

Australian Law Reform Commission

Submitted by email: familylaw@alrc.gov.au

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Submission in Response to the ALRC Discussion Paper Review of the Family Law System

Thank-you for the opportunity to make a submission in response to the ALRC (the Commission) Discussion paper on the review of the family law system.

About Australian Women Against Violence Alliance

Australian Women Against Violence Alliance (AWAVA) is one of the six National Women's Alliances funded by the Australian Government to bring together women's organisations and individuals across Australia to share information, identify issues and contribute to solutions. AWAVA's focus is on responding to and preventing violence against women and their children. AWAVA's role is to ensure that women's voices and particularly marginalised women's voices are heard by Government, and to amplify the work of its member organisations and Friends and Supporters. AWAVA's members include organisations from every State and Territory in Australia, representing domestic and family violence services, sexual assault services, women's legal services, and services for women in the sex industry, as well as organisations representing or working with Aboriginal and Torres Strait Islander women, young women, women educators and other groups. AWAVA's contract manager is the Women's Services Network (WESNET).

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Principles to underpin the reform

We welcome an extensive list of positive proposals following the issues paper to reform and improve the family law system. We also acknowledge that many of the issues we expressed jointly with the National Aboriginal and Torres Strait Islander Women’s Alliance and Harmony Alliance Migrant and Refugee Women for change in our [submission](#) to the issues paper have been addressed. We also acknowledge positive proposals made on the planned co-designed cultural safety framework, as well as broader and more detailed engagement with issues specific to Aboriginal and Torres Strait Islander communities, culturally and linguistically diverse and LGBTIQ communities and people with disability.

Later in this submission we provide more detailed feedback on the ALRC proposals. However, here would like to reiterate some of the principles that we believe need to underpin reform of the family law system.

Women’s safety is paramount

We acknowledge that safety and the best interest of the child should be a paramount consideration and we commend the Commission on this approach. We also acknowledge the commitment to ensure safety of families. However, we strongly advise that there needs to be a more nuanced gender analysis applied in relation to safety. We reiterate that women’s safety (specifically) needs to be a central priority alongside children’s safety.

We commend and refer you to the five-step plan *Safety First in Family Law*¹, which was developed by Women’s Legal Services Australia with the goal of creating a family law system that keeps women and children safe. The steps include the following measures:

Step 1 – Develop a specialist response for domestic violence cases in family courts

Step 2 – Reduce trauma and support those who are most at risk of future violence and death

Step 3 – Intervene early and provide effective legal help for the most disadvantaged

Step 4 – Support women and children to financially recover from domestic violence

Step 5 – Strengthen the understanding of all family law professionals on domestic violence and trauma.

There is evidence to suggest that perpetrators of violence are using the court processes to further inflict violence and abuse on women whether explicitly through direct cross-examination, for instance, or more implicitly through an unfair division of property that fails to account for the impact of family violence. In this regard, we believe that it is not sufficient to take a general approach to the issue of safety without addressing a gendered dimension of it.

We also refer you to the 2018 CEDAW Concluding observations on Australia, and in particular the recommendation to ensure “gender-sensitive approaches to the family violence” in the family law system.²

¹ See <https://safetyinfamilylaw.org.au/the-solutions/>

²² Committee on the Elimination of Discrimination against Women (2018) Concluding observations on the eighth periodic report of Australia, para 28(e).

We also note that the bill on the ban of direct cross-examination is currently before the Senate. We reiterate that a complete [ban of direct cross-examination](#) of victims/survivors of family violence by their perpetrators is essential to ensure women's safety in courts and avoid further abuse and re-traumatisation.

Family violence lens to be applied throughout the family law system

We acknowledge that in many proposals the possibility that family violence had occurred is envisaged. The discussion paper quotes the report by the Australian Institute of Family Studies that notes that:

- nearly half had safety concerns for themselves and/or their children,
- 85% reported a history of family violence involving emotional abuse, and
- more than half reported physical violence.³

The same report also states that family violence is “the most commonly raised factual issue in litigated proceedings”.⁴ The amount of case before the court that involve family violence are increasing.⁵ With this information it becomes evident that, unfortunately, allegations of family violence cannot be treated as rarely occurring or a possibility. It also becomes evident that family violence is a core business of the family system.

While we welcome proposals in relation to family violence specialisation in courts, we strongly believe that early risk assessment needs to be in place alongside better safeguards where family violence was not identified early. This requires sufficient training and resourcing for courts.

It is, thus, important that reforms in the family law system start from the premises of safety of women and their children and accounts for the possibility of family violence. Judiciary and all other relevant professions needs to be trained in family violence to be able to apply that lens and identify potential violence to support disclosure.

Better resourcing of the family law system

There needs to be an acknowledgement that for proposed reforms to be fully implemented and effective better funding and resourcing of the family law system is required. It is concerning that the proposed merger of the Family Law Court and the Federal Circuit Court is aimed at releasing money from already overstretched family law system. While we understand that the courts merger was out of scope of this inquiry, it is vital to ensure that the sufficient funding is allocated to improve the family law system rather than reducing of budgets.

³ Rae Kaspiew et al, ‘Evaluation of the 2012 Family Violence Amendments: Synthesis Report’ (Australian Institute of Family Studies, 2015) 16.

⁴ Ibid page 49

⁵ <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/news/mr200616>

Need for a specialised legal aid grants pathway in family law for victims/survivors of family violence

The lack of a specialised legal aid grant pathway for victims/survivors of domestic violence, particularly in family law matters, is a major concern because of the existing gender bias.⁶ When viewed as a whole, funding allocated to legal assistance services favours criminal law matters.⁷ As males have significantly higher rates of being charged with criminal offences that could result in imprisonment, they are more likely than women to seek assistance in criminal law matters and, as a result, there are more male legal aid applicants.⁸ In 2013, a study found 75% of the highest users of Legal Aid in NSW were men and all participants in the study had accessed criminal law services.⁹ On the other hand, women are more likely to require assistance in relation to being a victim/survivor of domestic and family violence, particularly in the family law system and/or civil law system, which typically affect female legal aid applicants. And while the high number of women killed in the context of domestic violence provides a strong case that loss of liberty and life arguments apply, which can be as pertinent in family law matters as they are in criminal law matters, their gender-specific legal needs are not prioritised and are therefore not met.

Challenges for women in obtaining legal aid are also evident in the application of Legal Aid Commissions' family law policies and guidelines. For example, some women's legal services have reported cases of legal aid grants being terminated if a party does not agree with the recommendations made by a family report writer who has been appointed to comment on the care, welfare and development of a child in a family law matter (covered in the following section).¹⁰ In addition, the provision of legal aid is dependent on the stringent guidelines of each state and territory that may fail to take into account the nuances of a woman in cases of violence. For example, the provision of legal aid is often based upon a client meeting a requisite means test¹¹, precluding women who have a small level of financial support from family members or charities from receiving legal aid.

There should be a separate and additional specialised domestic violence pathway for legal aid grants, particularly for family law and care and protection matters. Such a pathway could make the legal aid application process more effective and could have public interest benefits in having legal aid policies and guidelines that work best to eliminate violence against women. Currently, women's legal services and other community legal services spend a considerable

⁶ WLSA submission to senate inquiry – Domestic Violence and gender inequality 12 April 2016, pg 7

⁷ Productivity Commission, Access to Justice Arrangements – Productivity Commission Draft Report, April 2014, pg 627.

⁸ Ibid.

⁹ Ibid.

¹⁰ WLSA submission to the Productivity Commission's Access to Justice Inquiry, 4 November 2013, p.18.

¹¹ Legal Aid New South Wales. Criminal Law Matters: when legal aid is available: Apprehended Domestic Violence Orders: <http://www.legalaid.nsw.gov.au/for-lawyers/policyonline/policies/4.-criminal-law-matters-when-legal-aid-is-available/4.4.-apprehended-domestic-violence-orders#4.4.1%20Applicants%20in%20Apprehended%20Domestic%20Violence%20Orders>

amount of time advising and advocating for women who have been refused legal aid, including helping them to appeal such decisions.

It is important to note that not having legal representation means more expensive and longer proceedings. The Law Council of Australia states, “that court delays and the number of court appearances ‘significantly drives’ up the cost of legal representation for parties in family law proceedings: ‘people spend less when they are in the system for less time’”.¹²

We also note that recommendations made by the Productivity Commission in relation to the additional 200 million investment into community legal centres have not been implemented.

Responses to ALRC proposals and questions

Section 2: Education, Information and Awareness

Proposals 2-1, 2-2 (national awareness raising campaign)

Proposal 2–1 The Australian Government should develop a national education and awareness campaign to enhance community understanding of the family law system. This should include information about:

- the benefits of seeking information, advice and support when contemplating or experiencing separation;
- the duties and responsibilities of parents and the importance of taking a child centred approach to post-separation parenting that prioritises children’s safety and best interests;
- the existence and location of the proposed Families Hubs (Proposals 4–1 to 4–4) as a place where people experiencing separation can access advice and support services;
- the availability of the proposed family law system information package (Proposals 2–5 to 2–8) that provides practical information to assist people, including children and young people, to understand and navigate the family law system, including how to access the package; and
- the availability of alternative dispute resolution processes to assist and empower people experiencing separation to reach agreement about arrangements for their children and property outside of court proceedings.

Proposal 2–2 The national education and awareness campaign should be developed in consultation with Aboriginal and Torres Strait Islander, culturally and linguistically diverse, LGBTIQ and disability organisations and be available in a range of languages and formats.

We are concerned that the proposed national campaign precedes the implementation and evaluation of the efficacy of proposed reforms in the family law system. One can assume a potential increase of litigants in the family system with the increased awareness about the accessibility of the system. This means that without adequate funding to courts as well as ensuring the efficacy of the reforms and addressing systemic issues and barriers in the system, a national awareness raising campaign may not deliver its goals.

It is worth considering whether the national campaign may have a better impact if it was targeting workers of the family violence and adjunct sectors, so they can better support

¹² Ms Wendy Kayler-Thomson, Chair, Family Law Section, Law Council of Australia, *Committee Hansard*, Canberra, 30 May 2017, p. 10. – in the report on the better family law system.

litigants. We also believe that the national campaign needs to be a part of a later step of the implementation of the reforms in the family law system.

In any case, the results of the national awareness raising campaign will not be effective without the following:

Appoint more judges

We wish to reiterate our concerns expressed in [our submission](#) in response to the issues paper in relation to the long waiting periods and the insufficient amount of judges. The Law Council of Australia reports that “it is not uncommon for there to be 30 or more cases before a judge on the first hearing date, which gives each case about 10 minutes.”¹³ Appointing more judges will improve the early identification of risks and decrease waiting periods.

Ensure free legal assistance to victims/survivors of family violence

We also wish to reiterate that the national awareness raising campaign should not be seen as replacing the need for free legal assistance especially for victims/survivors of sexual, domestic and family violence. We strongly support the calls to increase the funding to community legal centres, especially women’s legal centres and to ensure specialist legal aid grants pathway in family law for victims/survivors of family violence.

We reiterate that recommendations made by the Productivity Commission in relation to the necessary \$200 million investment into community assistance services have not been implemented. We also bring your attention and support the recommendation made by the Law Council of Australia that is calling on the Australian government to “invest significant additional resources in Legal Aid Commissions, Community Legal Centres, Aboriginal and Torres Strait Islander Legal Services, and Family Violence Prevention Legal Services to address critical civil and criminal legal assistance service gaps”.¹⁴ The Law Council of Australia envisages that the required investment amounts to \$390 million per annum at minimum.

Provide guaranteed access to interpreters

We refer you to the Recommended National Standards for Working with Interpreters in Courts and Tribunals developed by Judicial Council on Cultural Diversity.¹⁵ We recommend championing them in the family law system to ensure consistency across the system in engaging interpreters. Access to interpreters is essential for access to justice.

We would like to emphasise the use of telephone interpreters especially in instances when interpreting in person is not available. Anecdotal evidence from service providers suggests that when an interpreter is not at court, especially at the time of the first court hearing/listing, the court proceeds without one. Often an interpreter is not booked for that first hearing because many parties do not attend at that point. If they do though, there needs to be an interpreter available as an option. The court needs to be equipped with a telephone to use for that

¹³ Law Council of Australia (2017) Parliamentary inquiry into a better family law system to support and protect those affected by family violence.

¹⁴ Law Council of Australia (2018) The Justice Project Final Report. Recommendations and Group Priorities, p. 4, rec. 2.1.

¹⁵ JCCD (2017) Recommended National Standards for Working with Interpreters in Courts and Tribunals. Available at: <http://jccd.org.au/wp-content/uploads/2018/02/JCCD-Interpreter-Standards.pdf>

purpose. Additionally, using a telephone interpreter is useful for getting an interpreter for the second party if one has not been booked.

It is noted that the Family Violence Best Principles for the Federal Circuit Court and the Family Court do not list best practice of working with interpreters among other principles when reviewing family violence matters.¹⁶ We believe that the Recommended National Standards for Working with Interpreters in Courts and Tribunals should be listed there as best practice.

We are concerned that the discussion paper does not meaningfully engage with this issue. We recommend examining the issue more closely, ensuring the unrestricted access to interpreters in courts, training for all professionals in the family law system on work with interpreters and ensuring sufficient separate funding to community legal services, specialist women's services and other adjunct sectors to provide free interpreting to their clients.

Proposed restructure of the Family Court and Federal Circuit Court

We also find it concerning that proposed merger of the Family Court and the Federal Circuit Court are neither in scope of this discussion paper nor are looked at together with necessary reforms. It is concerning that the court merger is primarily designed to release the money rather than better resources already underfunded courts.

We endorse WLSA's recommendations on this matter:¹⁷

1. Scrap (or at least delay) the Bills until after the Australian Law Reform Commission (ALRC) Family Law Review report is tabled.
2. Amend the terms of reference for the ALRC Review to include consideration of alternative court restructure and extend the time for submissions so there can be proper consultation about alternative court structures as well as court practice and procedure.

In conclusion, we believe that the national awareness raising campaign will be successful when all structural issues and barriers are resolved, safety of women and their children is guaranteed, all staff is appropriately trained on the nature and dynamics of family violence, when the waiting periods are minimal and when sufficient amount of judges is employed, to name only a few prerequisites.

¹⁶ See: <http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/reports-and-publications/publications/family-law/family-violence-best-practice-principles> and <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/publications/family+violence/family-violence-best-practice-principles>

¹⁷ Women's Legal Services Australia (2018) Submission in response to the ALRC discussion paper on the review of the family law system.

Proposal 2-4 (Family hubs)

Proposal 2–4 The Australian Government should work with state and territory governments to support the development of referral relationships to family law services, including the proposed Families Hubs (Proposals 4–1 to 4–4), from: universal services that work with children and families, such as schools, childcare facilities and health services; and first point of contact services for people who have experienced family violence, including state and territory specialist family violence services and state and territory police and child protection agencies.

We would like to seek further clarifications on the proposals to establish Family hubs. There are a number of questions that have not been addressed in the discussion paper. They are:

1. How does creation of Family Hubs influence current service provision and funding arrangements?
2. What will be the process of subcontracting other services to provide their workers to Family Hubs?
3. What are the relationships between Family Hubs and Domestic Violence Units?
4. Which systems will be in place to ensure consistent and quality training of all services and employees in a Family Hub?

The discussion paper refers to police as being one of the first points of contact for people experiencing family violence. While they may be well positioned to refer victims/survivors of family violence to appropriate services, it is essential to ensure ongoing training for police officers. Additionally, the most recent report by the Australian Institute of Health and Welfare states that women are disclosing violence first to their peers (between 70% and 80%), health professionals, counsellors and then to police.¹⁸ It is, thus, essential to ensure ongoing primary preventions and awareness raising among the general population, as well as appropriate training for the health sector. Responses to family violence require a whole of society approach.

While it may be positive to have one entry point for separating families including those experiencing family violence, we would like to reiterate the unique and essential role that specialist women’s services are playing in addressing family violence and violence against women more broadly.

The role of specialist women’s service in the family law system

Specialist women’s services that have been established in response to the need for comprehensive and trauma-informed support and existed as a sector for over the last 40 years¹⁹. Guided by women-centred models of practice, these services include organisations working to address domestic and family violence (including refuges and shelters), sexual assault services and rape crisis centers (which provide support to all people regardless of

¹⁸ Australian Institute of Health and Welfare (2018) Family, domestic and sexual violence in Australia 2018. Cat. no. FDV 2. Canberra: AIHW. Figure 5.2: Women who experienced partner violence and sought advice or support, by sources of advice and support, 2016 (source for the figure: Personal Safety Survey 2016. ABS cat. no. 4906.0. Canberra: ABS)

¹⁹ Andrew, M. (2013). The institutional harvest: women’s services and women’s policy agencies. Maddison, S., and Sawyer, M. (eds.) (2013). *The Women’s Movement in Protest, Institutions and the Internet* (pp. 87-104). New York, NY: Routledge.

gender), and organisations working with diverse groups of women including Aboriginal and Torres Strait Islander women, women from culturally and linguistically diverse backgrounds and others on issues of violence against women. This model of practice has been built on feminist and social justice approaches to responding to violence against women and is informed by the gendered understanding of causes of violence.

AWAVA continues to advocate for substantial increases in funding and greater safeguards for the role of the specialist women's services, which are at the forefront of the efforts to respond to and eliminate violence against women.²⁰ The work of specialist women's services, including women's legal services, is underpinned by a gendered understanding of violence²¹. They are focused on women and children's safety²², providing gender and cultural safety, working from a client-centred, trauma-based, empowering framework²³, supporting women to navigate complex systems, recognising children as clients in their own right, and working towards greater gender equality recognising the complexity of intersectionality and that women are best qualified to decide their pathway to recovery from violence and trauma²⁴.

Across the full range of services responding to violence against women, there is increasing demand, in part because of increased community awareness and condemnation of this violence.²⁵ While immediate increases to services is required, international and Australian

²⁰ AWAVA Policy Brief on the role of specialist women's services in Australia's response to violence against women and their children 2016 <https://awava.org.au/2016/04/07/research/role-specialist-womens-services-australias-response-violence-women-children>

²¹ Queensland sexual assault services (2010) The Right to Choose Enhancing best practice in responding to sexual assault in Queensland <http://www.communitydoor.org.au/sites/default/files/Right%20to%20choose%20final%20pdf%20with%20covers.pdf>; Nichols, A. (2011) 'Gendered Organizations: Challenges for Domestic Violence Victim Advocates and Feminist Advocacy', *Feminist Criminology*, 6(2), 111-113. The United Nations General Assembly (1993) 'Declaration on the Elimination of Violence Against Women' recognises that violence against women is a cause and consequence of gender inequality and states that services should be delivered based on this understanding. G.A. res 48/104, 1993 (DEVAW) <http://www.un.org/documents/ga/res/48/a48r104.htm> article 4 (g).

²² Victorian Government Department of Human Services (2012) Family Violence Risk Assessment and Risk Management Framework and Practice Guides 1-3, Edition 2 http://www.dhs.vic.gov.au/_data/assets/pdf_file/0010/718858/1_family_violence_risk-assessment_risk_management_framework_manual_010612.PDF; Domestic Violence Victoria (2006) Code of Practice for Specialist Family Violence Services for Women and Children: Enhancing the safety of women and children in Victoria, http://www.dhs.vic.gov.au/_data/assets/pdf_file/0003/580908/code-of-practice-domestic-violence-vic-2006.pdf

²³ Allen, N., Larsen, S., Trotter, J. and Sullivan, C. M. (2012) 'Exploring the Core Service Delivery Processes of an evidence-based community advocacy program for women with abusive partners', *Journal of Community Psychology* 14(1), 1-18.

²⁴ Zweig, J.M. and Burt, M.R. (2007) 'Predicting women's perceptions of domestic violence and sexual assault agency helpfulness: What matters to program clients?' *Violence against Women*, 13, 1149-1178; Council of Europe, Combating violence against women: minimum standards for support services (2008) [http://www.coe.int/t/dg2/equality/domesticviolencecampaign/Source/EG-VAW-CONF\(2007\)Study%20rev.en.pdf](http://www.coe.int/t/dg2/equality/domesticviolencecampaign/Source/EG-VAW-CONF(2007)Study%20rev.en.pdf) See also existing Australian standards documents (notes 40 to 43).

²⁵ AWAVA Policy Brief on the role of specialist women's services in Australia's response to violence against women and their children 2016 <https://awava.org.au/2016/04/07/research/role-specialist-womens-services-australias-response-violence-women-children>

evidence is clear that not just ‘any old service’ will do: ill-equipped services that lack well-trained staff discourage help-seeking, prevent disclosure of abuse and may inadvertently increase the risks for victims/survivors or lead them to return to abusive situations²⁶.

Lack of funding to specialist women’s and community legal services creates additional barriers for women subjected to violence. Women often have limited capacity to obtain access to justice because of financial barriers, and are often unable to access legal information, advice and/or representation due to the high cost of private legal representation²⁷. Domestic Violence NSW’s Practitioners’ Survey indicates that often, women who are working casually or part-time, and where there is property to the relationship, do not meet financial eligibility criteria to access free legal assistance from Legal Aid²⁸. It is also difficult for women to obtain pro bono assistance, as it is not a particularly attractive area for lawyers working in family law²⁹. Given the lack of access to free specialist and/or legal services, when self-representing in family courts, women are at risk of unsuccessful settlements as well as further re-traumatisation and abuse.

Women’s legal services, specialist Aboriginal and Torres Strait Islander and multicultural legal services have the skills and knowledge to work effectively with victims/survivors, but need to be resourced to scale up their work in response to demand. This scaling-up needs to occur in the context of broader funding and capacity increases across the legal assistance sector and specialist domestic and family violence services sector, together with other related services (such as sexual assault services) that support victims/survivors in the family law system.

We recommend that the Australian Government incorporates specialist women’s services into family law systems, and adequately funds these services, by:

- o Prioritising the engagement with specialist women’s services in responses to family violence;

²⁶ Zweig, J.M. and Burt, M.R. (2007) ‘Predicting women’s perceptions of domestic violence and sexual assault agency helpfulness: What matters to program clients?’ *Violence against Women*, 13, 1149-1178; Stone, J. and Clifton, B. (2005) ‘Sexual Assault Resource Centre: Client mental health survey’, *ACSSA Newsletter*, No.9 November 2005, p 15; Women’s Resource Centre (2007) *Why Women Only? The value and benefits of by women, for women, services*, London, UK <http://thewomensresourcecentre.org.uk/wp-content/uploads/whywomenonly.pdf>; Chung, D., Colley, D. and Zannettino, L. (2004) *Effective Integrated Approaches in the Delivery of Services and Responses for Women Experiencing Domestic Violence*, Research and Education Unit on Gendered Violence, University of South Australia, Adelaide and Partnerships Against Domestic Violence, Canberra; Zannettino, L. (2006) *Better Outcomes for the Protection of Children Affected by Domestic Violence: Developing Interagency Collaboration between Child Protection and Domestic Violence Services: A Research Report*, Research and Education Unit on Gendered Violence in partnership with the Department for Families and Communities, South Australia; Irwin, J., Waugh, F. and Bonner, M. (2006) ‘The inclusion of children and young people in research on domestic violence’, *Communities, Children and Families in Australia*, 1(1), pp.17-23.

²⁷ Women’s Legal Services Victoria Submission Domestic Violence in Australia pg 5, Productivity Commission, Access to Justice Arrangements – Inquiry report No. 72, 3 December 2014

²⁸ Domestic Violence NSW Practitioner Survey Respondent – Parliamentary inquiry into a better family law system.

²⁹ National Pro Bono Resource Centre, Pro bono legal services in family law and family violence, Understanding the limitations and opportunities (Final Report) October 2013

- Funding specialist women’s services that provide embedded services in state and territory courts to continue to support clients with family violence issues when they move to the family law system to seek parenting or other orders; and
- embedding workers from specialist women’s services in the family court, Family Relationship Centres and Family Hubs.

Proposal 2-5 (working group to develop a family law information package)

Proposal 2–5 The Australian Government should convene a standing working group with representatives from government and non-government organisations from each state and territory to:

- advise on the development of a family law system information package to facilitate easy access for people to clear, consistent, legally sound and nationally endorsed information about the family law system; and
- review the information package on a regular basis to ensure that it remains up-to-date.

We support this proposal and wish to reiterate the role of specialist women’s services including women’s legal services in responding to violence against women. We believe that they need to be included in the description of engaged stakeholders and their participation needs to be prioritised.

Proposals 2-7, 2-8 (accessibility of family law information)

Proposal 2–7 The family law system information package should be accessible in a range of languages and formats, including:

- electronically via a central website;
- as printed material available at key entry points to the family law system and universal services; and
- through interactive means, including a national telephone helpline and a national web-chat service.

Proposal 2–8 The family law system information package should be:

- developed with reference to existing government and non-government information resources and services;
- developed in consultation with Aboriginal and Torres Strait Islander, culturally and linguistically diverse, LGBTIQ and disability organisations; and
- user-tested for accessibility by community groups including children and young people, Aboriginal and Torres Strait Islander people, people from culturally and linguistically diverse communities, LGBTIQ people and people with disability.

We fully support these proposals, noting they are consistent with AWAVA’s policy recommendations.

However, we wish to reiterate that it is essential to ensure that translated materials about the family law system are translated to the highest standard and do not use the language that can be stigmatising or victim blaming.

In this regard, we recommend to adopt standards for translations of all family law related materials. We recognise, that there have been some positive changes at the policy level in regard to standards for engaging interpreters in courts and tribunals.³⁰ Little attention,

³⁰ For instance, the Judicial Council on Cultural Diversity has developed Recommended National Standards for Working with Interpreters in Courts and Tribunals, and the NSW Education Centre Against Violence is running training courses for interpreters on interpreting for people who have experienced sexual and family violence.

however, has been paid to standards for written translations. There is no consistency into which languages information is translated. Anecdotal evidence suggests that the quality of translations varies sometimes due to difficulties in explaining some legal terms or the general lack of standards for translation in the realm of family violence, family law, and child protection.

There is little awareness that resources to be translated from English to other languages need to be written specifically for translation. This includes using plain English, avoiding jargon or providing more detailed explanations for concepts that potentially may not be in use in other languages.

We support recommendation 160 of the Victorian Royal Commission into Family Violence that the Australian Government together with the National Accreditation Authority for Translators and Interpreters Ltd, works to ensure that accreditation and testing processes and approval of translator and interpreter courses require an understanding of the nature and dynamics of family violence. Furthermore, we recommend that the Attorney's General Department, in consultation with the specialist women's sector, and cultural and linguistically diverse communities develops national standards and a terminology resource containing translations and explanations of key concepts in the areas of family violence, sexual assault, family law and child protection. This resource needs to be available in all major languages spoken in Australia.³¹

Section 3: Simpler and Clearer Legislation

Proposal 3-2 (review of court forms)

Proposal 3–2 Family law court forms should be comprehensively reviewed to improve usability, including through:

- only gathering information that is absolutely required, and simplifying how information is gathered (eg through use of check-boxes);
- using smart forms, to pre-populate information from previously completed forms (such as name and address), ask contextual questions based on previous answers, and provide contextual help within the form;
- using real-time help functions, such as a live-chat functionality, and links to audio-visual help;
- providing collaborative functions in circumstances where forms require information from both parties to allow them both to easily enter information;
- ensuring that all forms are drafted in ordinary English and where possible providing alternative forms in Easy English to assist litigants with limited literacy or English skills;
- providing a paper form for use by individuals without access to technology; and
- providing a single set of forms for all courts exercising jurisdiction under the Family Law Act 1975 (Cth).

We support this proposal and thank the Commission for considering AWAVA's recommendations. We wish to reiterate the necessity of adequate funding to the courts to implement this proposal.

³¹ We refer you to the resource developed by the Centre for Culture, Ethnicity and Health as an example https://www.ceh.org.au/glossary-terms-child-family-relationship-services/?sf_action=get_data&sf_data=all&_sft_category=multilingual-resources

Proposals 3-3, 3-4, 3-5 (the principle of safety and best interests of a child)

Proposal 3–3 The principle (currently set out in s 60CA of the Family Law Act 1975 (Cth)) that the child’s best interests must be the paramount consideration in making decisions about children should be retained but amended to refer to ‘safety and best interests’.

Proposal 3–4 The objects and principles underlying pt VII of the Family Law Act 1975 (Cth) set out in s 60B should be amended to assist the interpretation of the provisions governing parenting arrangements as follows:

- arrangements for children should be designed to advance the child’s safety and best interests;
- arrangements for children should not expose children or their carers to abuse or family violence or otherwise impair their safety;
- children should be supported to maintain relationships with parents and other people who are significant in their lives where maintaining a relationship does not expose them to abuse, family violence or harmful levels of ongoing conflict;
- decisions about children should support their human rights as set out in the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities; and
- decisions about the care of an Aboriginal or Torres Strait Islander child should support the child’s right to maintain and develop the child’s cultural identity, including the right to:
 - (a) maintain a connection with family, community, culture and country; and
 - (b) have the support, opportunity and encouragement necessary to participate in that culture, consistent with the child’s age and developmental level and the child’s views, and to develop a positive appreciation of that culture.

Proposal 3–5 The guidance in the Family Law Act 1975 (Cth) for determining the arrangements that best promote the child’s safety and best interests (currently set out mainly in s 60CC), should be simplified to provide that the following matters must be considered:

- any relevant views expressed by the child;
- whether particular arrangements are safe for the child and the child’s carers, including safety from family violence or abuse;
- the developmental, psychological and emotional needs of the child;
- the capacity of each proposed carer of the child to provide for the developmental, psychological and emotional needs of the child;
- the benefit to a child of being able to maintain relationships that are significant to them, including relationships with their parents, where it is safe to do so; and
- anything else that is relevant to the particular circumstances of the child.

The outlined proposals are in line with AWAVA’s position on prioritising the best interests of the child. We also commend the proposed language of ‘safety and best interest of the child’. Yet, we think that the text of the proposal 3-5 (“the capacity of each proposed carer of the child to provide for the developmental, psychological and emotional needs of the child”) may potentially open a loop hole for the perpetrator to obtain custody or other parenting arrangements. It can be particularly evident in cases where a mother has a disability.

The interim report of the Justice Project undertaken by the Law Council of Australia states that while there is no evidence that intellectual disability causes parental inadequacy³², in reality,

³² Law Council of Australia (2017) The Justice Project. Consultation Paper ‘People with Disability’; Law Council of Australia (2017) The Justice Project. Consultation Paper ‘People Who Experience Family Violence’.

parents with an intellectual disability are ‘disproportionately represented in child protection services and care proceedings’, and have high rates of child removal.³³ Discriminatory practices, misconceptions, lack of the awareness and training on disability create significant disadvantages for people with disability in the justice system.³⁴ The disadvantage is further exacerbated by people’s limited understanding of their rights within the legal system, poor economic position, communications difficulties or other personal barriers.³⁵

During separation, parental disability may negatively affect the orders made under the Family Law Act. A report by the Office of the Public Advocate states that “the disability of one parent can be used by the parent without a disability to argue that the child’s residence and contact with the disabled parent should be changed or limited.”³⁶

During family law court proceedings, family report writers play a big role in making recommendations on what is in the best interests of the child. As identified by Women’s Legal Services Australia, there is a need for better understanding of the dynamics of family violence by family report writers and better training. While some additional funding has been provided for appropriately skilled family consultants, there are additional and concerning problems in the area of disability. The Office of the Public Advocate argues that family report writers have limited or no expertise in disability and “are not aware of best practice in assessing the parental capacity of people with disabilities”.³⁷

Another significant issue is the overrepresentation of mothers with disability in courts where member of their extended family are applying for a parenting order. Guided by the best interests of the child, under the Act once the relationships between a child and an adult is established, “a natural parent is not given preference over a person with a more remote relationship with the child”.³⁸ The Office of the Public Advocate argues that unless a natural parent is unable to adequately care for the child, the preference should be given to her.³⁹

We stress the importance of the training for all professionals in the family law system on the nature and dynamics of family violence as well as disability.

³³ Robyn Mildon et al, Understanding and Supporting Parents with Learning Difficulties (Victorian Parenting Centre, 2003) 4.

³⁴ Intellectual Disability Rights Service, ‘Final grant report: Making Sense Website’ (Report, Law and Justice Foundation of New South Wales, 28 May 2015) 1 (‘Final grant report’).

³⁵ Law Council of Australia (2017) The Justice Project. Consultation Paper ‘People with Disability’; Law Council of Australia (2017) The Justice Project. Consultation Paper ‘People Who Experience Family Violence’

³⁶ Office of the Public Advocate (2013) What happened to the village? The removal of children from parents with a disability. Report 1: Family law – the hidden issues.

³⁷ Ibid.

³⁸ Office of the Public Advocate (2013) What happened to the village? The removal of children from parents with a disability. Report 1: Family law – the hidden issues.

³⁹ Ibid.

Proposals 3-7 (move from parental responsibility to decision making responsibility)

Proposal 3–7 The decision making framework for parenting arrangements in pt VII of the *Family Law Act 1975* (Cth) should be further clarified by:

- replacing the term ‘parental responsibility’ with a more easily understood term, such as ‘decision making responsibility’; and
- making it clear that in determining what arrangements best promote the child’s safety and best interests, decision makers must consider what arrangements would be best for each child in their particular circumstances.

We would like to seek clarifications on this proposal in relation to the meaning and interpretation of ‘decision making responsibility’. We are concerned that ‘decision making responsibility’ can still be misinterpreted by judicial officials and family members about what this means: i.e. the degree to which decision making responsibility is equal and what type of decisions each party has responsibility for. For instance, in the context of family violence, will this make it practically difficult for women who have parental responsibility as a formal thing to exclude ex-partner perpetrators from e.g. the ability to collect the child from school?

This may create a further risk that women and their children will be placed in the situation of ongoing coercion and control by perpetrators.

In this regard, it is essential to ensure that sufficient and ongoing training is available for all professionals in the family law system.

We support the position of DV VIC who are advocating for increased clarification about what decision making responsibility means and that where family violence has occurred it be clear that final decision making rests with the Affected Family Member and the perpetrator should have consultation rights, not decision making rights.⁴⁰

Proposal 3-9 (assistance in formulating care arrangements)

Proposal 3–9 The Attorney-General’s Department (Cth) should commission a body with relevant expertise, including in psychology, social science and family violence, to develop, in consultation with key stakeholders, evidence-based information resources to assist families in formulating care arrangements for children after separation that support children’s wellbeing. This resource should be publicly available and easily accessible, and regularly updated.

We believe that in the process of formulating care arrangements for children after the separation, it is essential that representatives from Aboriginal and Torres Strait Islander, culturally and linguistically diverse, disability and LGBTIQ organisations must be consulted with and lead the design of care arrangements responsive to their needs.

⁴⁰ Domestic Violence Victoria (2018) Submission in response to the ALRC discussion paper on the review of the family law system.

Proposals 3-10, 3-11 (property settlements)

Proposal 3–10 The provisions for property division in the *Family Law Act 1975* (Cth) should be amended to more clearly articulate the process used by the courts for determining the division of property.

Proposal 3–11 The provisions for property division in the *Family Law Act 1975* (Cth) should be amended to provide that courts must:

- in determining the contributions of the parties, take into account the effect of family violence on a party's contributions; and
- in determining the future needs of the parties, take into account the effect of any family violence on the future needs of a party.

We fully support these proposals, noting they are consistent with AWAVA's policy recommendations.

Proposal 3-12 (commissioning research on financial matters after separation)

Proposal 3–12 The Attorney-General's Department (Cth) should commission further research on property and financial matters after separation, including property adjustment after separation, spousal maintenance, and the economic wellbeing of former partners and their children after separation.

We encourage you to include the topic of economic abuse to the proposed research on property and financial matters after separation. Economic abuse can continue to be inflicted on women in the process of separation and property settlements.

It is known that abusive men are frequently reported as engaging in protracted litigation and in some cases vexatious or abusive behaviour. An example of this type of systems abuse is failure to disclose relevant financial documents during the discovery stages of family law proceedings. The *Family Law Rules 2004*⁴¹ require parties to make full and frank disclosure of their financial circumstances. However, perpetrators frequently engage in deceitful and controlling behaviours, avoiding disclosure obligations. For example, a common behaviour reported by women is an ex-partner hiding their income due to their self-employment⁴² or withholding other financial information in order to lessen the property settlement or spousal maintenance their ex-partner would otherwise be entitled to.⁴³

We also refer you to the Stepping Stones: Legal barriers to economic equality after family violence (Women's Legal Service Victoria)⁴⁴ report, Small Claims, Large Battles: Achieving economic equality in the family law system (Women's Legal Service Victoria)⁴⁵ and the

⁴¹ Family law Rules 2004 Rule 13.04. See:

http://www.austlii.edu.au/au/legis/cth/consol_reg/flr2004163/s13.04.html

⁴² Women's Legal Services Australia (WLSA) Submission to House of Representatives Standing Committee on Social Policy and Legal Affairs on Child Support. 2014, p 12. See: http://www.wlsa.org.au/uploads/submission-resources/WLSA_Child_Support_Submission.pdf

⁴³ Ibid page 10

⁴⁴ Smallwood, E. (2015) Stepping Stones: Legal barriers to economic equality after family violence, Women's Legal Service Victoria, Melbourne

⁴⁵ Women's Legal Service Victoria (2018) Small Claims, Large Battles: Achieving economic equality in the family law system

Economic Security for Survivors of Domestic and Family Violence: Understanding and measuring the impact (Good Shepherd Australia New Zealand)⁴⁶ report.

Proposal 3-13 (engaging financial sector in relation to debt)

Proposal 3–13 The Australian Government should work with the financial sector to establish protocols for dividing debt on relationship breakdown to avoid hardship for vulnerable parties, including for victims of family violence.

We support this recommendation, yet wish to highlight the need to engage specialist women’s services too to work together on issues relating to dividing debts.

It is important to note that women already are entering the family law system with financial debts. The Stepping Stones report highlights that among women assisted by Women’s Legal Service Victoria, “43% were dealing with joint debts, and 85% were dealing with debts in their sole name. Of these women, 25% had a debt that was accrued by an abusive partner against their wishes, without their knowledge, without understanding or under duress”.⁴⁷

We also caution against the notion that the debt should be split equally between parties (para 3.128 of the ALRC discussion paper).

Proposal 3-17 (splitting of superannuation)

Question 3-2: Should provision be made for early release of superannuation to assist a party experiencing hardship as a result of a separation? if so, what limitations should be placed on the ability to access superannuation in this way? How should this related to superannuation splitting provisions?

We are concerned that proposals for early release of superannuation jeopardise women’s economic security long-term and shift the onus from the government onto an individual, in settings where women are already disadvantaged by the current gender gap in super.⁴⁸

The poverty and financial hardship that women experience as a result of violence is a major part of the short and long-term impacts of this violence, with compounding repercussions affecting health and well-being in all areas of life, for women individually and for their dependents. At the same time, women’s relative economic disempowerment is a major factor contributing to the perpetration of violence against women, both at a society-wide level and at a personal level.⁴⁹

⁴⁶ Tanya Corrie (2016) Economic Security for Survivors of Domestic and Family Violence: Understanding and measuring the impact. Good Shepherd Australia New Zealand
https://www.goodshep.org.au/media/1421/financial-security-for-survivors-of-domestic-and-family-violence_march2016.pdf

⁴⁷ Smallwood, E. (2015) Stepping Stones: Legal barriers to economic equality after family violence, Women’s Legal Service Victoria, Melbourne.

⁴⁸ Workplace Gender Equality Agency <https://www.wgea.gov.au/addressing-pay-equity/what-gender-pay-gap>; Australian Institute of Superannuation Trustees, Women in Super (2016) Women’s Super Summit 2016, http://www.aist.asn.au/media/881217/2016_aist-wis_women_s_super_summit_web.pdf

⁴⁹ Our Watch, Australia’s National Research Organisation for Women’s Safety (ANROWS) and VicHealth (2015) *Change the story: A shared framework for the primary prevention of violence against women and their children*

The choices open to women to pursue lives free of violence, abuse and control are structured by their access to resources and their autonomy with regard to how those resources are used. Measures to alleviate hardship and provide financial support at critical points, such as attempts to establish a household separate from an abusive partner, must therefore be pursued in a way that does not exacerbate economic gender inequality overall, or contribute to victims'/survivors' economic disempowerment and poverty across their life-course.⁵⁰ The most sound approaches to achieving this goal are structural responses that are grounded in human rights principles and are competent in meeting the needs of people with diverse and multiple experiences of poverty and disempowerment.

Individuals do experience extreme hardship resulting from domestic and family violence, and could benefit in the immediate term from access to some portion of their superannuation savings, with potential flow-on benefits in terms of financial recovery over their lifetime. However, there is no evidence that these flow-on benefits would outweigh the negative impact on savings. Most importantly, the same benefits could be obtained from measures that provide flexible, adequate and publicly-funded support both at critical moments and as part of a sound ongoing social security payments system. Unlike measures to expand early release of superannuation, the latter approach would not jeopardise individuals' lifetime savings or increase their risk of poverty in later life.

Services for women and children facing domestic and family violence are severely underfunded and already find it difficult or impossible to adequately assist those who have particularly large or complex needs and limited means of support.⁵¹ We are concerned that broadening and normalising the use of personal savings (in this case, superannuation) as a way to meet the needs of women facing violence would further entrench the structural under-resourcing of the women's service sector. This approach is also inherently regressive, in that it would increase inequality by making the capacity to build a life free of violence even more dependent on personal wealth and income.

in Australia, Our Watch, Melbourne, Australia. <https://www.ourwatch.org.au/getmedia/0aa0109b-6b03-43f2-85fe-a9f5ec92ae4e/Change-the-story-framework-prevent-violence-women-children-AA-new.pdf.aspx>

⁵⁰ Australian Law Reform Commission (2011) *Family Violence and Commonwealth Laws* (DP 76), Section 19 - Superannuation Law, <https://www.alrc.gov.au/publications/19-superannuation-law/gaining-early-access-superannuation>

⁵¹ For example, a recent report by the Multicultural Centre for Women's Health suggests that almost half (47.6%) of the immigrant and refugee women accommodated in refuges in Victoria in 2009-2010 were women without permanent residency. Similar concerns were highlighted by the ALRC in its Discussion Paper and Final Report, *Family Violence and Commonwealth Laws*, and were raised in submissions from TEWLS and immigrant women's organisations. On the other hand, anecdotal evidence suggests that women without permanent residency require longer support. For a detailed analysis on the visa implications in the context of family violence, we refer you to AWAVA's 2017 submission to the Department of Immigration and Border Protection on visa simplification: <https://awava.org.au/2017/10/12/submissions/submission-department-immigration-border-protection-visa-simplification>.

We also want to warn that such an approach takes the onus off the government to provide more community legal support at the expense of women's superannuation. The principle of the state's responsibility to create safety for all residents⁵², and more specifically to provide adequate services and support to victims/survivors of violence⁵³, requires a more comprehensive, universal and human-rights-based approach to meeting the needs of women and children in situations of hardship. This includes extending income support and other public services to meet the needs of women who do not currently have access, particularly women without permanent visa status and without income.⁵⁴ We are calling for more funding to be provided to community and women's legal services to ensure victims/survivors are able to afford family violence proceedings.

Question 3-3 (binding financial agreements)

Question 3-3: Which, if any, of the following approaches should be adopted to reform provisions about financial agreements in the Family Law Act 1975 (Cth):

- amendments to increase certainty about when financial agreements are binding;
- amendments to broaden the scope for setting aside an agreement where it is unjust to enforce the agreement, for example, because there has been family violence, or a change of circumstances that was unforeseen when the agreement was entered into;
- replacing existing provisions about financial agreements with an ability to make court-approved agreements; or
- removing the ability to make binding pre-nuptial financial agreements from family law legislation, and preserving the operation of any existing valid agreements?

We understand the benefits to individuals and to government of people being able to resolve their own disputes without going to court, and we acknowledge that there are some women with assets who may benefit from entering these agreements. However, Binding Financial

⁵² United Nations General Assembly (2013) Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, A/HRC/23/49, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A_HRC_23_49_English.pdf

⁵³ AT v Hungary - CEDAW Committee Recommendation No. 19 para 24 (r) (iii); Beijing Platform Strategic Objective D1 para 125 (a), echoed by the Secretary General at p80 of his report; CEDAW Committee Decision 2005 Communication No.2/2003. <http://www.un.org/womenwatch/daw/cedaw/protocol/decisions-views/CEDAW%20Decision%20on%20AT%20vs%20Hungary%20English.pdf>; Commission on the Status of Women, 57th session (2013) Agreed Conclusions on the elimination and prevention of all forms of violence against women. E/CN.6/2013/11 <http://www2.unwomen.org/~media/headquarters/attachments/sections/csw/57/csw57-agreedconclusions-a4-en.pdf?v=1&d=20140917T100700> clause A(c); UN Women (2012) Handbook for National Action Plans on Violence against Women <http://www.unwomen.org/en/digital-library/publications/2012/7/handbook-for-national-action-plans-on-violence-against-women> p. 44.

⁵⁴ AWAVA (2017), Submission on Visa Simplification to the Department of Immigration and Border Protection <https://awava.org.au/2017/10/12/submissions/submission-department-immigration-border-protection-visa-simplification>; AWAVA and Harmony Alliance (2017), Joint Pre-Budget Submission 2018-19, <https://awava.org.au/2018/02/01/submissions/2018-2019-joint-awava-harmony-alliance-pre-budget-submission>

Agreements do not properly account for the erosion of self-esteem and the lack of consent that are key to the dynamics of violence.

While the legislation assumes equal contracting parties, we know that for a very large number of women, their choices are interwoven with their need to limit the risk of harm to themselves and their children, by appeasing their partner. In these cases there is a very high risk that women will sign agreements even if their legal advice cautions against it. These women understandably see the alternative as worse. For this reason, we believe the legislation should adopt a specific setting aside provision for circumstances where there is family violence. In the absence of such a provision, there is high risk that outcomes will place women in poverty and reward perpetrators of violence.

Proposal 3-19 (spousal maintenance)

<p>Proposal 3–19 The dedicated spousal maintenance considerations should include a requirement that the court consider the impact of any family violence on the ability of the applicant to adequately support themselves.</p>

We support including a consideration for the impacts of family violence on an applicant’s ability to support themselves in spousal maintenance provisions. However, we also think that this needs to be done considering the balance between safety and financial needs to avoid further abuse and control from a perpetrator.

Section 4: Getting Advice and Support

Proposals 4-1, 4-2, 4-3, 4-4 (Family Hubs)

Proposal 4-1, 4-2, 4-3, 4-4 (Family Hubs)

Proposal 4–1 The Australian Government should work with state and territory governments to establish community-based Families Hubs that will provide separating families and their children with a visible entry point for accessing a range of legal and support services. These Hubs should be designed to:

- identify the person’s safety, support and advice needs and those of their children;
- assist clients to develop plans to address their safety, support and advice needs and those of their children;
- connect clients with relevant services; and
- coordinate the client’s engagement with multiple services.

Proposal 4–2 The Australian Government should work with state and territory governments to explore the use of digital technologies to support the assessment of client needs, including their safety, support and advice needs, within the Families Hubs.

Proposal 4–3 Families Hubs should advance the safety and wellbeing of separating families and their children while supporting them through separation. They should include on-site out-posted workers from a range of relevant services, including:

- specialist family violence services;
- legal assistance services (such as community legal centres);
- family dispute resolution services;
- therapeutic services (such as family counselling and specialised services for children);
- financial counselling services;
- housing assistance services;
- health services (such as mental health services and alcohol and other drug services);
- gambling help services;
- children’s contact services; and
- parenting support programs or parenting education services (including a program for fathers).

Proposal 4–4 Local service providers, including Aboriginal and Torres Strait Islander, culturally and linguistically diverse, LGBTIQ and disability organisations, specialist family violence services and legal assistance services, including community legal services, should play a central role in the design of Families Hubs, to ensure that each hub is culturally safe and accessible, responsive to local services.

We refer you to questions that we posed in response to the proposal 2-4. We wish to reiterate that the process of contracting services as a part of Family hubs should prioritise specialist women’s services. We also would like to warn against the duplication of the existing services on the ground. In this regard, we support the following position of DVVic and urge the Commission to consider it:⁵⁵

- The purpose of the Families Hubs across the country should be clearly articulated before implementation begins;

⁵⁵ Domestic Violence Victoria (2018) Submission in response to the ALRC discussion paper on the review of the family law system.

- Families Hubs should be co-designed with the community services sector in each state and not duplicate existing services;
- Clear screening, intake, assessment, case management and referral responsibilities need to be established before Hubs go live, particularly in relation to family violence;
- Hubs need to be properly resourced to respond to demand;
- The design of the Families Hubs should prioritise safety and accessibility in their physical and organisational design;
- Families Hubs should be designed to respond to intersectionality that recognises structural oppressions and the interplay of gendered family violence, race, cultural background, sexual orientation, gender identity, religion, age and disability;
- Women and children who have gone through the Family Courts should be supported and resourced to participate in the co-design of the Families Hubs;
- Hub design should be evidence-based and a clear monitoring and evaluation plan should be designed from the outset.

There needs to be a recognition that design and implementation of these proposals requires sufficient resourcing.

We also wish to reiterate the need for all staff in a Family Hub to be trained in responses to family violence.

Proposals 4-5, 4-6, 4-7, 4-8 (Support for FASS and potential roll out)

Proposal 4–5 The Australian Government should, subject to positive evaluation, expand the Family Advocacy and Support Service (FASS) in each state and territory to include:

- an information and referral officer to conduct intake, risk and needs screening and triage, as well as providing information and resources;
- a family violence specialist legal service and a family violence specialist support service to assist clients who have experienced or are experiencing family violence; and
- an additional legal service and support service, to assist clients who are alleged to have used family violence and clients who are not affected by family violence but have other complex needs

Proposal 4–6 The FASS support services should be expanded to provide case management where a client has complex needs and cannot be linked with an appropriate support service providing ongoing case management.

Proposal 4–7 The level and duration of support provided by the FASS should be flexible depending on client need and vulnerability, as well as legal aid eligibility for ongoing legal services.

Proposal 4–8 The Australian Government should, subject to positive evaluation, roll out the expanded FASS to a greater number of family court locations, including in rural, regional and remote locations.

We fully support these proposals, noting they are consistent with AWAVA’s policy recommendations.

Section 6. Reshaping the Adjudication Landscape

Proposals 6-1, 6-2, 6-3 (court specialisation)

Proposal 6–1 The family courts should establish a triage process to ensure that matters are directed to appropriate alternative dispute resolution processes and specialist pathways within the court as needed.

Proposal 6–2 The triage process should involve a team-based approach combining the expertise of the court’s registrars and family consultants to ensure initial and ongoing risk and needs assessment and case management of the matter, continuing, if required, until final decision.

Proposal 6–3 Specialist court pathways should include:

- a simplified small property claims process;
- a specialist family violence list; and
- the Indigenous List.

We welcome the family violence court specialisation. However, we are concerned that there will be prioritisation of high risk cases only. We strongly advise that early risks assessments needs to be done from the moment of entering the system. We refer you to the five-step plan *Safety First in Family Law*⁵⁶, which was developed by Women’s Legal Services Australia that recommends to:

- 1a.** place domestic violence specialists in family court registries to undertake risk assessment at the very earliest stages of a case and provide recommendations on interim care arrangements for children.
- 1b.** Create a process in family courts to manage domestic violence cases with an emphasis on early decision making, triaging and case-management.

Additionally, we would like to bring your attention to the question of sexual violence. While we understand that specialist sexual violence courts⁵⁷ may be out of scope within the family law system, we would like to query whether there are other measures to ensure the specialist family violence court has capability to properly address sexual violence within the scope of family violence.

⁵⁶ See <https://safetyinfamilylaw.org.au/the-solutions/>

⁵⁷ Due to the distinctive nature of sexual offences, we see the benefit of establishing specialist sexual violence courts. In this case, having the specialisation, the justice system will be better equipped to account for distinguishing characteristics of sexual violence. These courts needs to be operating through a trauma approach and ensure adequate training of judicial officers. For a more detailed analysis, we refer you to the submission made by the Rape and Domestic Violence Services Australia to the NSW Law Reform Commission review in relation to sexual offences <https://www.lawreform.justice.nsw.gov.au/Documents/Current-projects/Consent/PCO88.pdf>

Proposal 6-7 (family violence specialisation)

Proposal 6–7 The family courts should consider establishing a specialist list for the hearing of high risk family violence matters in each registry. The list should have the following features:

- a lead judge with oversight of the list;
- a registrar with responsibility for triaging matters into the list and ongoing case management;
- family consultants to prepare short and long reports on families whose matters are heard in the list; and
- a cap on the number of matters listed in each daily hearing list.

All of the professionals in these roles should have specialist family violence knowledge and experience.

We reiterate our concerns from the response above in relation to prioritising high risk cases only. With high number of cases involving family violence, early risk assessments and triage from the point of entering the system are necessary.

We echo recommendations made by WLSA in relation to developing a national risk assessment framework:

Recommendation 1: That the Australian Government, working with state and territory governments through the Council of Australian Governments (COAG), develop a national risk assessment framework for use by the family law court registry. We recommend that the Australian Government consider adopting an established state and territory risk assessment framework, i.e. the Victorian Common Risk Assessment Framework (CRAF) or the NSW Domestic Violence Assessment Tool, and that any national risk assessment framework should be:

1. Consistent nationally
2. Multi-method, multi-informant, while placing particular emphasis on the victim's own assessment of risk
3. Culturally sensitive
4. Supported by appropriate training.

Recommendation 4: That the Australian Government amend the Family Law Act (and other legislation as required) to require that upon filing of any family law application, the following risk assessment process is undertaken as soon as practicable:

1. 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.
2. 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.
3. Where the affected family member is Aboriginal and/or Torres Strait Islander, a referral should be made to a specialised and culturally safe legal service such as a Family Violence Prevention Legal Service (FVPLS) or Aboriginal and Torres Strait Islander Women's Legal Service.

4. That following receipt of such a referral, the family violence support worker undertake 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.⁵⁸

Overall, we support the specialisation and commend the understand that all professionals need to have specialist family violence knowledge.

Proposal 6-8, 6-9 (Parent management hearing)

Proposal 6–8 The Australian Government should work with state and territory governments to develop and implement models for co-location of family law registries and judicial officers in local court registries. This should include local courts in rural, regional and remote locations.

Question 6–3 What changes to the design of the Parenting Management Hearings process are needed to strengthen its capacity to apply a problem-solving approach in children’s matters? Are other changes needed to this model?

Question 6–4 What other ways of developing a less adversarial decision making process for children’s matters should be considered?

Proposal 6–9 The Australian Government should develop a post-order parenting support service to assist parties to parenting orders to implement the orders and manage their co-parenting relationship by providing services including:

- education about child development and conflict management;
- dispute resolution; and
- decision making in relation to implementation of parenting orders.

We wish to reiterate that given the high prevalence of sexual, domestic and family violence and high percentage of cases before the Family Court involving family violence, there should not be a presumption that cases before Parent Managements Hearings are not family violence cases.

We refer you to the submission made by Women’s Legal Service in relation to the Parent Management Hearing Bill which AWAVA endorsed.⁵⁹

While we understand that the model is not designed to deal with disputes involving family violence, all professional working with this models needs to have specialist family violence knowledge. We strongly support WLSA’s recommendation for the panel members to be trained and highly experienced in family violence, child abuse and trauma informed practice. Panel members should undergo appropriate training to better understand and work with victims of violence and trauma, ensuring decisions are better informed, safer and more appropriate. Further, all panel members should have an understanding of the tactics a perpetrator may utilise within the court system to ‘perpetuate a pattern of dominance and

⁵⁸ Women’s Legal Service Australia (2017) Submission to House of Representatives Standing Committee on Social Policy and Legal Affairs Submission to the parliamentary inquiry into a better family law system to support and protect those affected by family violence.

⁵⁹ Women’s Legal Service Australia (2017) Submission to the Senate Legal and Constitutional Affairs Committee in response to the Family Law Amendment (Parenting Management Hearings) Bill 2017. http://www.wlsa.org.au/submissions/parent_management_hearings_bill_feb_2018

control'.⁶⁰ Increased knowledge regarding gender bias and the nature of family violence amongst panel members can assist in holding perpetrators to account, and ensure that victims are treated in a consistent manner.⁶¹

We strongly support WLSA's recommendations about the need for funded legal assistance and representation in matters involving family violence and child abuse, including additional funding for family law and family violence duty services; specialist women's legal services and programs; and specialist Aboriginal and Torres Strait Islander controlled legal service providers (including both Family Violence Prevention Legal Services and Aboriginal and Torres Strait Islander Legal Services).⁶²

Lastly, we strongly support WLSA's recommendations in relation to the cultural competency, sexuality and gender diversity as well as disability training of all panel members in relation to family violence, child abuse and trauma informed practice. Panel members should be trained to account for the specific needs of Aboriginal and Torres Strait Islander women, women with disabilities, women from culturally and linguistically diverse backgrounds (including working with interpreters), working with vulnerable clients, trauma-informed practices and working with lesbian, gay, bisexual, transgender and queer (LGBTQ) families.⁶³

Proposal 6-12 (physical safety in courts)

Proposal 6–12 The Australian Government should ensure that all family court premises, including circuit locations and state and territory court buildings that are used or family law matters, are safe for attendees, including ensuring the availability and suitability of:

- waiting areas and rooms for co-located service providers, including the extent to which waiting areas can accommodate large family groups;
- safe waiting areas and rooms for court attendees who have concerns for their safety while they are at court;
- private interview rooms;
- multiple entrances and exits;
- child-friendly spaces and waiting rooms;
- security staffing and equipment;
- multi-lingual and multi-format signage;
- remote witness facilities for witnesses to give evidence off site and from court-based interview rooms; and
- facilities accessible for people with disability.

⁶⁰ Women's Legal Service NSW, Supplementary submission to the Family Law Council Reference on Families with Complex Needs and the Intersection of the Family Law and Child Protection System (16 October 2015) <http://www.wlsnsw.org.au/law-reform/submissions/> (accessed 9 June 2016).

⁶¹ Wakefield S & Taylor A. 2015. Judicial education for domestic and family violence. ANROWS Landscapes 02/2015. At: anrows.org.au/publications/landscapes/judicial-education-for-domestic-and-family-violence-state-knowledge-paper

⁶² Women's Legal Service Australia (2017) Submission to the Senate Legal and Constitutional Affairs Committee in response to the Family Law Amendment (Parenting Management Hearings) Bill 2017. http://www.wlsa.org.au/submissions/parent_management_hearings_bill_feb_2018

⁶³ Ibid.

We fully support these proposals, noting they are consistent with AWAVA’s policy recommendations. We also wish to reiterate that improvements of the physical safety in courts requires sufficient resourcing of courts.

Section 8. Reducing Harm

Proposal 8-1 (family violence definition)

Proposal 8–1 The definition of family violence in the *Family Law Act 1975* (Cth) should be amended to:

- clarify some terms used in the list of examples of family violence and to include other behaviours (in addition to misuse of systems and processes (Proposal 8– 3)) including emotional and psychological abuse and technology facilitated abuse; and
- include an explicit cross-reference between the definitions of family violence and abuse to ensure it is clear that the definition of abuse encompasses direct or indirect exposure to family violence.

Question 8–1 What are the strengths and limitations of the present format of the family violence definition?

Question 8–2 Are there issues or behaviours that should be referred to in the definition, in addition to those proposed?

We support these proposals, noting they are consistent with AWAVA’s policy recommendations.

However, we wish to bring your attention two issues with these proposals. Firstly, we would like to caution against a very particular definition of technology-facilitated abuse. Secondly, we wish to highlight two other types of behaviours that need to be included into the definition of family violence.

Technology-facilitated abuse

We welcome the expansion of the family violence definition to encompass technology-facilitated abuse. We note that the discussion paper (para 8.33) defines it in the following way:

- *using electronic or other means to distribute words or images that cause harm or distress; and*
- *non-consensual surveillance of a family member by electronic or other means.*

We caution against specific definitions as it can lead judges and other judicial officials dismissing or failing to recognise other forms of technology facilitated abuse.

Technology-facilitated abuse encompasses a wide range of behaviours where technology is misused to perpetrate abuse against another person or persons. It includes using technology to harass, stalk, groom, monitor, conduct surveillance on, location-track, threaten, humiliate, impersonate and/or isolate.

In gender-based violence against women, it can be understood as another tool used by perpetrators to hold power and control over a victim. In some cases, technology significantly increases the impact of abusive behaviours because of the increased capacity or reach of technologies being used compared to “traditional” forms of these behaviours.⁶⁴ As an early article on technology abuse states “Technology has given [abusers] new tools, enabling them

⁶⁴ Southworth, C. et al. (2006) An High-Tech Twist on Abuse: Technology, Intimate Partner Stalking and Advocacy, Violence Against Women Online Resources, June 1, p1–16.

to reach their victims from afar while infiltrating even deeper into their victims' everyday lives".⁶⁵

The WESNET Safety Net Australia project, which examines the intersection between technology and violence against women, has found that there is now a complete overlap between technology facilitated abuse and domestic and family violence. This is evidenced by both US and Australian studies, and indicate that that 97-98% of domestic and family violence practitioners surveyed had clients experiencing technology-facilitated abuse.⁶⁶

We would like to reiterate that narrow definitions are likely to become quickly outdated as technology and the way it can be used or misused rapidly evolve. It is, thus, essential to view technology-facilitated abuse through the same lens of coercion and control that perpetrators are exercising.

Expanding the definition of family violence

We believe that reproductive coercion and dowry abuse needs to be added to the expanded definition of family violence. We highlight some of the discussions below.

Reproductive Coercion

The term reproductive coercion is used to define a range of male partner pregnancy-controlling behaviours. These behaviours can include birth control sabotage (where contraception is deliberately thrown away or tampered with), threats and use of physical violence if a woman insists on condoms or other forms of contraception, emotional blackmail coercing a woman to have sex or to fall pregnant, or to have an abortion as a sign of her love and fidelity, as well as forced sex and rape.⁶⁷

Brisbane-based non-for-profit organisation Children by Choice has noted that women from culturally and linguistically diverse backgrounds are over-represented among women subjected to reproductive coercion, with up to one in five CALD contacts reporting this form of abuse.⁶⁸

⁶⁵ Fraser, C. et al. (2010) The New Age of Stalking: Technological Implications for Stalking, *Juvenile and Family Court Journal* 61, no. 4: 39–55,

⁶⁶ Domestic Violence Resource Centre Victoria (2015) ReCharge: Women's Technology Safety, Legal Resources, Research & Training: National Study Findings, available online at <http://www.smartsafe.org.au/sites/default/files/National-study-findings-2015.pdf>; Domestic Violence Resource Centre Victoria (2013) SmartSafe Research Findings, available online at www.smartsafe.org.au; Woodlock, D. (2017) The Abuse of Technology in Domestic Violence and Stalking, *Violence Against Women* 23, no. 5: 584–602; National Network to End Domestic Violence (2014) A Glimpse From the Field, *Safety Net Technology Safety Survey 2014*, available at <http://static1.squarespace.com/static/51dc541ce4b03ebab8c5c88c/t/54e3d1b6e4b08500fcb455a0/1424216502058/NNEDV+Glimpse+From+the+Field+-+2014.pdf>; National Network to End Domestic Violence (2018) Tech Abuse: Information From the Field, *Techsafety.org*, Washington, D.C., available online at <https://www.techsafety.org/blog/2018/9/12/tech-abuse-information-from-the-field>.

⁶⁷ Miller, E., Decker, M., McCauley, H., Tancredi, D., Levenson, R., Waldman, J., Schoenwald, P., & Silverman, J. (2010) Pregnancy Coercion, Intimate Partner Violence and Unintended Pregnancy 81 *Contraception*.

⁶⁸ Children by Choice Assoc Inc (2014) Domestic violence in Australia. Submission to the Finance and Public Administration References committee. Available at <https://www.childrenbychoice.org.au/factsandfigures/reproductivecoercion>

We recommend that the definition of family violence is expanded to encompass reproductive coercion.

Dowry Abuse

Dowry refers to a cultural practice involving the exchange of substantial gifts at the time of marriage. The practice of dowry can be associated with abuse, control and demands for more substantial gifts or financial contributions.

While dowry abuse is generally understood as a cultural practice, it is important to recognise that it occurs in a broader environment where male privilege is normalised⁶⁹ and relationships are not gender equal. Patel et al argue that dowry “has come to devalue women’s lives; reinforcing and perpetuating their commodification and unequal status in the family and wider society.”⁷⁰

Regardless of which party is the recipient of dowry, dowry abuse bears a gendered nature, as it manifests itself as male violence against women. O’Connor argues that “it is the young bride who suffers abuse; either because he did not get enough dowry; or because he was aggrieved for having to give ‘too much dowry’”.⁷¹ Patel et al note that dowry generally contributes to “the maintenance of highly patriarchal family structures and widening gender inequality”.⁷²

In this sense, dowry abuse is another manifestation of violence against women, the main driver of which is gender inequality, operating on many levels from social and cultural norms to economic and structural injustices.

We also draw your attention to the fact that The Victorian Parliament has passed the Family Violence Protection and Other Matters Bill 2018 which includes, amongst other measures, redefining the meaning of family violence to include “using coercion, threats, physical abuse or emotional or psychological abuse to demand or receive a dowry, either before or after a marriage.”⁷³

We recommend that the definition of family violence is expanded to encompass reproductive coercion.

⁶⁹ AWAVA (2016) Policy Brief The role of specialist women’s services in Australia’s response to violence against women and their children <http://awava.org.au/2016/04/07/research/role-specialist-womens-services-australias-response-violence-women-children>

⁷⁰ Patel, P., Handa, R., Anitha, S., Jahangir, S. Emerging issues for international family law: Part 3: Transnational marriage abandonment and the dowry question

⁷¹ ACHR (2015) Refusal to Comply with Dowry Demands Contributes to Family Violence and Death in Victoria, available at <http://achrh.org/wp-content/uploads/2016/07/ACHRH-SUBMISSION-TO-ROYAL-COMMISSION-ON-DOWRY-RELATED-FAMILY-VIOLENCE-AND-DEATH-11-May-2015.pdf>.

⁷² Patel, P., Handa, R., Anitha, S., Jahangir, S. Emerging issues for international family law: Part 3: Transnational marriage abandonment and the dowry question p. 2

⁷³ <https://www.sbs.com.au/yourlanguage/hindi/en/article/2018/08/09/victorian-parliament-passes-legislation-banning-dowry-abuse>

Proposal 8-2 (definition of family violence in relation to diverse groups)

Proposal 8–2 The Australian Government should commission research projects to examine the strengths and limitations of the definition of family violence in the *Family Law Act 1975* (Cth) in relation to the experiences of:

- Aboriginal and Torres Strait Islander people;
- people from culturally and linguistically diverse backgrounds; and
- LGBTIQ people.

While we support this proposal, we would also like to recommend that the strengths and limitations of the definition of family violence are examined in relation to people with disability.

Women with disability experience more severe violence more often than other women, are subjected to additional forms of violence because of their disability and encounter more barriers when they try to protect themselves and seek justice.⁷⁴ Data on this area is lacking, but disability support services report that “women and girls with disabilities were 37.3 per cent more likely than women and girls without disabilities to experience some form of intimate partner violence, with 19.7 percent reporting a history of unwanted sex compared to 8.2 percent of women and girls without disabilities.”⁷⁵ Twenty-two per cent of women and girls with disabilities who had made contact with service provider respondents in 2012 identified as having been affected by violence.⁷⁶

The social marginalisation and discrimination that women with disabilities experience can be compounded, for some, by reduced mobility, which limits capacity to escape violent situations. Domestic living arrangements for some people with disability take forms that are very different from the standard family home (e.g. group homes and other institutional settings), and domestic violence in these settings can be perpetrated by workers, carers and others in a way that does not fit conventional understandings of domestic and family violence. Overall, women with disabilities are at risk of the same forms of violence that other women face but “also experience forms of violence that are particular to their situation of social disadvantage, cultural devaluation and increased dependency.”⁷⁷

It is important to recognise that perpetrators of violence against women with disability may use specific forms of violence such as:

- Denial of care or denial of assistance with essential activities of daily life;
- Destruction or withholding of adaptive equipment;
- Withholding food or medication;
- Limiting access to communication devices;

⁷⁴ Women with Disabilities Australia (2011) Submission to the UN Analytical Study on Violence Against Women with Disabilities.

⁷⁵ Women with Disabilities Australia et al (2013) National Symposium on Violence against Women and Girls with Disabilities: Background Paper, p.28, Op Cit.

⁷⁶ Dowse, L. et al, Women With Disabilities Australia (2013) Stop the violence: addressing violence against women and girls with disabilities in Australia. Background paper.

⁷⁷ Ibid.

- Threats of institutionalisation;
- Threats to report to Community Services, meaning a fear of losing children;
- Manipulation of medication; and
- Forced sterilisation of women and girls⁷⁸.

At the same time, barriers specific to women with disability needs to be recognised and dismantled. These include:

- Fear being institutionalised in a nursing home or rehabilitation centre;
- Fear of loss of self-autonomy;
- Not recognising their experience as abuse;
- Blaming themselves for the abuse;
- Having no other options;
- Not trusting agencies to respond effectively;
- Fear of losing their independence; and
- Fear of losing their children.⁷⁹

It is important that the experiences of people with disability are addressed within the broader consideration of the adequacy of the definitions of family violence within the Family Law Act.

Proposal 8-3 (systems abuse)

Proposal 8–3 The definition of family violence in the Family Law Act 1975 (Cth) should be amended to include misuse of legal and other systems and processes in the list of examples of acts that can constitute family violence in s 4AB(2) by inserting a new subsection referring to the ‘use of systems or processes to cause harm, distress or financial loss’.

We fully support these proposals, noting they are consistent with AWAVA’s policy recommendations.

Proposals 8-6, 8-7 (sensitive communication)

Proposal 8–6 The *Family Law Act 1975* (Cth) should provide that courts have the power to exclude evidence of ‘protected confidences’: that is, communications made by a person in confidence to another person acting in a professional capacity who has an express or implied duty of confidence. The Act should provide that:

- Subpoenas in relation to evidence of protected confidences should not be issued without leave of the court.
- The court should exclude evidence of protected confidences where it is satisfied that it is likely that harm would or might be caused, directly or indirectly, to a protected confider, and the nature and extent of the harm outweighs the desirability of the evidence being given. Harm should be defined to include actual physical bodily harm, financial loss, stress or shock, damage to reputation or emotional or psychological harm (such as shame, humiliation and fear).
- In exercising this power, the court should consider the probative value and importance of the evidence to the proceedings and the effect that allowing the evidence would have on the protected confider.

⁷⁸ NSW Police (2018) Code of Practice for the NSW Police Force Response to Domestic and Family Violence. https://www.police.nsw.gov.au/_data/assets/pdf_file/0016/165202/Code_of_Practice_for_the_NSWPF_response_to_Domestic_and_Family_Violence.pdf

⁷⁹ Ibid.

· In family law proceedings concerning children, the safety and best interests of the child should be the paramount consideration when deciding whether to exclude evidence of protected confidences. Such evidence should be excluded where a court is satisfied that admitting it would not promote the safety and best interests of the child.

· The protected confider may consent to the evidence being admitted.

· The court should have the power to disallow such evidence on its own motion or by application of the protected confider or the confidant. Where a child is the protected confider, a representative of the child may make the claim for protection on behalf of the child.

· The court is obliged to give reasons for its decision.

Proposal 8–7 The Attorney-General’s Department (Cth) should convene a working group comprised of the family courts, the Family Law Section of the Law Council of Australia, the Royal Australian and New Zealand College of Psychiatrists, the Australian Psychological Society, the Royal Australian College of General Practitioners, Family & Relationship Services Australia, National Legal Aid, Women’s Legal Services Australia and specialist family violence services peak bodies and providers to develop guidelines in relation to the use of sensitive records in family law proceedings. These guidelines should identify:

· principles to consider when a subpoena of sensitive records is in contemplation;

· obligations of professionals who are custodians of sensitive records in relation to the provision of those records;

· processes for objecting to a subpoena of sensitive records; and

· how services and professionals need to manage implications for their clients regarding the possibility that material may be subpoenaed and any potential consequences for their clients if a subpoena is issued.

We fully support these proposals, noting they are consistent with AWAVA’s policy recommendations. We also wish to reiterate two important points.

The first point is in relation to access to support and services. For most women, following separation from a partner, the purpose of seeing a psychiatrist or psychologist is not to prove that violence took place, but to allow the victim/survivor to focus on their health and wellbeing. There are public policy reasons why victims of violence should be free to say anything to their psychiatrist or psychologist and why other people should not have access to those records. It is important that process of healing is not obstructed by such interferences, and seeking help remains the main purpose of such act.

Secondly, in the instances where a court grants leave to issue a subpoena, there needs to be a service in place able to provide advice and representation in family law and child protection matters for individuals and services wishing to object to subpoenas of sensitive records.⁸⁰

Section 9. Additional Legislative issues

Proposal 9-1 (supported decision making framework for people with disability)

Proposal 9–1 The *Family Law Act 1975* (Cth) should include a supported decision making framework for people with disability to recognise they have the right to make choices for themselves. The provisions should be in a form consistent with the following recommendations of the ALRC Report 124, *Equality, Capacity and Disability in Commonwealth Laws*:

⁸⁰ Sexual Assault Communications Privilege Service NSW website <http://www.legalaid.nsw.gov.au/what-we-do/civil-law/sexual-assault-communications-privilege-service>

- Recommendations 3–1 to 3–4 on National Decision Making Principles and Guidelines; and
- Recommendations 4–3 to 4–5 on the appointment, recognition, functions and duties of a ‘supporter’.

We support this proposal as it is a critical shift towards recognition of legal capacity of people with disability and a move from substitute decision making to supported decision making systems.

We urge the Commission to ensure that any work on supported decision making is consistent with the Article 12 of the Convention on the Rights of Persons With Disabilities⁸¹ and the General comment No. 182 (2014) Article 12: Equal recognition before the law of the Convention on the Rights of Persons With Disabilities. Its implementation needs to ensure full compliance with above mentioned documents. Additionally, given that mentioned ALRC report (in the text of the proposal) was developed in 2014, the implementation of the recommendations in this proposal need to comply with the most recent human rights guidance materials on article 12.

Question 9-1 (sterilisation of children with disability and medical procedures on intersex children)

In relation to the welfare jurisdiction:

- Should authorisation by a court, tribunal, or other regulatory body be required for procedures such as sterilisation of children with disability or intersex medical procedures? What body would be most appropriate to undertake this function?
- In what circumstances should it be possible for this body to authorize sterilisation procedures or intersex medical procedures before a child is legally able to personally make these decisions?
- What additional legislative, procedural or other safeguards, if any, should be put in place to ensure that the human rights of children are protected in these cases?

The starting point for addressing the medically unnecessary sterilisation of people with disability and medically unnecessary procedures on intersex children must be complete prohibition. Reforms that merely amend the current approach are inadequate. Any oversight mechanism that is put in place must be strictly tasked with testing the genuineness of claims that such procedures are medically necessary in any specific case. Any such oversight mechanism must be independent and human rights based, and not a part of the Family Courts or State and Territory-based systems.

Additional safeguards and mechanisms will be acceptable only once prohibition is enacted, and then safeguards should only consider the genuineness of claims that procedures are medically necessary and compliant with human rights. Safeguard mechanisms would be independent, with representation of human rights experts (including human rights focused clinicians) and peer-led intersex and disability organisations. The Family Law Court and State and Territory Tribunals have not proven to be effective safeguards for preventing medically unnecessary sterilisations and medical interventions on children with disability and intersex children.

⁸¹ <http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>

⁸² <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/031/20/PDF/G1403120.pdf?OpenElement>

Forced sterilisation of women with disability

In 2018 CEDAW Concluding observations on Australia, the CEDAW Committee recommended to “abolish the practice of non-consensual administration of contraceptives, abortion and sterilisation of women and girls with disabilities, and develop and enforce strict guidelines on sexual and reproductive health rights of women and girls with disabilities who are unable to consent.”⁸³ We support this recommendation and regard the act of forced sterilisation “[as] an act of violence, a form of social control, and a clear and documented violation of the right to be free from torture.”⁸⁴

We urge the government to take all necessary measures to abolish this harmful practice as a part of efforts to reduce violence against women.

Medically unnecessary procedures on intersex infants and children

The 2018 CEDAW Concluding observations has also recommended to “adopt clear legislative provisions explicitly prohibiting the performance of unnecessary surgical or other medical treatment on intersex children before they reach the legal age of consent”.⁸⁵

These unnecessary surgeries are performed in an attempt to “normalise” bodies, alleviate parental distress over the atypical genital appearance and/or influence adult sexual orientation and/or gender identity. Moreover, these unnecessary surgeries are conducted on infants and children when they are unable to consent to such a procedure. Surgeries being performed in an absence of consent combined with an attempt to normalise rather than for medical necessity, constitute a human rights violation.⁸⁶

The narrative of normalisation of one’s bodies and genitalia is rooted in rigid gender binary expectations that are placing an expectation on an individual to conform to stereotypically male or female gender categories. This harmful practice is often compared to FGM.⁸⁷ With no evidence to suggest the benefit of such a procedure and this harmful practice constituting a form of violence and infringement of rights to bodily autonomy, integrity and dignity, we believe that such forms of violence need to be abolished rather than regulated.

We support the calls to guarantee bodily integrity, autonomy and self-determination to children born with non-normative sex characteristics, and prohibit unnecessary deferrable surgical or other medical treatment on intersex children until they reach an age at which they can provide their free, prior and informed consent.⁸⁸

⁸³ Committee on Elimination of Discrimination Against Women (2018) Concluding observation on the eight periodic report of Australia.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ See more at Intersex Human Rights Australia <https://ihra.org.au/7571/on-genital-surgeries/> and <https://ihra.org.au/348/sanfrancisco-hrc-intersex-report/>

⁸⁷ See more at Intersex Human Rights Australia <https://ihra.org.au/hf/15108/third-day-intersex-genital-mutilation-igm/>

⁸⁸ Intersex Human Rights Australia (2018) CEDAW Shadow Report; Committee on Elimination of Discrimination Against Women (2018) Concluding observation on the eight periodic report of Australia.

We also note the current inquiry: Protecting the human rights of people born with variations in sex characteristics in the context of medical interventions run by the Australian Human Rights Commission and support the advocacy of Intersex Human Rights Australia.

Section 10. Skilled and supported workforce

Proposal 10-1, 10-2 (development of core competencies)

Proposal 10–1 The Australian Government should work with relevant nongovernment organisations and key professional bodies to develop a workforce capability plan for the family law system.

Proposal 10–2 The workforce capability plan for the family law system should identify:

- the different professional groups working in the family law system;
- the core competencies that particular professional groups need; and
- the training and accreditation needed for different professional groups.

We fully support this proposal, noting it is consistent with AWAVA’s policy recommendations.

Proposal 10-3 (identification of core competencies)

Proposal 10–3 The identification of core competencies for the family law system workforce should include consideration of the need for family law system professionals to have:

- an understanding of family violence;
- an understanding of child abuse, including child sexual abuse and neglect;
- an understanding of trauma-informed practice, including an understanding of the impacts of trauma on adults and children;
- an ability to identify and respond to risk, including the risk of suicide;
- an understanding of the impact on children of exposure to ongoing conflict;
- cultural competency, in relation to Aboriginal and Torres Strait Islander people, people from culturally and linguistically diverse communities and LGBTIQ people;
- disability awareness; and
- an understanding of the family violence and child protection systems and their intersections with the family law system.

We fully support this proposal, noting it is consistent with AWAVA’s policy recommendations.

Intersection of family violence and family law in property determinations

However, we would like to draw your attention to the need to add the topic of the intersection of family violence and family law in property determinations that includes the financial impacts of family violence and the nature and impacts of economic abuse.⁸⁹ While we acknowledge that this topic has been addressed elsewhere in the discussion paper, it is essential that the family violence training that is provided to all professionals is comprehensive.

⁸⁹ Smallwood, E. (2015) Stepping Stones: Legal barriers to economic equality after family violence, Women’s Legal Service Victoria, Melbourne.

Sexual violence

We also note the importance of understanding of sexual violence and inclusion of this issues into the family violence training. Whether sexual violence occurs within or outside of intimate relationships, whether it is episodic or systemic as in situations of domestic and family violence or sexual exploitation, it is a gross human rights violation. Responses to sexual violence including sexual harassment require a higher prioritisation and visibility in its own right as sexual violence remains subsumed under the definition of domestic and family violence, which is contributing to the invisibility of the issue.

The Victorian Royal Commission into Family Violence also “identified that sexual violence is an area that has the potential to fall through the gaps in the system, as family violence services often do not ask about sexual assault, as it is viewed as a separate form of violence”.⁹⁰

Proposal 10-6 (professional development of all legal practitioners)

Proposal 10–6 State and territory law societies should amend their continuing professional development requirements to require all legal practitioners undertaking family law work to complete at least one unit of family violence training annually. This training should be in addition to any other core competencies required for legal practitioners under the workforce capability plan.

We fully support this proposal, noting it is consistent with AWAVA’s policy recommendations.

We also support the recommendation made by the Law Council of Australia, as follows:

“Mandatory family violence education should be provided to all legal practitioners as part of their continuing legal education requirements, if not on an annual basis then at least on the basis of one hour/unit every two years. Core competencies should be developed for legal practitioners, in consultation with key stakeholders.”⁹¹

Proposals 10-7, 10-8, 10-9 (accreditation of Children’s contact services, and appointment of judges with DFV knowledge, accreditation of family report writers)

Proposal 10–7 The *Family Law Act 1975* (Cth) should provide for the accreditation of Children’s Contact Service workers and impose a requirement that these workers hold a valid Working with Children Check.

Question 10–3 Should people who work at Children’s Contact Services be required to hold other qualifications, such as a Certificate IV in Community Services or a Diploma of Community Services?

Proposal 10–8 All future appointments of federal judicial officers exercising family law jurisdiction should include consideration of the person’s knowledge, experience and aptitude in relation to family violence.

Question 10–4 What, if any, other changes should be made to the criteria for appointment of federal judicial officers exercising family law jurisdiction?

Question 10–5 What, if any, changes should be made to the process for appointment of federal judicial officers exercising family law jurisdiction?

⁹⁰ Law Council of Australia (2018) The Justice Project. Final Report Part 1. People who Experience Family Violence, drawing on the Victorian Royal Commission, Summary and Recommendations, 24.

⁹¹ Law Council of Australia (2018) The Justice Project Final Report. Recommendations and Group Priorities, p. 24.

Proposal 10–9 The Australian Government should task the Family Law Commission (Proposal 12–1) with the development a national accreditation system with minimum standards for private family report writers as part of the newly developed Accreditation Rules.

We fully support these proposals, noting they are consistent with AWAVA’s policy recommendations.

Proposal 10-13 (reports about parenting capacity of parents with disability)

Proposal 10–13 The *Family Law Act 1975* (Cth) should provide that, where concerns are raised about the parenting ability of a person with disability in proceedings for parenting orders, a report writer with requisite skills should:

- prepare a report for the court about the person’s parenting ability, including what supports could be provided to improve their parenting; and
- make recommendations about how that person’s disability may, or may not, affect their parenting.

We refer you to earlier [points](#) made earlier in this submission in relation to prejudiced attitudes towards the parental capacity of parents with disability.

Training on disability must be a part of the accreditation process of family report writers to ensure that they produce impartial reports that do not equate disability with parenting incapacity. This training should cover themes related to disability, human rights and disability parenting as well as being run by parents with disability.

We refer you to two publications by the Office of the Public Advocate for further discussion on the intersection of family violence, child protection and parents with disability: Office of the Public Advocate (2013) *What happened to the village? The removal of children from parents with a disability. Report 1: Family law – the hidden issues* and Office of the Public Advocate (2015) *Rebuilding the village: supporting families where a parent has a disability. Report 2 Child Protection*.

Section 11. Information sharing

Proposal 11-1, 11-2 (information sharing)

Proposal 11–1 State and territory child protection, family violence and other relevant legislation should be amended to:

- remove any provisions that prevent state and territory agencies from disclosing relevant information, including experts’ reports, to courts, bodies and agencies in the family law system in appropriate circumstances; and
- include provisions that explicitly authorise state and territory agencies to disclose relevant information to courts, bodies and agencies in the family law system in appropriate circumstances.

The relevant agencies can be identified through the proposed information sharing framework (Proposals 11–2 and 11–3).

Proposal 11–2 The Australian Government should work with state and territory governments to develop and implement a national information sharing framework to guide the sharing of information about the safety, welfare and wellbeing of families and children between the family law, family violence and child protection systems. The framework should include:

- relevant federal, state and territory court documents;
- child protection records;

- police records;
- experts' reports; and
- other relevant information.

While we support improvements in information sharing between systems, we urge the Commission not to see the information sharing “as the panacea”.⁹² We share the concerns expressed by Women’s Legal Services Australia in relation to the ability to analyse and interpret the data in (presumably created) shared database, privacy of sensitive and personal records as well as access to the records when parties do not have legal representation.

We also encourage the government to ensure that the only risk relevant information is shared and that there are safeguards against the inappropriate use of information. Perpetrators must be prohibited from accessing information about women and children affected by violence. Most importantly, victims/survivors need to consent to sharing this information.

Section 12. System Oversight and Reform Evaluation

Proposal 12-1 (establishment of Family Law Commission)

Proposal 12–1 The Australian Government should establish a new independent statutory body, the Family Law Commission, to oversee the family law system. The aims of the Family Law Commission should be to ensure that the family law system operates effectively in accordance with the objectives of the Family Law Act 1975 (Cth) and to promote public confidence in the family law system. The responsibilities of the Family Law Commission should be to:

- monitor the performance of the system;
- manage accreditation of professionals and agencies across the system, including oversight of training requirements;
- issue guidelines to family law professionals and service providers to assist them to understand their legislative duties;
- resolve complaints about professionals and services within the family law system, including through the use of enforcement powers;
- improve the functioning of the family law system through inquiries, either of its own motion or at the request of government;
- be informed by the work of the Children and Young People’s Advisory Board (Proposal 7–13);
- raise public awareness about the roles and responsibilities of professionals and service providers within the family law system; and
- make recommendations about research and law reform proposals to improve the system.

We believe that it is necessary to ensure that the voices of Aboriginal and Torres Strait Islander, culturally and linguistically diverse and LGBTIQ communities and people with disabilities are represented in this statutory body. For these reasons, we recommend to establish respective Advisory boards similar to the proposed Children and Young People’s Advisory Board.

We also wish to reiterate our recommendations on the need to employ Aboriginal and Torres Strait Islander and multicultural liaison officers in family courts.

⁹² Women’s Legal Service Australia (2018) Submission to the Australian Law Reform Commission’s Issues Paper on Review of the Family Law System

Out of the total number of 95 employees in the Family Court of Australia, only one employee is identified as Aboriginal and/or Torres Strait Islander.⁹³ The situation in the Federal Circuit Court is similar. There are only 7 Aboriginal and/or Torres Strait Islander staff members among 560 employees.⁹⁴

The Family Law Council's Interim Report on Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems⁹⁵ has highlighted the need for the government to provide funding for the employment of Aboriginal and Torres Strait Islander family liaison officers. We support that recommendation.

Similarly, we believe that courts and tribunals should engage multicultural Liaison Officers, establish Cultural Diversity Committees, introduce multicultural plans, and actively recruit employees from migrant and refugee backgrounds.

Our recommendations in relation to employing liaison officers have been echoed by the most recent recommendations made by the Law Council of Australia, who called on the government to “employ non-legal liaison officers, such as Aboriginal and Torres Strait Islander, cultural, disability and youth liaison officers, to reach and build the trust with specific client groups who have high levels of legal need but are unlikely to seek help [...]”.⁹⁶

Proposals 12-8, 12-9, 12-10 (cultural safety framework)

Proposal 12–8 The Australian Government should develop a cultural safety framework to guide the development, implementation and monitoring of reforms to the family law system arising from this review to ensure they support the cultural safety and responsiveness of the family law system for client families and their children. The framework should be developed in consultation with relevant organisations, including Aboriginal and Torres Strait Islander, culturally and linguistically diverse, and LGBTIQ organisations.

Proposal 12–9 The cultural safety framework should address:

- the provision of community education about the family law system;
- the development of a culturally diverse and culturally competent workforce;
- the provision of, and access to, culturally safe and responsive legal and support services; and
- the provision of, and access to, culturally safe and responsive dispute resolution and adjudication processes.

Proposal 12–10 Family law service providers should be required to provide services that are compliant with relevant parts of the cultural safety framework.

We fully support these proposals and specifically commend the Commission on the two proposals to be “a community-informed co-design model” developed in consultation with relevant community organisations.

⁹³ Family Court of Australia, 2016-2017 Annual Report.

⁹⁴ Federal Circuit Court of Australia, 2016-2017 Annual Report

⁹⁵ Family Law Council (2015) Families with Complex Needs and the Intersection of Family Law and Child Protection Systems, Interim report.
<https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Documents/Families-with-Complex-Needs-Intersection-of-Family-Law-and-Child-Protection-Systems%E2%80%93Interim-Report-Terms-1-and-2.pdf>

⁹⁶ Law Council of Australia (2018) The Justice Project Final Report. Recommendations and Group Priorities, p. 4, rec. 2.6.

We also believe that the development of the cultural safety framework should be at the centre of the reforms of the family law system alongside women's safety.

We thank you for the opportunity to participate in this inquiry. If you would like to discuss the contents of the AWAVA submission further, please contact Merrindahl Andrew, AWAVA Program Manager, using the details below.

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