in improving the family court's response to domestic and family violence.

ANROWS thanks the ALRC for considering this submission. We would be pleased to assist the Commission further if required.

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