



Women's Domestic Violence
Court Advocacy Service NSW Inc

Women's Domestic Violence Court Advocacy Services NSW submission to the Australian Law Reform Commission Review of the Family Law System

PART 1: Overall Feedback on Areas in Need of Reform

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1. About WDV CAS NSW

Women's Domestic Violence Court Advocacy Services NSW (WDVCAS NSW) is the state-wide peak body, representing the 29 WDV CASs across New South Wales (NSW). WDV CASs encompass the Women's Domestic Violence Court Advocacy Services (WDVCASs), Local Coordination Points (LCPs) and Family Advocacy Support Services (FASSs). We provide the primary specialist response for women who have experienced domestic and family violence in NSW in a fully integrated way with key Government and non-Government partners across all frontline service portfolios. During the 2017-18 financial year WDV CASs provided 176,678 services to 43,947 women, with 36,912 accompanying children.

WDVCAS NSW supports better outcomes for women and children; identifying and advocating on these issues within social, political and legal contexts. WDV CAS NSW operates from a human rights and feminist perspective to support better outcomes for women and children experiencing domestic and family violence. We are funded by Legal Aid NSW's Women's Domestic Violence Court Advocacy Program and by our members.

2. Overview

The current family law system is failing to produce processes and outcomes which consistently prioritise the safety, recovery and wellbeing of women and children who have experienced domestic and family violence.

Feedback obtained by WDV CAS and FASS workers from our clients, women who have accessed the family law system in the context of family violence throughout NSW, reveals a system which fails on a number of measures:

- 2.1 Screening measures are inadequate so that women and children experiencing domestic and family violence are regularly being provided with inappropriate service responses and being subjected to unsafe processes and outcomes;
- 2.2 Risk assessment processes across the various State and Territory and Federal Courts and services are not uniform, leading to system failures which increase risk and reduce safety, and increase the rate of secondary traumatisation;
- 2.3 Support services are not being provided to women and their children who have experienced domestic and family violence across the various interconnected State and Territory and Federal Court processes. In NSW, WDV CASs are not funded to support women at criminal charge hearings, nor to provide case management services to assist women in navigating the various legal and other support service systems to achieve safety, recovery and wellbeing for themselves and their children. Nor are WDV CASs provided with funding to support children throughout these processes. This is despite current health and social science research which holds that supporting children in an integrated way with their non-abusive parent maximises child safety, recovery and wellbeing.



- 2.4 The implementation of FASSs has resulted in a substantial improvement in processes and outcomes for women accessing the family law system in the context of family violence. However, these services are underfunded, do not have capacity for case management of clients, and are not available in regional areas;
- 2.5 Legal advice and advocacy is not being provided to women and their children who have experienced domestic and family violence across the various interconnected State and Territory and Federal Court processes in a systematic way, resulting in many women appearing before the Federal Circuit and Family Courts without adequate advice, and self-represented, when the safety of themselves and their children on an ongoing basis are at risk;
- 2.6 A lack of information sharing provisions between State and Territory and Federal Courts, and between State and Territory Government Agencies and Federal Courts, in relation to family violence, is resulting in evidence issues for women and their children who have experienced domestic and family violence, such that women are being required to represent evidence in Federal Courts exercising family law jurisdiction to establish family violence and abuse which has already been established at the State and Territory level;
- 2.7 Significant delays caused by the under-resourcing of Federal Courts exercising family law jurisdiction, a lack of information sharing, and the purposeful delay and complication of proceedings by perpetrators of domestic and family violence as a form of systems abuse, are also resulting in increased secondary trauma and poorer outcomes for women and their children who have experienced domestic and family violence;
- 2.8 Women subjected to domestic and family violence report experiencing a service system which is stacked against them in terms of the safety, recovery and wellbeing of themselves and their children. Women report being advised by family relationship professionals, family law practitioners, family report writers and judicial officers alike that the family law system is such that a father's right to a meaningful relationship with his child(ren) will usually override considerations of violence and abuse when an order for no unsupervised or overnight time is sought, unless there is evidence of extreme violence or abuse. The bar for 'unacceptable risk' is regarded as being set at an extraordinarily high level.
- 2.9 Women report experiencing the family law system as a traumatising experience in itself. They report having to retell their story and being disbelieved, discredited, having the experiences of themselves and their children minimised and trivialised, being blamed for the violent and abusive behaviour of the perpetrator or the child(ren)'s fear and apprehension, and being characterised as insincere, vexatious, calculating and alienating of the child(ren)'s relationship with their father when reporting violent and abusive behaviour and acting protectively for their child(ren). These experiences are not confined to any one particular profession or sector, but rather include family relationship professionals, family law practitioners, family report writers and judicial officers.
- 2.10 Women report their children's experiences of violence, abuse and fear not being taken into account. They report their children being encouraged and even pressured into making positive statements about their father, notwithstanding the abuse and violence they have experienced.

WDVCAS NSW's submission does not intend to recanvas the issues already outlined by Women's Legal Service (WLS) NSW and others. However, as the representative for the primary specialist



domestic and family violence service for women in NSW, and the service responsible for delivering the Family Advocacy Support Service (FASS) in the major Family Courts in NSW, WDV CAS NSW lends an important voice to concerns that the family law system, as it currently operates, fails to prioritise the safety, recovery and wellbeing of women and children who have experienced family violence.

Indeed, **WDVCAS NSW is in a unique position to describe some of the common yet diverse experiences of women and their children accessing in the family law system in the context of domestic and family violence.** The focus of this submission is thus to give voice to these experiences. The specific examples provided in this submission were obtained from an online survey undertaken with WDV CAS/ FASS workers in November 2018.

3. Overall feedback on areas in need of reform

3.1. Family law system entry and triage

Currently, people who are separating enter the family law system through a diverse range of means at various stages. In the context of family violence and abuse, a failure to access the appropriate advice and supports at an early juncture can lead to reduced safety and increased risk, as well as an escalation of conflict and increasingly complicated proceedings.

WDVCAS NSW thus support the concept of a well-publicised, single entry point for accessing the family law system and the range of supports and services attached to this system. **However, concerns are held with regards to the specific proposal of the Families Hubs in the context of domestic and family violence and abuse.**

Specifically, **women and their children who have experienced domestic and family violence and abuse would need to access the same agency, with the same physical location and service staff, as the perpetrator** of that violence and abuse. This presents material service accessibility issues, in addition to issues of safety and risk. The need for women who have experienced domestic and family violence and abuse to be able to access safe, confidential, trauma-specialist, women's-specific services, is well documented. Without an environment of safety and discrete supports, screening, risk assessment, safety planning and referral mechanisms for women and their children who have experienced domestic and family violence and abuse will not be adequate. Shuttle systems will not adequately resolve issues of safety and risk.

Further, in the case of family violence, the development of face-to-face Families Hubs would represent a duplications of risk assessment, safety planning, referral and case co-ordination services, as these services are already carried out by the FASS.

WDVCAS NSW proposes instead that a central family law clearinghouse be established, providing a national Family Law Helpline. Like LawAccess NSW, this helpline would not provide legal advice, but would provide legal information and operate as a referral service. Parties who are separating could call the Family Law Helpline for information and guidance as to the process for resolving their parenting



and/or property matters. The helpline would need to be staffed by highly skilled social workers and a series of standardised questions would need to be developed to determine the appropriate legal information and referral pathways to be provided to separating parties accessing the helpline.

It is noted that a similar service is already provided by the Australian Government through the Family Relationships Advice Line. Currently, however, this service is not easily identifiable as family law helpline and had other focusses in 'strengthening family relationships' and 'helping families stay together'. It is thus recommended that a discrete Family Law Helpline be established with this very clear role. It is also recommended that this service be independently managed and operated from FRCs and FASSs.

Where a positive screen for family violence and/or abuse is obtained, referral should be made to the closest Family Advocacy Support Service (FASS) for follow up. The FASS would then be responsible for carrying out the appropriate risk assessment, safety planning and referral processes, and would also provide ongoing case-management support to the client.

It is noted that this recommendation is made alongside the recommendation for the expansion of the FASS to case management and its extension to Federal Courts in regional areas exercising family law jurisdiction (Proposals 4-5 to 4-8).

Where a negative screen for family violence and/or abuse is obtained, referral could foreseeably be made to a 'Families Hub'. However, WDVCAS NSW question whether this would be the most efficient allocation of resources, given the present existence of **Family Relationship Centres (FRCs)**, which **could be further funded to provide supports and assistance** with regards to connecting the person and their children with the relevant services for the purpose of resolving their dispute.

Further screening and risk assessment processes undertaken by either the FASS or the FRC would likely result in some referral between each agency as appropriate.

With regards to the proposal associated with the Families Hubs for on-site out-posted workers to attend to clients from a range of relevant services, WDVCAS NSW is supportive of this concept in principal. However, it is noted that requiring workers from external service agencies to provide on-site services (at Families Hubs, or at FASSs and FRCs as recommended in this submission) would require additional resources.

If additional funding is to be provided to service agencies for this purpose, WDVCAS NSW would support this proposal. However, in the event that additional resources are not provided to service agencies for this purpose, **WDVCAS NSW would support the requirement for the case-co-ordination agency (recommended to be FASSs and FRCs) to have strong referral pathways developed with relevant service agencies** as listed in ALRC's Discussion Paper (and others as appropriate, such as culturally-specific services for Aboriginal and Torres Strait Islander clients, and clients from a culturally and linguistically diverse backgrounds). Further, **WDVCAS NSW supports targets for referrals**



made to these agencies to be part of the service agreements for case-coordination agencies (i.e FASSs and FRCs).

3.2. Screening for family violence and abuse

Current risk screening measures for family violence and abuse are inadequate so that women are still accessing the family law system in the context of family violence without being screened, or being screened very late into the process once proceedings have commenced, or earlier but by practitioners without the appropriate knowledge and expertise so that the process has been ineffective.

As a result of ineffective screening processes, women and children experiencing domestic and family violence are being provided with inappropriate service responses and as a consequence, experience unsafe family law processes and outcomes.

WDVCAS recommend that screening for family violence and abuse be undertaken as soon as clients enter the family law service system utilising a common, validated screening tool. Training in the use of this screening tool should be mandatory for all practitioners and professionals working in the family law system, and a positive screening process should result in a referral into the Specialist Family Violence List.

3.3. Risk assessment and safety planning

Currently, risk assessment and safety planning processes undertaken for identified victim-survivors of family violence and abuse are inconsistent across State and Territory as well as Federal jurisdictions and where a victim-survivor has not yet entered the domestic and family violence service system.

Once family violence has been identified, risk assessment and safety planning must be undertaken for the victims-survivors of family violence and abuse. This risk assessment and safety planning should be undertaken in partnership with the victim-survivor, in relation to herself and her children, utilising a common risk assessment framework and tool and safety planning methodology.

This risk assessment and safety planning must be undertaken by a trauma-specialist, domestic and family violence worker, who should work with the victim-survivor and her children to amend and adapt assessments of risk and safety plans over time in a dynamic manner in accordance with the needs and circumstances of that family. These changes to risk and safety will also have flow-on effects for victim-survivors' case management plans for recovery.

3.4. Support services for victim-survivors

Currently, the support services being provided to victim-survivors of domestic and family violence and abuse accessing the family law system, principally women and their children, are insufficient in both scale and coverage. In NSW, for example, WDVCASs are funded to deliver the FASS in the main metropolitan Family Courts of Sydney, Parramatta, Wollongong and Newcastle. However, no such service operates in the regional Federal Circuit Courts exercising family law jurisdiction of Lismore, Dubbo, Coffs Harbour, Albury.



Further, the FASSs themselves are inadequately funded to provide an integrated service to victim-survivors of domestic and family and abuse. In Sydney Family Court, for example, the funding for the FASS provides for a single full-time specialist domestic and family violence support worker. There are no funds available for case management services to the client, which precludes a more proactive and integrated response. Nor are WDVCSs provided with funding to support children throughout these processes, despite current health and social science research which holds that supporting children in an integrated way with their non-abusive parent maximises child safety, recovery and wellbeing.

WDVCAS NSW recommends the FASS be expanded to include case management. Where possible, the service delivering the FASS should be the same service delivering court advocacy services throughout the various court processes at the state and territory level, such as the WDVCSs in NSW. This ensures the **services are wrapped around the women and her children,** rather than women and children having to access multiple services at each juncture, and having to repeat their story, losing vital information, knowledge and experience in the process. The addition of case management to the FASS would also result in an **increased focus on early intervention and less adversarial means of resolving parenting and property disputes** within the family law system. Women would be able to be better supported in **accessing the appropriate legal advice at the point of separation,** resulting in more appropriate outcomes for safety and wellbeing in their civil protection matters, and where appropriate, **early triage into shuttle family dispute resolution options.** They would also be able to be better supported in **accessing other crucial supports, such as housing, health and financial assistance, prior to the initiation of family law proceedings,** further supporting improved processes and outcomes for women and children's safety and wellbeing and **reducing the likelihood of protracted family law proceedings** and their impacts.

WDVCAS NSW also recommends that the FASS be extended to regional Federal Circuit Courts exercising family law jurisdiction. Women in rural, regional and remote areas currently do not have access to supports when navigating the family law system, and these women, and their children, are often subject to significantly higher levels of disadvantage, such as socio-economic disadvantage, and disability. Aboriginal women and women from culturally and linguistically diverse (CALD) backgrounds as well as gender diverse peoples and people of diverse sexuality, often experience extreme barriers to accessing the family law system safely and regularly report the family law system to be a traumatising experience.

WDVCAS NSW finally recommends that each FASS be funded to employ an Aboriginal Specialist Worker and that each FASS with a significant CALD population be funded to employ a Multicultural Specialist Worker to ensure these services are able to provide the most culturally accessible and appropriate service to women accessing the family law system in the context of family violence. FASS workers must also be highly trained and competent in working with women with disability (WWD), as well as women of diverse age, gender and sexuality.

It is noted that these requirements around training and cultural competency are currently being met by the FASS in NSW. Further, Aboriginal Specialist Workers and Multicultural



Specialist Workers are already employed by WDVCASs to support women in obtaining safety and support across NSW and to support women in the Local Court for civil protection and charge mentions. However, the FASS funding does not extend to the provision of these culturally specialist support services in the Family Court.

3.5. Legal advice and advocacy services for victim-survivors

Although, following various government commissioned inquiries and reports, including the Productivity Commission's Access to Justice Report 2014, the Commonwealth and State and Territory Governments have demonstrated an increased commitment for legal services, women's access to legal advice and advocacy for family law matters in the context of family violence and abuse is still inconsistent and inadequate.

A significant proportion of WDVCAS/ FASS clients fail to obtain adequate legal advice, and many appear before the Federal Circuit and Family Courts unrepresented, in a situation where the ongoing safety of themselves and their children are at risk.

WDVCAS/ FASS Workers (November 2018)

Often woman do not have the understanding of the system and so do not know what evidence they may need...

There is a massive gap for women who do not meet the Legal Aid requirements i.e. - they have an asset like the family home, but still do not have the money to get legal representation - regarding property and custody issues.

WDVCAS NSW is also concerned that, where women are provided with legal advice and/or representation, **the legal practitioner may not have an understanding of the particular issues facing women and children impacted by domestic and family violence.**

WDVCAS/ FASS Worker (November 2018)

[O]ften solicitors do not understand domestic violence and do not know how to ask the right questions, so the issues are not understood. Often women and children are re-victimised and placed at risk of significant harm as the perpetrator often continues his control over the family through long court process and orders made by the court.

Legal advice may as be disjointed, so that the advice and representation being provided is specifically targeted to the jurisdiction or forum in which the woman is appearing, and is not provided in the context of the woman and her children's overall circumstances, and the proceedings in other jurisdictions.

WDVCAS NSW is also concerned that **women who are accessing legal advice and representation in family law matters in the context of family violence also regularly report negative experiences**, such as feeling misunderstood, judged and pressured into not divulging concerns about the abuser's behaviour and/or agreeing to outcomes which place herself and her children at ongoing risk of harm.



In the few cases where women are provided with legal advice and representation across the various interconnected State and Territory and Federal Court processes in a systematic way, such as through the FASS and the Domestic Violence (DV) Unit of Legal Aid NSW, the safety, recovery and wellbeing of themselves is dramatically improved as they are supported throughout the process, they have a consistency of service so that they do not need to re-tell and explain their story over and over, their legal representative has a good understanding of the previous relevant issues and is able to effectively apply them in the family law matter, and they are being supported and assisted by practitioners and advocates with specialist knowledge and expertise in relation to family violence and abuse.

Having all the relevant information from previous proceedings and ensuring women who have experienced domestic and family violence are represented also leads to more efficient and effective processes in the Federal Courts exercising family law jurisdiction.

WDVCAS NSW recommends that women accessing the family law system in the context of family violence are provided with appropriate options of legal advice and representation.

Family law practitioners should be required to have adequate competency around family violence, including a demonstrated knowledge and understanding of its definition, nature, causes, prevalence, impacts, and skills in responding in a trauma informed, culturally safe manner.

WDVCAS NSW also recommends a specialisation category for family law practitioners with specific expertise in practicing in the field of domestic and family violence. This specialisation is already evident in the Federally funded DV Units. **A positive screening process utilising the validated screening tool for domestic and family violence should result in a referral to a specialist family law practitioner.**

WDVCAS NSW further recommends the pilot Specialist Domestic Violence Units be expanded to become a service which is nationally available, so that the legal services a woman is able to access for both her and her children's safety is not determined by her postcode.

WDVCAS NSW finally recommends that the means and merit test for Legal Aid be reviewed in the context of family violence, where women and children's very safety is at risk.

3.6. Information sharing

Currently, women accessing the family law system in the context of family violence and abuse find themselves having to re-establish the abuse and violence experienced by themselves and their children at the hands of their ex-partner even where there is ample evidence at the state and territory level.



WDVCAS/ FASS Worker (November 2018)

The Court appears to disregard DV to a certain extent. I feel once charges have been laid by police, that should be enough evidence for the Family Court.

This is often made more difficult by the lack of information shared between State and Territory and Federal Courts, and between State and Territory Government Agencies and Federal Courts, in relation to family violence.

WDVCAS NSW recommend the development and strengthening of information sharing provisions, which furnish Federal Courts exercising family law jurisdiction with the relevant information regarding the behaviour of the person using violence and abuse. This will improve the quality of the evidence which is available to these Courts in making decisions for the safety and best interests of children and their carers.

WDVCAS NSW stress that, like State and Territory based information sharing provisions, **the focus of these provisions should be on the person using violence and abuse and their behaviour, rather than on the persons who are the target of this abuse.** Women and children subject to violence and abuse should not be discouraged from accessing support services in relation to their experiences due to a lack of privacy in relation to the use of these services.

3.7. Delays in proceedings

Currently, significant delays caused by the under-resourcing of Federal Courts exercising family law jurisdiction, a lack of information sharing, and the purposeful delay and complication of proceedings by perpetrators of domestic and family violence as a form of systems abuse, result in increased secondary trauma and poorer outcomes for women and their children who have experienced domestic and family violence.

WDVCAS/ FASS Workers (November 2018)

The perpetrators often don't care about the cost only the control of the system and the client, to cause as much trouble and problems for the victim. The court does not understand that this is how the perpetrator operates.

[T]he victim is still having to submit to the other partners commands.

WDVCAS NSW emphasise the importance of early intervention – providing **case management support** to survivors of domestic and family violence to facilitate the uptake of family law advice and essential supports, early on as they enter the service system. WDVCAS further emphasise the importance of **appropriate and accessible legal advice and representation** for women accessing the family law system in the context of family violence. This investment in early supports will take the pressure off Family Court case loads, and improve the process and outcomes for women and children's safety and wellbeing.



WDVCAS NSW also recommend Family Law Courts be adequately funded to ensure matters are able to be addressed appropriately within a reasonable period. Funding should also support the development of a Specialist Family Violence List in addition to the Magellan List for cases involving serious allegations of physical and sexual child abuse.

WDVCAS NSW further support recommendations made by the ALRC in its Discussion Paper around the strengthening of the specific provisions which empowering judicial officers to dismiss applications made by parties where they are regarded as unmeritorious. In particular, Proposal 8–5, which recommends that in considering whether to deem proceedings as unmeritorious under the *Family Law Act 1975* (Cth), a court **must** have regard to evidence of a history of family violence, and in children's cases **must** consider the safety and best interests of the child and the impact of the proceedings on the other party when they are the main caregiver for the child.

3.8. Understanding of domestic and family violence and its impacts

WDVCAS/ FASS Worker (November 2018)

I don't believe [the family law system] recognise[s] the severity of physiological and emotional abuse and it's effect on the whole family.

WDVCAS/ FASS workers report a service system which is stacked against women and children subjected to domestic and family violence. Women are frequently advised by family relationship professionals, family law practitioners, family report writers and judicial officers alike that the family law system is such that a father's right to a meaningful relationship with his child(ren) will likely override considerations of violence and abuse when an order for no unsupervised or overnight time is sought, unless there is evidence of extreme violence or abuse.

WDVCAS/ FASS Worker (November 2018)

[The family law system] frequently fails to prioritize the safety and welfare of women & children or make perpetrators accountable. Decisions often don't reflect knowledge of DFV. (e.g. perpetrator tactics)- e.g. they give perpetrators rights to see their children while FACS [child protection authorities] expect women to keep their children safe. Courts don't recognize when a woman has had a rare, one-off fight back incident in the context of a long history of being a victim of DFV. Women in these instances are often given harsher consequences than violent men who repeatedly breach AVO's. In summary family law system is incompetent in dealing with DFV matters & we need DFV specific courts.

The bar for 'unacceptable risk' is regarded as being set at an extraordinarily high level. Consequently, unsafe outcomes for women and children are commonplace.



WDVCAS/ FASS Worker (November 2018)

Child contact can often cause the family much distress because the court orders do not protect [the children]. Often the domestic violence and/or child abuse issues cannot be proven or maybe struck out of the court. The family court do not have good outcomes for victims of domestic violence and child abuse cases.

WDVCAS NSW recommend that the Family Court establish a Specialist Family Violence List in addition to the Magellan List for cases involving serious allegations of physical and sexual child abuse. **A positive screening for family violence utilising a common, validated screening tool should result in a referral into this pathway.**

Specifically, in relation to ALRC Proposal 6-7, **WDVCAS NSW consider that all parenting and property matters under the *Family Law Act 1975 (Cth)* where there are reasonable grounds to believe there is history of family violence involving the parties, or risk of family violence, should be directed to a Specialist Family Violence List.**

The Specialist Family Violence List should be presided over by Specialist Judges, with a demonstrated knowledge, understanding and competency in hearing family law matters in the context of family violence.

Court staff, including Family Consultants and Court Report Writers, legal practitioners, Independent Children's Lawyers, and other family relationship service professionals, should also be family violence specialists to operate within the Specialist Family Violence List.

Without specialist knowledge and expertise of family violence and abuse, its incidence and impacts will not be taken into account in a manner which consistently prioritises the safety, recovery of women and their children who have been subjected to violence and abuse.

Screening and risk assessment in relation to family violence and/or abuse must be undertaken by a specialist family violence support service.

All matters where a Notice of Risk has been filed should be triaged into the specialist family violence. Further triaging of matters should be undertaken by Registrars with specialist knowledge and understanding of domestic and family violence and abuse, and case managed thereafter.

WDVCAS NSW also note that the specialist family violence list will also likely be quite large, given the significant proportion of family law matters which involve allegations for family violence.

WDVCAS NSW is concerned to ensure that ALL matters which involve family violence are directed to the specialist family violence list for appropriate resolution.

Specifically, in relation to ALRC Proposal 6–3, **WDVCAS NSW consider that the court registrars, family consultants and judicial officers in the Indigenous List must have specialist knowledge and understanding of domestic and family violence and abuse, and**



the court registrars, family consultants and judicial officers in the Specialist Family Violence List must have cultural competency in working with Aboriginal and Torres Strait Islander peoples and families.

3.9. Experiences of secondary victimisation

Women report experiencing the family law system as a traumatising experience in itself. They report having to retell their story and being disbelieved, discredited, having the experiences of themselves and their children minimised and trivialised, being blamed for the violent and abusive behaviour of the perpetrator or the child(ren)'s fear and apprehension, and being characterised as insincere, vexatious, calculating and alienating of the child(ren)'s relationship with their father when reporting violent and abusive behaviour and acting protectively for their child(ren). These experiences are not confined to any one particular profession or sector, but rather include family relationship professionals, family law practitioners, family report writers and judicial officers.

WDVCAS/ FASS Workers (November 2018)

In every case I have supported in the family court, the experiences of the victim is minimised, or there is an excuse as to why the perpetrator did what he did. The victim is blamed more often, or the perpetrator does some counselling and therefore the court see him as 'ok' now, to have his kids and that he has dealt with his violence.

My experience is that the Family Court often revictimizes women and children particularly those with family violence and/or child abuse issues. This places the families in extreme risk of significant harm and continuation of family violence and/or child abuse and dysfunction.

[Women report not] having the abuse they experience taken seriously. Feeling like they are being punished for trying to protect a child from abuse. Where there is verbal abuse rather than physical, [they report] not having this recognised as emotionally traumatic for a child.

3.9.1. Escalating abuse and threats of harm

WDVCAS and FASS clients often experience escalating abuse and threats of harm to themselves and/or their children upon the initiation of family law processes, and if matters are not deal with by practitioners and judicial officers with particular knowledge and expertise around domestic, family and sexual violence, adequate protections, even if obtained in state courts, will not always be supported in the federal family court jurisdiction.



WDVCAS/ FASS Workers (November 2018)

Women often report more threats & feeling more fearful. Most clients would prefer to not to go through police or legal process as they know it can easily fuel their ex-partners rage & feelings of revenge = more suffering.

3.9.2. Survivors of family violence being regarded as less credible witnesses

WDVCAS/ FASS clients report that in many cases they are regarded as less credible witnesses than their perpetrators due to trauma, lack of representation and/or related mental health concerns.

WDVCAS/ FASS Workers (November 2018)

Women are often traumatized already from the abuse they've endured & then they have typically been interrogated in front of their perpetrator in court. Women's symptoms of trauma are often misinterpreted as them not being credible. Perpetrators of violence on the other hand are often very good actors with sociopath & narcissistic traits that enable them to present extremely well &/or have money to get themselves the best legal representation.

3.9.3. Experiences of violence and abuse, minimised, excused, or misconstrued

Women very often report having their experiences of violence and abuse, minimised, excused, trivialised, or misconstrued as situational, historical, one-off or multi-directional.

WDVCAS/ FASS Worker (November 2018)

In every case I have supported in the family court, the experiences of the victim is minimised, or there is an excuse as to why the perpetrator did what he did. The victim is blamed more often, or the perpetrator does some counselling and therefore the court see him as 'ok' now, to have his kids and that he has dealt with his violence.

3.9.4. Experiences of a lack of cultural safety and understanding

WDVCAS and FASS service clients from a diverse range of backgrounds with a multiplicity of experiences and needs. For example, in 2017/18, 11.72 per cent of our clients identified as Aboriginal or Torres Strait Islander women, 18.50 per cent identified as being from a culturally and linguistically diverse (CALD) background, and 7.39 per cent identified as living with disability.

Women going through the family law process often report experiencing a lack of cultural safety and understanding from family law practitioners, court experts and judicial officers, of the particular issues facing them resulting from intersecting cultural or status-based factors.



WDVCAS/ FASS Worker (November 2018)

A lot of women seeking help at our service are from culturally & linguistically diverse backgrounds (CALD) & low-socio economic status. They often have to overcome so many extreme barriers, for such a long time to even get to their first appointment. For example, many CALD women are told by their family &/or community to be quiet about the abuse -to accept it because disclosing about their abusive husband would bring shame on the family. Furthermore, they are threatened with disowning them altogether.

3.9.5. Material concerns not fully taken into account

Women report their material concerns around housing, financial stress and the ability to move to be closer to the supports of family, friends and employment opportunities as being not fully taken into account by family law practitioners, court experts and judicial officers in the family law system. Women often experience their legitimate concerns about child support and fair and timely property settlement, as well as wanting to move away from the perpetrator for the safety and wellbeing of themselves and their children, and their recovery after abuse, being dismissed or given very little weight.

WDVCAS/ FASS Worker (November 2018)

Unfortunately women and children end up being the biggest losers financially. Domestic Violence is not understood by lawyers, expert witness and judges. Often the court process is very costly and clients are taken through the process and can end up owing money to lawyers or have nothing left...

3.9.6. Protective behaviours being misconstrued as alienating

A disturbingly high number of clients report being placed in the difficult position of wanting to protect their child(ren) from violence and abuse, but feeling pressured by legal practitioners, court experts and judicial officers without specialist knowledge and expertise in domestic, family and sexual violence, into agreeing for their child to spend time with the abusive parent when they know it is not safe because they fear that they will be typecast as 'difficult' or 'alienating' the child from their father.

WDVCAS/ FASS Worker (November 2018)

Most cases I have worked with have been pressured by lawyers to agree, or to not mention child abuse, or to just go along with the perpetrator. The lawyers have absolutely no understanding of domestic violence. Clients need an experienced dv case manager to attend with clients. I work with Staying Home Leaving Violence and I case manage my clients and go with them to legal appointments and family court. I have much better outcomes for my clients with my supporting them. Often family reports will say that the mother (victim) is alienating the children from the father.



As a result, women often feel pressured into agreeing for their child(ren) to spend time with the abusive parent when they know it is not safe because they fear that they will be typecast as 'difficult' or even 'vengeful', which in some cases has even led to women losing primary care of the child(ren) placing them in further danger. It is noted that it is not uncommon for women to report this pressure associated with raising concerns about child sexual abuse, and as such, many real concerns about such conduct never goes before the Court.

WDVCAS/ FASS Workers (November 2018)

Yes. The father's right to see his children regardless of how abusive he his (& how safe it is for his children to be around) is the message she's repeatedly given in the family law system. Even in the rare case where there's protective orders in place to prevent father seeing the kids, the mother & kids often live in fear knowing there's little the system can do in practice

Family violence is not taken into consideration. Sometimes it is better for women not to mention it as they are seen as false accusations against the father and then the women are labelled as trouble makers

3.9.7. Children's experiences

Women report their children's experiences of violence, abuse and fear not being taken into account. They report their children being encouraged and even pressured into making positive statements about their father, notwithstanding the abuse and violence they have experienced.

WDVCAS and FASS clients regularly report their child(ren) being forced to spend time with the abusive parent against their will and in fear and distress, resulting in extreme anxiety, nightmares, bedwetting, and a range of psychosocial impacts. As WDVCAS and FASS workers we often work with clients around the impacts this has on the mother-child relationship of trust and reliance for protection.

WDVCAS/ FASS Worker (November 2018)

Consistently & repeatedly -cannot stress this enough how often this goes on. It's unethical & a crime in itself that victims (including kids) of abuse are ordered to spend time with perpetrators. I've seen so many clients over the years who report their kids feel fearful, distressed & have other symptoms such as bed wetting or acting out aggressively /repeating their fathers abusive behaviour towards their mum. Mothers are re-traumatized seeing their kids go through this. The abuse cycle continues via the kids.



4. Conclusion

This submission has provided feedback from the peak body for women's safety services in NSW- WDVCAS NSW, on some of the overall areas of the family law system in need of reform. The family law system needs to be better integrated, with adequate resourcing and increased specialisation if it is to consistently produce processes and outcomes which prioritise the safety, recovery and wellbeing of women and children who have experienced domestic and family violence.

To this end, **WDVCAS NSW reiterates the importance of:**

- **The creation of a safe, well-publicised single entry point to the family law system- a Family Law Helpline;**
- **The development and implementation of a common, validated family violence screening tool, a positive reading of which results in a referral to the FASS and into the Specialist Family Violence List;**
- **Creation of a Specialist Family Violence List;**
- **Risk assessment, safety planning and case management supports being provided to identified victim-survivors of family violence by a trauma-specialist, domestic and family violence service (i.e. a FASS); and**
- **The provision of appropriate options for specialist legal advice and representation for identified victim-survivors of family violence accessing the family law system.**

WDVCAS NSW is appreciative of the opportunity to provide input into this important inquiry and looks forward to working with the Australian Government and partners in implementing the reforms which flow from this work.