

**Domestic Violence NSW**

**Submission to House of Representatives  
Standing Committee on Social Policy and Legal Affairs**

*Parliamentary inquiry into a better family law system to support and  
protect those affected by family violence*

May 2017

## DVNSW

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Domestic Violence NSW Inc. is the peak body for specialist domestic and family violence services in NSW. DVNSW provides a representative and advocacy function for specialist services and the women, families and communities they support. DVNSW's mission is to eliminate domestic and family violence through leadership in policy, advocacy, partnerships and the promotion of best practice. We work with our members, state and federal government and communities to create a safer NSW for all.

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

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

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

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

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## Executive Summary

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Domestic Violence NSW welcomes the opportunity to comment on the *Parliamentary inquiry into a better family law system to support and protect those affected by family violence*. As the peak body for specialist support services in our state, we have worked closely and collaboratively with DVNSW members, broader networks of specialist practitioners and government colleagues to encourage participation of service users, mainstream and specialist support providers, communities and stakeholders and to assist them to independently contribute to this review. DVNSW conducted an online survey with specialist DFV practitioners and services specifically for this inquiry, receiving 22 individual and 5 team practitioner responses. These insights form the basis for our submission.

DVNSW and our member services have a strong interest in improving systems and practices for those experiencing or at risk of experiencing domestic and family violence (DFV) and their interactions with the family law system in Australia. We welcome the opportunity to provide input on the intersectionality and complexity of DFV victim-survivors needs in the family law system.

We recognise that substantial steps have been taken to address gaps and discrepancies but our services identify that there are still major barriers and system failures for families impacted by violence in the family law system. We receive several new requests for advocacy, referral and support every month from survivors of domestic and family violence who are engaged in the Family Court process. We note that nationally, frontline DFV support services are reporting substantially increased demand which is then passed on to the courts. Existing pressures on community legal centres and restricted eligibility to Legal Aid mean that many vulnerable survivors of violence are unable to access justice or legal support.

In summary, our survey with NSW DFV services found that despite some systemic and policy improvements, the Family Court continues to let victim-survivors down in terms of safety and outcomes, there are substantial backlogs and delays, cases often take significant periods of time to be resolved and there is a general lack of resources within the system to support families to recover from trauma and violence.

*“2 months of delay in the making of decisions in the best interests of a child or young person equates to 1% of childhood that cannot be restored<sup>1</sup>”*

Judge Crichton, 2010

Our survey respondents concluded that victim-survivors are particularly vulnerable when Family Court timelines are protracted as it heightens and prolongs the stress of interacting and being under the control of a perpetrator, many of whom manipulate the system to exert further control. The courts' inability to provide adequate timely access to justice means that too often victim-survivors agree to outcomes that are not in the best interests of themselves or their children.

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<sup>1</sup> Judge N Crichton (1 July 2010), Family Drug and Alcohol Court, Wells Street, London W1 as quoted in The Munro Review of Child Protection Part One: A Systems Analysis 1 October 2010, accessed 12<sup>th</sup> September 2015,

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/175407/TheMunroReviewPart\\_one.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/175407/TheMunroReviewPart_one.pdf)

## DVNSW Recommendations

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The recommendations in this submission are based upon the Women's Legal Services Australia Safety First in Family Law Plan:

### **WLSA Safety First Plan: Step 1: Develop a specialist pathway for family violence cases in the family courts.**

- a) *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.*
- b) *Create a process in family courts to manage domestic violence cases with an emphasis on early decision-making, triaging and case-management.*
- c) *Engage court-based support services to assist families in crisis. These services could include specialist services for women from high-risk groups as well as housing, domestic violence and child & youth focussed workers.*
- d) *Remove the language of "equal shared time" and "equal shared parental responsibility" in the Family Law Act 1975 to shift culture and practice towards a greater focus on safety and risk to children.*

### **WLSA Safety First Plan: Step 2: Reduce trauma and support those who are most at risk of future violence and death**

- a) *Implement the recommendations from the Family Law Council's 2012 reports on improving family law system for clients from Aboriginal and Torres Strait Islander and Culturally and Linguistically Diverse Backgrounds.*
- b) *Undertake a comprehensive audit of the barriers in the family law system for women in other high-risk groups such as women with disabilities, women from regional and rural communities and women in prison.*
- c) *Introduce legislative protections to stop a victim being directly cross-examined by their abuser by amending the Family Law Act 1975.*
- d) *Strengthen the support of child protection in family law cases for "protective carers", such as mothers leaving violent relationships, in family law proceedings.*

### **WLSA Safety First Plan Step 3: Intervene early and provide effective legal help for the most disadvantaged**

- a) *Roll out a mediation model with specialist domestic violence lawyers and social workers based on the highly effective 2012 Co-ordinated Family Dispute Resolution pilot.*
- b) *Expand family law legal services by funding Community Legal Centres, including specialist women's legal services; Aboriginal Family Violence Prevention Legal Services, Aboriginal and Torres Strait Islander Legal Services and Legal Aid Commissions to assist the most disadvantaged, high risk families in the family court system.*
- c) *Create a specialist legal aid funding pathway for domestic violence family law cases.*

## Introduction

DVNSW supports Women's Legal Services Australia (WLSA) *Safety First in Family Law Plan*<sup>2</sup> and endorses WLSA's submission and its recommendations to this inquiry. DVNSW acknowledges the expertise and reflections that specialist DFV practitioners and the voices and experiences of victim-survivors across Australia have contributed.

Interaction with the family law system, as well as accessing ongoing specialist domestic and family violence support, are the main challenges that many victim-survivors face. There are a number of major research projects and inquiry findings<sup>3,4,5,6</sup> relating to the gaps in support for victim-survivors of domestic violence and systemic barriers in the justice system. Recommendations from the Family Law Commission, Australian Law Reform Commission, the Senate Inquiry into Domestic Violence<sup>7</sup>, the Victorian Royal Commission into Family Violence Report<sup>8</sup> and the Productivity Commissions<sup>9</sup> all contribute to evidence-based changes to the current family law system that would dramatically improve the experience for victim-survivors.

DVNSW advocates for coordinated, well-resourced and evidence-based responses to families to be embedded throughout the family law system. DFV specialist practitioners and advocates want to work with family law specialists to improve outcomes and systems for victim-survivors. We commend the federal government for focusing on areas that could result in positive, meaningful change for survivors of family violence. Our respondents consistently highlighted the need to develop a range of comprehensive strategies so that workers in all parts of the system are trauma-informed, and wherever possible, trauma-specialist approaches are adopted by both the Family Law Court and the Children's Court.

DVNSW advocates that in all reform or review processes the following principle should be adopted:

That all Australians should be able to access timely, well-resourced domestic, family and sexual violence support responses located in their communities that are client-centred, trauma-specialist, culturally-safe and are based on the premise that domestic violence is a gendered crime and a violation of human rights.

<sup>2</sup> Women's Legal Services Australia, *Safety First Plan*, accessed April 2017

<[http://www.womenslegal.org.au/files/file/SAFETY%20FIRST%20POLICY%20PLATFORM.MAY%202016\\_FINAL.pdf](http://www.womenslegal.org.au/files/file/SAFETY%20FIRST%20POLICY%20PLATFORM.MAY%202016_FINAL.pdf)>

<sup>3</sup> 2016 FLC Final Report on *Families with Complex Needs and the Intersection of Family Law and Child Protection* (FLC 2016 Final Report), accessed April 2017 <<https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Documents/Family-with-Complex-Needs-Intersection-of-Family-Law-and-Child-Protection-Systems-Final-Report-Terms-3-4-5.PD>>

<sup>4</sup> 2015 FLC Interim Report on *Families with Complex Needs and the Intersection of Family Law and Child Protection* (FLC 2015 Interim Report), accessed April 2017, <<https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Documents/Families-with-Complex-Needs->>

<sup>5</sup> 2016 Victorian Royal Commission into Family Violence Report (2016 RCFV Report), accessed April 2017, <<http://files.rcfv.com.au/Reports/Final/RCFV-All-Volumes.pdf>>

<sup>6</sup> 2015 AIFS evaluation of the 2012 Family Law Act amendments (2015 AIFS Evaluation Report), accessed April 2017, <<https://aifs.gov.au/publications/evaluation-2012-family-violence-amendments/export>>

<sup>7</sup> 2015 federal Senate Finance and Public Administration References Committee inquiry report titled *Domestic violence in Australia* (2015 Senate Inquiry Report), accessed April 2017,

<[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Finance\\_and\\_Public\\_Administration/Domestic\\_Violence/Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Domestic_Violence/Report)>

<sup>8</sup> 2016 Victorian Royal Commission into Family Violence Report (2016 RCFV Report), accessed April 2017, <<http://files.rcfv.com.au/Reports/Final/RCFV-All-Volumes.pdf>>

<sup>9</sup> 2014 Productivity Commission Access to Justice Arrangements Inquiry Report (2014 Productivity Commission A2J Report), accessed April 2017, <<http://www.pc.gov.au/inquiries/completed/access-justice/report>>

## Context

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NSW's domestic and family violence response system is struggling to cope with the current demand. NSW Police report that DV-related assaults have increased by 2% over the last five years whilst most other crimes types are stable or dropping<sup>10</sup>. Support services for victim-survivors are consistently at (or over) capacity. Specialist practitioners regularly have to make choices about which families they can support and to what degree they can provide assistance because of demand. DVNSW members regularly report that the Family Law system fails to protect those who need it, despite the policy amendments adopted in 2012<sup>11</sup>. The substantial number of clients negatively affected by Family Law Court rulings identified in our survey indicates that there are still extensive systemic issues that fail to address and recognise the complex nature of domestic and family violence.

*“Please help us to continue to support women and have faith in the system, it needs work, updating, change in processes and training for all levels of professionals working within it”*

DVNSW survey respondent

There are no quick fixes when it comes to addressing system gaps or inconsistencies in family law system. Similarly, there is no “one size fits all” model solution for survivors of domestic and family violence that will work in every community context. Meaningful change that places the safety of women and children at the core of a commitment to law reform and policy development requires respectful, resourced partnership work between legal professional and practitioners, court staff and DFV specialists.

If we are to work effectively and justly with women, children and families in a way that improves their safety, a comprehensive understanding of the nature of violence in the family context and the impacts of trauma on women, child, young people and communities must be integrated at all levels of legal proceedings including preparatory processes prior to the jurisdiction of the Family Court.

## Terms of Reference 1

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**How the family law system can more quickly and effectively ensure the safety of people who are or may be affected by family violence, including by:**

- facilitating the early identification of and response to family violence
- considering the legal and non-legal support services required to support the early identification of and response to family violence

### 1.1. Safety

There is a strong economic and moral argument for a swift, safety-centric approach to resolving Family Court matters. Research<sup>12</sup> unequivocally demonstrates that the very existence of DFV within a family increases the likelihood of engagement with the Family Court as well as the intensity and duration of that engagement. All of the respondents to our practitioner survey identified a myriad of safety concerns for women, children and young people interacting with the family law system. Family law systems should place the safety and recovery of victim-

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<sup>10</sup> BOCSAR, 2016 [http://www.bocsar.nsw.gov.au/Pages/bocsar\\_pages/Domestic-Violence.aspx](http://www.bocsar.nsw.gov.au/Pages/bocsar_pages/Domestic-Violence.aspx)

<sup>11</sup> Family Law Changes 2012, Family Court of Australia, accessed April 2017, <[http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/news/fcoa\\_family\\_law\\_changes](http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/news/fcoa_family_law_changes)>

<sup>12</sup> Rae Kaspiew, Matthew Gray, Ruth Weston, Lawrie Moloney, Kelly Hand, and Lixia Qu and the Family Law Evaluation Team, *Evaluation of the 2006 Family Law Reforms*, Australian Institute of Family Studies, Melbourne, 2009 p 65, 77-8.

survivors and their children at the centre of decision-making. Ideally interactions with the family law system should represent a pathway to recovery for survivors; at a very minimum its principles and practices should be trauma-informed and underpinned by safety considerations.

All our survey respondents reported undertaking substantial safety planning activities and processes with their clients, however many practitioners shared examples of systemic challenges that impacted on clients feeling physically safe or able to attend court including:

- Perpetrators filling courts or the areas outside courts with family and friends to intimidate the victim-survivor and/or their children
- Court car parks being used as areas of intimidation and locations for abuse pre and post proceedings
- Entrances used by victim-survivors and perpetrators leading to uncontrollable verbal and non-verbal intimidation
- Lack of designated areas for private consultation (safe areas) within court complexes
- Lack of police support to provide escort to and from court for those with ongoing risks identified
- Inconsistency of video links available in all areas across NSW
- Victim-survivors regularly agreeing to arrangements they do not believe are in the best interests of their children to resolve proceedings and avoid further intimidation.
- 

*“Many, many clients are abused by their perpetrators in the foyers of family law courts. They are often followed to their cars and even followed home”*

DVNSW survey respondent

Sarah Marie Thomas<sup>13</sup> was killed in the Joondalup Courthouse mediation room in December 2016 by her former partner. There have been a number of subsequent responses from Western Australian institutions since that incident regarding security in court, scoping solutions such as metal detectors and the full armament of police officers<sup>14</sup>. Very few have focussed specifically on improving safety for domestic and family violence victims. This tragic case offers an opportunity to prevent deaths like Sarah’s and to ensure that other children will not lose their mothers in a place where they should be safe. There are areas of opportunity for substantial improvement such as allowing safety plans to be devised between the court house, police, support services and victim-survivors with a mechanism so that the magistrate is aware that a safety plan is in place. Trauma-informed processes and structures should be considered for all family law cases where violence is alleged or identified.

## 1.2. Early Identification

Safety risk management is the core principal for best practice in specialist DFV service provision. Family Courts should whenever possible make early identification of the risks to women, children and young people so that adequate support is provided. We welcome the 2016 announcements by the Family Court of Australia and the Federal Circuit Court of Australia in relation to the implementation of “a new screening approach for family violence cases”<sup>15</sup>.

More recently, the Family Law Council (FLC)<sup>16</sup> made some detailed recommendations about the importance of early risk assessment and identification of DFV and the need for a consistent risk-assessment framework. We strongly support recommendations 1-3 made by the FLC. Significant cultural and practice shifts need to occur

<sup>13</sup> The West, “Fatal stabbing at Joondalup Courthouse”, accessed April 2017, < <https://thewest.com.au/news/wa/fatal-stabbing-at-joondalup-courthouse-ng-b88335044z>>

<sup>14</sup> Sky News, “No security step up despite court stabbing”, accessed April 2017 < <http://www.skynews.com.au/news/national/wa/2016/12/21/court-stabbing-accused-remanded-in-custody.html>>

<sup>15</sup> Federal Circuit Court of Australia (20 June 2016), *Media Release - Family law system needs more resources to deal with an increasing number of cases involving family violence*. Accessed online April 2017: <http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/about/news/mr200616>

<sup>16</sup> FLC Final Report 2016, <<https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Pages/FamilyLawCouncilpublishedreports.aspx>>



including:

- Well-funded support services embedded into state and territory courts.
- Specialist DFV support services that have the capacity and flexibility to follow and support client's recovery regardless of where they are engaged in the family law system.
- Embedding specialist DFV practitioners, processes and services within the family courts.
- Adoption of a national risk assessment framework for use by family lawyers and family dispute resolution practitioners as well as an aligned framework for the family law court registry. This would be a whole-of-family risk assessment process.
- Guidelines and protocols to support family law professionals to make warm referrals to specialist domestic and family violence services.

Support services and survivors of abuse have reported that matters brought to the Family Court often have protracted timeframes. We are aware that inadequate resourcing of the court system substantially impedes court staff from carrying out their duties and often impacts on timeframes and processes. With court delays and insufficient funding for forensic investigations, the Family Law Court significantly contributes to ongoing exposure to trauma for victim-survivors of domestic and family violence. In addition, such delays have legal consequence in recovery matters where status quo is relied upon in later proceedings.

### 1.3. Shared Parenting Principles and Safe Decision Making

A common theme identified by our respondents was the misunderstanding across the family law system that parents have "equal rights" to shared parenting and access to children even where there is violence and abuse identified. This can lead to life altering and unnecessarily traumatic custody arrangements where violence and abuse is ignored or minimised just to maintain parental contact. While the nature of a 50/50 shared parenting arrangement can be positive in principal, 50/50 co-parenting requires a high level of parental cooperation and power and control that is often not present in the parental relationship where there is a history of DFV. We have numerous examples and case studies of court decisions where children have been ordered to live with the abusive parent and the protective parent is given supervised visits even when children and young people have clearly and consistently expressed their desire to remain with the "safe parent".

*"Judges have actually placed the children with the perpetrator of violence, claiming that the victim is too traumatised by the DV to care for the children"*

DVNSW survey respondent

Many families in the family law system who have been impacted by violence are there primarily because a level of cooperation in the family (usually between the parents), is disrupted and cannot be achieved. Women who have experienced violence in their intimate partnership expect the court to protect their children from further exposure to abuse and trauma. The reality is that this is often not the case and many women and their advocates report that the family law system further reinforces victim-blaming dynamics, rewarding the perpetrator and failing to hold him to account for his abusive behaviour.

*"Despite firm and lengthy evidence of the incidences of domestic violence by the perpetrator to the children's mother, including police records, counselling records detailing the impact of trauma on the child and the history of violence to their mother, and medical records of injuries sustained, I have seen most perpetrators be granted some level of contact with the children. Even if this contact is supervised, it shows a gross misunderstanding of*

*the impact of domestic violence on the child, symptoms of trauma and perpetuating the cycle of violence for the children as their mother often has to spend time before and after contact rebuilding safety for the child.”*

- DVNSW survey respondent

Dr Lesley Laing<sup>17</sup> (2010) argues that domestic and family violence is often treated as an issue markedly separate to considerations of men’s fathering capacities in the Family Court. Susan Heward-Belle<sup>18</sup> (2015) explores the fragmentation of men’s identities as fathers and resulting perception that men “*can be simultaneously “poor partners” but “good fathers”*”. There is an increasing need to develop better understanding of fathers who are perpetrators of domestic and family violence and the impacts on their children.

We need to: “*view these men holistically; to attend to their multiple and complex identities in order to develop a more nuanced understanding of their contributions (both positive and negative) to family life and child development. A feminist intersectional approach offers a frame to attend to this complexity. This approach elevates gender as the primary contributor to violence against women, while considering how gender may be mediated through class, culture, and health*” Heward-Belle (2015).

*“In situations where a child is taken by the father but the mother has usually been the primary care giver (and in the event that no Family Law orders are in place) police are powerless to make the perpetrator return the child to the mother and clients are advised to get Family Law Orders in place or apply for a recovery order. It would be better if police just had the power to say, give the child back and then tell the perpetrator to seek Family Law Orders instead of the victim. We support clients to so many legal appointments regarding this exact situation and they are all told...” if you can get the child back just take it”. I think this is very traumatic for the child.”*

- DVNSW survey respondent

#### 1.4. Barriers in the Family Law System

There are a number of substantial barriers in the family law system that unfairly disadvantage Aboriginal and Torres Strait Islander and Culturally and Linguistically Diverse (CALD) communities, people with disability, people living in poverty, LGBTIQ families and women in rural, regional and remote communities.

*Improving the family law system for Aboriginal and Torres Strait Islander clients*<sup>19</sup> and *Improving the family law system for clients from culturally and linguistically diverse backgrounds*<sup>20</sup>, by the FLC, 2012 extensively explored how the family law system could be improved for Aboriginal and Torres Strait Islander and CALD clients. DVNSW members’ submissions consistently echo the barriers to accessing the system as well as the specific challenges these cohorts face if engaged including:

- Lack of access to safe services that meet their needs and are trusted
- Lack of culturally diverse workforces

<sup>17</sup> Laing, L. (2010). No way to live: Women’s experiences of negotiating the family law system in the context of domestic violence. Accessed 12<sup>th</sup> September 2015 <<http://hdl.handle.net/2023/6255>>

<sup>18</sup> Susan Heward-Belle (2015): The Diverse Fathering Practices of Men Who

Perpetrate Domestic Violence, Australian Social Work, accessed 11<sup>th</sup> September 2015 ><http://dx.doi.org/10.1080/0312407X.2015.1057748><

<sup>19</sup> Family Law Council 2012, *Improving the family law system for Aboriginal and Torres Strait Islander clients*, Family Law Council. Accessed April 2017: <https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Documents/Improving%20the%20Family%20Law%20System%20for%20Aboriginal%20and%20Torres%20Strait%20Islander%20Clients.pdf>.

<sup>20</sup> Family Law Council 2012, *Improving the family law system for clients from culturally and linguistically diverse backgrounds*, Family Law Council. Accessed April 2017: <https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Pages/FamilyLawCouncilpublishedreports.aspx>.

- The complexity of language used within courts
- A lack of gender and cultural safety throughout the system.

More recently the FLC's 2016 report includes updated recommendations in this area that DVNSW endorses, particularly:

- embedding workers from Aboriginal and Torres Strait Islander services in the family courts and Family Relationship Centres as family liaison officers and Aboriginal Liaison Officers;
- working with Aboriginal and Torres Strait Islander communities and organisations to develop and deliver culturally appropriate post-separation parenting programs and family dispute resolution services;
- developing and resourcing tailored education programs about the family law and child protection systems for Aboriginal and Torres Strait Islander communities to enhance understanding of legal rights and awareness of how the family law system works; and
- ensuring ongoing cultural competency training for family law system professionals, including judicial officers, that builds an understanding of the multiple and diverse factors contributing to the high levels of family violence in Aboriginal communities, and an understanding of Aboriginal and Torres Strait Islander family structures and child rearing practices.

Working with Lesbian Gay Bisexual Transgender Intersex and Queer (LGBTIQ+) families is also an area that has been raised by DVNSW members as an area most likely to be misunderstood within the family law system.

*“Family law professionals could improve their understanding of DFV in LGBTIQ communities by undertaking specific sensitivity training to become familiar with the specific barriers faced by these communities. It is important that family law professionals really listen to their client and their experience. The client may or may not be comfortable talking about their gender/sexuality, it is important to keep in mind that LGBTIQ people have been systematically and socially silenced with many being used to hiding their identity and relationships”*

DVNSW survey respondent

*“There is also the issue of support for women/men in LGBTI relationships. In my experience the birth mother of 2 children now finds herself having to get a loan for up to \$40,000 to go through court - when she has been the primary caregiver for over 15 years and her (now) ex-partner has continued on her career. This woman will not be able to afford court and appropriate legal representation because of her financial position. She is working to support her children but no savings to draw on.”*

DVNSW survey respondent

### 1.5 Women with Disability<sup>21</sup>

Women with disability are estimated to be 37.3% more at risk of domestic violence than their peers.<sup>22</sup> In NSW alone, 43% of the women who experienced personal violence in 2011 were estimated to have a disability or long-

<sup>21</sup> Women With Disability and Domestic and Family Violence: A Guide For Policy and Practice, People with Disability Australia and DVNSW, 2015

<sup>22</sup> ABS (Australian Bureau of Statistics), 2012. '4430.0 – Disability, Ageing and Carers, Australia: Summary of Findings, 2012', Australian Bureau of Statistics. <<http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/A813E50F4C45A338CA257C21000E4F36?opendocument>>

term health condition, 7% higher than the national average.<sup>23</sup> Women with disability are particularly vulnerable to homelessness and to violence and require tailored assistance to access appropriate support and recovery opportunities. Women with disability experience domestic and family violence in a range of ways and settings including:

- Physical violence: withholding of food, water, medication or support services, misusing medication as a restraint, using physical restraints and destroying or withholding disability-related equipment.<sup>24</sup>
- Sexual violence: inappropriate touching during care giving, taking control of reproductive processes and demanding sexual activities.
- Emotional violence: verbal abuse, forced isolation, denying or trivialising the disability, humiliating the individual, threatening violence, institutionalisation or the withdrawal of care, and threatening to hurt guide dogs, pets or other family members.<sup>25</sup>
- Financial violence: stealing or taking control of money, taking control of investments and refusing to pay for essential medication or disability-related equipment. Particular forms of coercion and manipulation that result from existing hierarchies between people with disability and people without disability, such as individuals being led to believe that all relationships function in this way.

We strongly recommend that the family law and family violence inquiry takes into consideration the experiences of victim-survivors with disability who require support and recovery opportunities and its intersectionality with the family law system and the impacts of proposed changes particularly with reference to accessibility and limiting re-traumatisation.

### Recommendations:

DVNSW endorses and support the following recommendations made by WLSA to address earlier identification of DFV, additional support, improving safety and supporting those that need more intensive support:

#### **WLSA Safety First Plan: Step 1: Develop a specialist pathway for family violence cases in the family courts.**

- a) *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.*
- b) *Create a process in family courts to manage domestic violence cases with an emphasis on early decision-making, triaging and case-management.*
- c) *Engage court-based support services to assist families in crisis. These services could include specialist services for women from high-risk groups as well as housing, domestic violence and child & youth focussed workers.*
- d) *Remove the language of “equal shared time” and “equal shared parental responsibility” in the Family Law Act 1975 to shift culture and practice towards a greater focus on safety and risk to children.*

<sup>23</sup> Family and Community Services, 2014. 'Women in NSW 2014', NSW Government.  
<[http://www.women.nsw.gov.au/\\_data/assets/file/0019/300772/3303\\_WNSW-Report2014\\_web.pdf](http://www.women.nsw.gov.au/_data/assets/file/0019/300772/3303_WNSW-Report2014_web.pdf)>

<sup>24</sup> Frohmader, C. 2007b. 'It's not ok, it's violence: information about domestic violence and women with disabilities', Women with Disabilities Australia.  
<[http://wwda.org.au/wp-content/uploads/2013/12/Its\\_Not\\_OK\\_Its\\_Violence.pdf](http://wwda.org.au/wp-content/uploads/2013/12/Its_Not_OK_Its_Violence.pdf)>

<sup>25</sup> Frohmader, C. 2007b:8

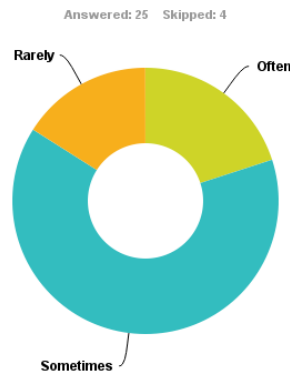
## Term of Reference 2:

The making of consent orders where there are allegations or findings of family violence, having regard to the legislative and regulatory frameworks, and whether these frameworks can be improved to better support the safety of family members, as well as other arrangements which may be put in place as alternative or complementary measures

### 2.1. Cross-examination of victim-survivors by perpetrators is unacceptable

DFV specialist practitioners reported that the occurrence of cross examination by a perpetrator occurred “often, and sometimes” 20% and 64% respectively with their victim-survivor clients involved with the family law system, see DVNSW Fig. 1.

**Q8 How often are your clients cross-examined by their abuser?**



DVNSW Fig. 1

Our survey respondents identified that a substantial proportion of victim-survivors are likely to be exposed to re-traumatisation and intimidation facilitated by the system. The practice of cross-examination by perpetrators has evoked particularly strong criticism from practitioners.

*“Clients often suffer severe panic/anxiety attacks leading up to the court date and some even vomit before going into the court room. Due to the severity of the anxiety experienced some clients cannot show up for the hearing and are then penalised. It is an outrage that perpetrators are allowed to cross-examine their victims.”*

DVNSW survey respondent

*“[victim-survivors who are cross-examined by perpetrators]... They have panic attacks, they decline in their mental health, they end up in hospital due to stress related mental health issues, one [of my victim-survivor clients] self harmed and one [victim-survivor clients] tried to carry out her suicide.”*

DVNSW survey respondent

*“We have had perpetrators approach victims after court and use the evidence the victim gave as the trigger for another incident. [cross examination by a perpetrator]... Makes the clients lose trust in the system, and not want to reach out and get help as they are fearful of being re traumatized”*

DVNSW survey respondent

*“Rulings are made based on an assumption of equal power between the parties rather than the fixed imbalance of power that pre-dates and persists through the court process. This leaves victims further vulnerable to system*

*abuse by wealthy and highly educated (savvy) perpetrators. Victims are judged on their emotional presentation at court, ignorant of the impact of DV. Victims are still discouraged from presenting evidence in affidavits of DV by their solicitors saying that they will be deemed as malicious accusations. The financial cost of the legal process automatically excludes many victims, particularly those who have experienced financial abuse. Repeated applications can be made to the court even though orders were recently made. This process is used to wear victims down both financially and emotionally. Children experience the extreme stress through the whole process. There is little or no accountability for judges where a ruling is made that places children at ongoing risk of harm. This is frequent and causes long term impacts for the whole family.”*

DVNSW survey respondent

Case studies provided to DVNSW<sup>i</sup> expose the undertone of systemic abuse by perpetrators using self-representation as their tool. DVNSW recognise that under the *Family Law Act*<sup>26</sup> the court can intervene in proceedings if a question is deemed “offensive, abusive or humiliating”, however detailed court experiences outlined in responses to our survey suggest this is not always the case and can be dependant on the Magistrate’s level of understanding in relation to violence and trauma. Victim-survivors should be able to participate fairly in proceedings; the fear of being cross-examined can lead to out of court settlements that lead to unsafe arrangements for children.

This issue is not a new one; many inquiries<sup>27,28</sup> have already raised and subsequently recommended bans or official responses on the practice of cross examination. Ultimately from a best practice and strengths based response DVNSW advocates for the elimination of cross-examination by perpetrators and the best protection possible for victim-survivor witnesses.

### Recommendations:

DVNSW endorses and support the following recommendations made by WLSA to address the barriers faced by those most at risk, and the removing the avoidable trauma of cross examination:

#### **WLSA Safety First Plan: Step 2: Reduce trauma and support those who are most at risk of future violence and death**

- a) *Implement the recommendations from the Family Law Council’s 2012 reports on improving family law system for clients from Aboriginal and Torres Strait Islander and Culturally and Linguistically Diverse Backgrounds.*
- b) *Undertake a comprehensive audit of the barriers in the family law system for women in other high-risk groups such as women with disabilities, women from regional and rural communities and women in prison.*
- c) *Introduce legislative protections to stop a victim being directly cross-examined by their abuser by amending the Family Law Act 1975.*
- d) *Strengthen the support of child protection in family law cases for “protective carers”, such as mothers leaving violent relationships, in family law proceedings.*

<sup>26</sup> Family Law Act 1975, Accessed April 2017, < <https://www.legislation.gov.au/Details/C2008C00025/2a9d7a0d-425d-47b6-9f46-d7a4ee647a64>>

<sup>27</sup> FLC 2016 Final Report, page 114, accessed April 2017  
<<https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Pages/FamilyLawCouncilpublishedreports.aspx>>

<sup>28</sup> Family violence in the court system, Roundtable Outcomes, 2016 accessed April 2017 <<https://coagvawsummit.pmc.gov.au/family-law>>

## Terms of Reference 3 and 4

**Term of Reference 3:** The effectiveness of arrangements which are in place in the family courts, and the family law system more broadly, to support families before the courts where one or more party is self represented, and where there are allegations or findings of family violence;

**Term of Reference 4:** How the family law system can better support people who have been subjected to family violence recover financially, including the extent to which family violence should be taken into account in the making of property division orders;

### 3.1. Financial abuse and its recovery

Financial abuse is an extremely common experience for domestic and family violence victims and there is little or no recognition that women involved with the Family Law Court may not have the ability to access cash, bank accounts, liquefiable assets or even to work. Even in circumstances where a woman is living in the family home, it is a common experience that she may have a house but no access to money for legal advice and support. Many women may appear to be financially stable and as a consequence of this they are unable to access Legal Aid. Financial abuse does not just end post separation or post proceedings for a victim-survivor. In 2016 the Australian National Research Organisation for Women's Safety conducted research that concluded that when women were subjected to family violence over an extended period of time they are far more likely to experience poor economic outcomes, the most significant being that she is far less likely to be in paid employment<sup>29</sup>.

*"Poverty is one our biggest enemies [in supporting recovery], and women and children coming out of DV are generally impoverished"*

DVNSW survey respondent

DVNSW has previously provided evidence including statutory declarations and case studies detailed by women from all backgrounds, professions and income strata that have borrowed thousands of dollars to pay for representation in the Family Court to Parliamentary Inquiries. We are aware that many women give up because they are in huge debt as a result of court costs. The financial circumstances of families need to be considered individually and sensitively with an understanding of the dynamics and impacts of financial abuse. We recommend more flexibility and sensitivity for victim-survivors when it comes to eligibility of Legal Aid.

*"Issues in these matters ...[family law involving property]... can be quite complex and parties will often choose to settle prior to final hearing, because legal costs are prohibitive. I have found that during settlement proceedings (e.g. mediations) it is usually the victim-survivor who will be most flexible in letting go of claims over property. This generally means that she settles for outcomes which are less favourable, than might have been awarded by a court apprised of all the evidence."*

DVNSW survey respondent

*"Many women who experiencing DV/FV are not eligible for legal aid, but cannot afford private representation. Often this prohibits them from making applications to the court, which they might otherwise make, to protect their*

<sup>29</sup> Natasha Cortis and Jane Bullen, *Domestic Violence and Women's Economic Security Building Australia's Capacity for Prevention and Redress: Final Report* (ANROWS, 2016), accessed April 2017 <<http://anrows.org.au/publications/horizons/domestic-violence-and-womens-economic-security-building-australia%E2%80%99s-capacity>>, .

*children and/or property interests. Many women essentially walk away from relationships without their just/equitable share of the joint assets and/or enter/allow parenting arrangements which are, at worst, unsafe or otherwise not actually in the best interests of their children.”*

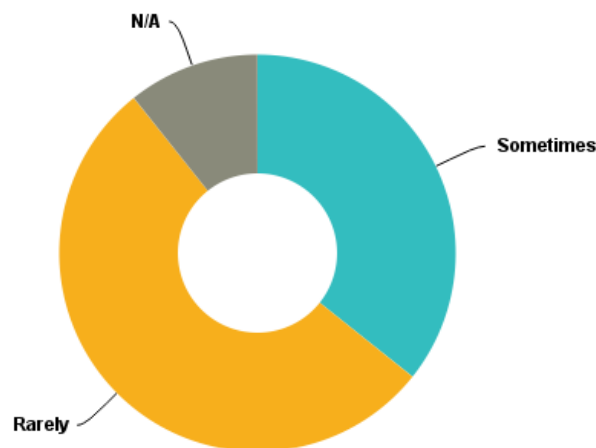
DVNSW survey respondent

### 3.2. Family law and property proceedings can be cost prohibitive

Despite fundamental changes, approaches and understanding of DFV in the family law system we are still seeing DFV inadequately taken into consideration for property or spousal maintenance orders. DVNSW advocates that pathways need to be provided for victim-survivors for financial recovery. Pivotal decisions regarding financial recovery are dependant on fair decisions being made regarding property settlement. 54% of our survey respondents report *rarely* seeing DFV taken into consideration for property or spousal maintenance orders with 36% reporting it only *sometimes* occurs (see Fig. 2).

#### Q6 How often have you seen domestic and family violence adequately taken into account when courts are making property or spousal maintenance orders?

Answered: 28 Skipped: 1



DVNSW Fig 2.  
DVNSW Survey

*“I work at a women's centre and it's very rare that I see DV taken into account when it comes to property”*

DVNSW survey respondent

*“It is difficult for our clients to be adequately represented as Legal Aid is not readily available for Civil law, therefore our clients are disadvantaged and the ruling ends up going in favour of whoever has the resources to pay for the representation”*

DVNSW survey respondent



*“Legal aid funds matters where the client is holding on to their property. So, if the client sells it in the future, legal aid can get their funds returned. When a client has left DFV and has property, most of the time they have been subjected to financial abuse and have no funds available. They have had no access to bank accounts or cash and cannot afford to procure a solicitor, therefore have to rely upon self-representation. The abuser, who does have access to the funds, stretches out of the court proceedings (generally by not complying with instructions and agreeing upon quotes) for this and court does not stop this happening. It becomes systemic abuse. Court dates get extended and women have to come back and appear in court to face their abuser repeatedly. Spousal maintenance is very rarely given.”*

DVNSW survey respondent

Domestic and family violence and its intersectionality with property settlements are not explicitly dealt with within the *Family Law Act*, the FLC made recommendations for pivotal changes to the *Family Law Act* that would allow for the nuance this complex area requires.

DVNSW endorses the FLC recommendations that

- Direct courts to consider actions of the perpetrator to be regarded as a negative contribution as a monetary value and how this impacts upon the victim-survivor
- Direct courts to consider how DFV impacts upon the financial situation of the victim-survivor when considering spousal maintenance

### **Recommendations:**

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DVNSW endorses and support the following recommendations made by WLSA to address creating more opportunity for early resolutions, reducing the length of time required to resolve matter in court, directing resources to those at greater risk, reducing the financial burden placed upon victim-survivors and streamlining processes to resolve property matters that take into account the ongoing financial impact of DFV.

#### **WLSA Safety First Plan Step 3: Intervene early and provide effective legal help for the most disadvantaged**

- a) *Roll out a mediation model with specialist domestic violence lawyers and social workers based on the highly effective 2012 Co-ordinated Family Dispute Resolution pilot.*
- b) *Expand family law legal services by funding Community Legal Centres, including specialist women's legal services; Aboriginal Family Violence Prevention Legal Services, Aboriginal and Torres Strait Islander Legal Services and Legal Aid Commissions to assist the most disadvantaged, high risk families in the family court system.*
- c) *Create a specialist legal aid funding pathway for domestic violence family law cases.*

#### **WLSA Safety First Plan: Step 4: Support women and children to financially recover from domestic violence**

- a) *Promote early resolution of small property disputes under \$100,000 through a legally-assisted, alternative dispute process or streamlined case management process at court.*
- b) *Amend the Family Law Act to require courts to consider family violence when determining a property division in accordance with the Family Law Council's 2001 advice to the Attorney General.*
- c) *Simplify court processes and forms in the family courts, particularly the application requirements and form of evidence currently required by the court to determine a small property division.*

### Term of Reference 5:

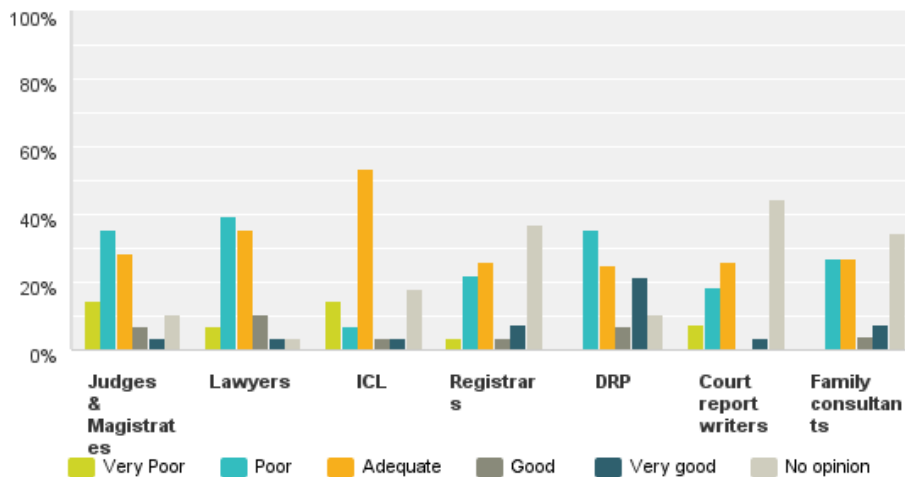
How the capacity of all family law professionals—including judges, lawyers, registrars, family dispute resolution practitioners and family report writers—can be strengthened in relation to matters concerning family violence

#### 5.1. Family Law Professionals and their understanding of DFV

Since the major changes in the 2012 family law system reforms there has been an unprecedented focus upon improving the knowledge and understanding of the impact of DFV by family law professionals. However, as referenced in Fig 3, there are still considerable concerns held by DFV specialist practitioners:

**Q4 Based on your experiences with the family law system, how would you rate the general level of understanding of each of the following family law professionals in relation to family violence and the needs of families where family violence is an issue:**

Answered: 28 Skipped: 1



#### DVNSW Survey Fig.3

ICL – Independent Children’s Lawyer

DRP – Dispute Resolution Practitioner

While the 2012 reforms have been widely welcomed by the domestic and family violence support sector, there is clearly a need for ongoing and thorough training through all levels of family law professionals in order to have an impact upon those who need the family law system the most. Survey respondents detail recent experiences that would suggest for some jurisdictions or with various combinations of family law professionals, the reforms have insufficiently addressed instances of ignorance in relation to DFV or where DFV has been minimised at the cost of children’s safety. Our respondents identified:

*”Too many examples of children being required by the court to visit with violent parent in spite of evidence of his violence and abuse The fact that many different judges make these orders time and again shows they have a*

*very poor understanding of how dangerous DV perpetrators are”*

DVNSW survey respondent

*“An understanding of the impact of trauma on children who are forced to spend time with a perpetrator of family violence. The assumption should not be what is in the best interest of the child, but rather what is in the interest of the child’s safety.”*

DVNSW survey respondent

## **5.2. Magistrates and Judges personal understanding of DFV and its impact upon their decisions:**

In our survey, practitioners had rated magistrates and judges as having the poorest understanding of DFV. This is a disturbing reflection considering the importance that a comprehensive understanding of DFV has in the family court and the power held by these family law professionals. Respondents particularly highlighted the importance of judges and magistrates being trained in family violence dynamics and trauma-informed practice to limit inappropriate questioning by a perpetrator while a victim-survivor is under cross examination as well as identifying tactics utilised to delay and draw out proceedings. We note that some judges and magistrates have a sophisticated and nuanced understanding of the impacts of violence and trauma and that this knowledge and understanding usually results in good decisions relating to safety and children particularly.

*“We have had numerous occasions where the magistrate has declined the victims giving evidence via AVL when the victims are extremely fearful of the other party. We have also had magistrates allow numerous adjournments based on the perpetrator’s inability to get his documentation in order. This has drawn out the process for the victims and furthers the abuse the perpetrator is subjecting the victim to”*

DVNSW survey respondent

*“On the whole we have only experienced a couple of magistrates who seem to grasp a reasonable understanding of the complexities of domestic violence. We would love to see all magistrates receive comprehensive training in domestic violence and the impact of the trauma on the family system.”*

DVNSW survey respondent

*“From what I have witnessed judges have very little understanding of the impact of emotional, psychological abuse. If the abuse is not physical it is not seen as violence. Also don’t seem to understand how the perpetrators can use the court system as a form of abuse. E.g.; husband requesting that the wife give notice of her whereabouts and if she moves houses to be put on court orders. E.g.; father requesting drug and alcohol testing from mother with no evidence of this in a DV context.”*

DVNSW survey respondent

## **5.3. Core knowledge transfer from the specialist DFV sector:**

*“A better understanding of the tactics perpetrators of family violence use to extend the family law process is essential, why is it so obvious to us [DFV specialist practitioner] but not to them”*

DVNSW survey respondent

Unsurprisingly, all of the issues explored in this inquiry there are many inquiries and professional recommendations detailing the needs of the family law system in regards to DFV training and the capacity of the system to adequately respond to victim-survivors of violence. For example, in the 2016 Royal Commission into Family Violence in Victoria explicitly details that training material including the dynamics and complexities of domestic and family violence are offered in an immediate timeframe and that this training is ongoing and available to all judicial officers and court staff.

DVNSW would add that this training needs to be:

- Compulsory and where possible face to face, in comparison to online modules that are optional.
- Development of training should be in consultation with the specialist DFV sector, child protection experts as well as sexual assault professional bodies
- When training is delivered it be delivered in a joint professional development capacity aimed at creating a consistent trauma-informed cross-sector culture.

Echoing our support for recommendations for cohorts who experience additional barriers to the family law system there are complementary recommendations regarding training for family law professionals specifically in relation to working with clients of Aboriginal and Torres Strait Islander and CALD backgrounds. Furthermore, there should be training regarding working with LGBTIQ+ families and people with disabilities that support the understandings of the experiences and barriers faced by these cohorts and the intersectionality with DFV and the family law system.

DVNSW endorses and support the following recommendations made by WLSA to address the issue of professionals in the family law system requiring specific DFV training, trauma or cultural competency and the monitoring and accreditation of family report writers.

### Recommendations:

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#### **WLSA Safety First Plan: Step 5: Strengthen the understanding of all family law professionals on domestic violence and trauma**

- a) *Family report writers - establish a national accreditation and monitoring scheme with mandatory training on domestic violence, cultural competency and working with victims of trauma for all practitioners who prepare family reports.*
- b) *Judicial officers - the Judicial College of Australia develop and deliver a comprehensive professional development package for all family law judicial officers on domestic violence, cultural competency and working with victims of trauma.*
- c) *Legal professionals, including ICLs - the Australian Institute of Family Studies develop a comprehensive domestic violence training program for family law legal professionals and work with state and territory law institutes and bar associations to roll out the training.*

### Conclusion

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DVNSW notes that a number of the themes and key challenges raised in this submission represent a culmination of successive requests and recommendations for law reform, including adequate resourcing for systems and workforce development initiatives for the legal sector focusing on improving understandings and responses to the intersectionality between domestic and family violence victim-survivors and the family law system. We believe that this inquiry represents an opportunity for a fundamental shift in responses and an improved focus on safety and recovery for victim-survivors, to ensure they do not have to experience further abuse or trauma.

