

DOMESTIC
VIOLENCE
VICTORIA

Australian Law Reform Commission
Review of the Family Law System:
Discussion Paper

Submission

November 2018

Acknowledgements

Domestic Violence Victoria (DV Vic) wishes to acknowledge and profusely thank representatives of specialist family violence services who directly contributed to this submission during this busy and demanding time in the for the family violence sector in Victoria. Members represented include:

- EDVOS
- Emerge
- InTouch
- PartnerSPEAK
- Project Respect
- Quantum Support Services
- Safe Futures
- WAYSS
- Women's Health in the East
- VT Uniting

DV Vic thanks and acknowledges the feedback on this submission from other partners, including Victoria Legal Aid, Women with Disabilities Victoria, No to Violence and Djirra. Unless otherwise indicated, the quotes and examples in this submission can be attributed to these DV Vic members and partners. DV Vic also wishes to acknowledge the excellent work of close partners Women's Legal Service Victoria (WLSV) and Women's Legal Services Australia (WLSA) in campaigning for a safer family law system for women and children experiencing family violence. This proposal draws significantly on their research and recommendations for a better family law system. Finally, DV Vic acknowledges the women and children whose experiences and voices underpin this submission.

Contents

Acknowledgements	1
Executive Summary	4
Introduction	6
Key terms and concepts	8
Family violence	8
Gendered analysis of family violence	8
Intersectionality	8
Victim/survivor	9
Objectives and Principles.....	9
A rights-based approach to the public health framework.....	9
Legal principles.....	10
Eradicating presumption of equal-shared decision-making responsibility (Proposals 3-3 to 3-9).....	10
Amendments to finance and property provisions (Proposals 3-10 to 3-17).....	11
Early release of superannuation (Question 3-2).....	11
Awareness, information, access and engagement	12
National awareness campaign and information package (Proposals 2-2 to 2-8)	12
Families Hubs (Proposals 4-1 to 4-4)	13
Expansion of FASS (Proposals 4-5 to 4-8)	15
Dispute resolution (Proposals 5-1 to 5-10 & 10-2).....	15
Supporting developments of Legally Assisted Dispute Resolution	16
Reshaping the adjudication landscape (Proposals 6-1 to 6-12).....	16
Determining evidence of family violence in family law matters (Questions 6-2)	16
Court lists and triage	17
Co-location	18
Post-order parenting support service	18
Children’s Experiences (Proposals 7-1 to 7-10)	19
Children’s voices.....	19
Family Consultants, Children’s Advocates and Independent Children’s Lawyers.....	19
Reducing harm (Proposals 8-1 to 8-6, and 9-1 to 9-7)	20
Definition of family violence.....	20
Misuse of legal system	20
Sensitive records	21

Welfare provisions and supported decision-making frameworks 21

Information Sharing (Proposals 11-1 to 11-12) 22

A skilled, supported and accountable workforce (Proposals 10-1 to 10-9 & 12-1 to 12-9)..... 24

Workforce capability and cultural change..... 24

Core Competencies 25

Role specific qualifications 25

Child Contact Service Workers 25

Judiciary..... 25

Family Consultants 26

Qualifications for interpreters 26

Family Law Commission 27

About Domestic Violence Victoria

As the peak body for specialist family violence services in Victoria, DV Vic is an autonomous, non-government organisation whose membership consists of over 80 state-wide and regional specialist family violence agencies across Victoria, which provide a variety of services to women and children who have experienced family violence. Our members also include community and women's health agencies, some local governments and other community service agencies. As the recognised representative of the specialist family violence sector in Victoria, DV Vic is the key stakeholder organising, advocating for, and acting on behalf of the specialist family violence sector. In this role, DV Vic holds a central position in the Victorian integrated family violence system and its governance structures.

Since our establishment in 2002, DV Vic has been a leader in driving innovative policy to strengthen sectoral and system response to family violence, as well as building workforce capacity and representing the family violence sector at all levels of government. DV Vic provides policy advice and advocacy to the Victorian Government about family violence response and systems reform and drives best practice through our role in the development and support of the state-wide Risk Assessment and Management Panels (RAMPs) and other specialist practice programs.

Executive Summary

DV Vic's responses to the Discussion Paper (the Paper) are grounded in the understanding that significant and holistic cultural change is required to address outdated and discriminatory family law processes that render many victim/survivors unsafe and without fair family law outcomes.

DV Vic believes that holistic change can be defined as a family law system that is responsive to family violence in a way that keeps women and children targeted by perpetrators of family violence safe, holds perpetrators to account, is trauma informed and consistently ensures fair and just outcomes for all parties.

The Paper's proposals are a step towards this but **must be underpinned by adequate funding and resourcing** – via an immediate increase in resources to community legal and family violence services and ongoing funding for the reforms in the long-term – **an emphasis on changing the culture within the family law system, and a commitment to meaningful co-design with states and territories governments, relevant sectors and organisations and those currently disadvantaged by family law processes** such as women with disabilities, Aboriginal and Torres Strait Islander women, women from culturally and linguistically diverse (CALD) backgrounds, and Lesbian, Gay, Bi-sexual, Transgender and/or Intersex (LGBTI) women.

This submission reiterates that a contemporary family law system must **enshrine not only the rights of children, but also gender equality and the rights of women in its objectives and principles**. While we recognise that a public health approach has the appeal of providing maximum benefit to largest number of people, as it is typically designed to address *single issues*, we believe it is **not** a suitable framework for addressing the multiple and intersecting issues of people accessing the family law system. Instead, we recommend that **a human-rights based approach is the most appropriate framework for enshrining**

the right to safety and right to justice that all families, and particularly victim/survivors of family violence, deserve from the family law system.

We welcome the proposals to increase victim/survivors' access to safety and justice through the reforms to parenting, finance and property matters. We stress that to ensure this right to safety is achieved, provisions for parenting **orders must eradicate the presumption of equal shared parenting responsibility and must do so in a way that it is clear to all parties in the family law system.**

We support Women's Legal Services Victoria's (WLSV) recommendations on finance and property matters. However, **we are firmly against the early release of superannuation funds to assist victim/survivors**, as this a solution that will put the long-term cost back on victim/survivors and misses the opportunity to reform the structural processes, such as access to spousal maintenance and the cost of legal representation, that make victim/survivors financially insecure.

All efforts to **increase information and access to the family law system must coincide with increased funding to community legal and specialist family violence services across Australia, and particularly in regional, rural and remote areas.** These services are key to ensuring victim/survivors can safely and fairly navigate the family law system.

Access and information about family law must also be inclusive and accessible to all. This funding must therefore include the specialist services who represent victim/survivors with disabilities, victim/survivors from Aboriginal and Torres Strait Islander, CALD, and LGBTI communities and all information campaigns must be co-designed with these organisations and the communities they represent. **Access to interpreters who are qualified and have a strong understanding of the nature and dynamics of family violence will also be essential to increasing the access to justice for victim/survivors from a CALD background.**

In principle, DV Vic supports the creation of Families Hubs, but **warns that they risk duplicating and reducing the specialist responses already provided by family law and family violence services throughout Australia.** To be successful, their implementation will require national design, guidelines and attention to needs and resources within each state and territory. The expansion of the FASS and LAFDR will assist in providing **the specialist and holistic psychosocial case management mechanism** described in our previous submission, and the Families Hubs, if their purpose and role are clearly defined, could further this by helping families access their services more easily.

A lack of information and access are not the only barriers for victim/survivors in the family law system. The adversarial process continues to significantly deter victim/survivors, replicates **the power imbalance of family violence and colludes in the coercion and control of women experiencing family violence.** Early determination of family violence is key to reducing the adversarial and hostile nature of family law processes. DV Vic therefore cautions against focusing on fact-finding processes, which may risk perpetuating an incident based and narrow understanding of family violence.

As a step towards a more inquisitorial approach, we welcome the proposal for a specialist family violence list, family violence triaging at the courts and co-location between the Family Court and other jurisdictions, yet **we believe that these proposals miss the opportunity to truly consider what a 'one-court' and inquisitorial approach would look in in the context of family law.**

Part of a 'one-court' approach includes increased information sharing. DV Vic welcomes proposals for a national information sharing scheme but highlights that **issues of consent and safety must be carefully prioritised** in the development of a national scheme to ensure that it does not deter victim/survivors or increase their safety risks. Initially, we believe priority should be given to implementing **information sharing protocols to reduce the inconsistencies between parenting orders and state-level family violence protection orders.**

DV Vic supports reforming the definition of family violence to improve how it is understood and applied within family law. However, we stress that the family law system will only truly prevent and reduce harm to victim/survivors when it is **led by a mature understanding of the dynamics of family violence and its relationship to the roles and responsibilities of family law.**

This will only be achieved when resources and focus go toward increasing the capacity of the workforce in the family law system. DV Vic supports further role specific qualifications and creating the Family Law Commission as **an accountability mechanism driving workforce capacity.** Yet, we also feel that there must be an effort to engender an understanding of how gender and other structural oppressions intersect to create overlapping forms of discrimination and marginalisation within the family law system. To do this, we recommend the **ALRC consider developing an "Institutional Change Framework" as an overarching policy platform for driving cultural change.**

Introduction

DV Vic welcomes the proposals set out in the Paper. They are a step towards the kind of holistic change needed to address the family law system's generally poor understanding of the nature and dynamics of family violence and the barriers to justice and safety that this creates for victim/survivors of family violence. We define holistic change as creating a family law system that:

1. Protects victim/survivors, particularly women and children, from family violence and abuse
2. Holds perpetrators to account and does not collude with the perpetration of further family violence
3. Is trauma-informed and demonstrates a mature understanding of the nature and dynamics of family violence
4. Work across jurisdictions to reduce delays and inconsistencies
5. Ensures fair and just outcomes for all parties, particularly victim/survivors of family violence.

These outcomes are interrelated. Successfully protecting victim/survivors demands a trauma-informed approach, as it understands the effects of family violence on victim/survivors and the role family law matters can play in exacerbating their safety risks and trauma.¹ This in turn recognises how perpetrators

¹ Zelman & Stravopoulos. 2016. Legal and Justice Background Paper. Blueknot. Accessed November 20, 2018. <https://www.blueknot.org.au/Portals/2/Reports%20and%20Docs/Legal%20and%20Justice%20Background%20Paper%20with%20Abstract%20FINAL.pdf>.

can use family law processes to continue their control and abuse and is thus better able to hold perpetrators to account and provide fairer outcomes.

To achieve these outcomes thought must also be given to the elements that underpin successful institutional and cultural change. From our experience supporting the implementation of the systemic recommendations from Victoria's Royal Commission into Family Violence, to be successful reforms that aim to bring sectors together and reorient the focus of organisational processes rely on **funding and resourcing all parties involved, a commitment to cultural change, and a thorough and transparent co-design and consultation process with governments and stakeholders across all states and territories.**

Funding

The family law system is under resourced² and many victim/survivors of family violence lack the financial resources to access legal representation. The reforms proposed in the Paper are long term and do not address the barriers to justice that a lack of affordable legal representation creates. In the immediate, we call for a commitment to providing funding to ensure victim/survivors can navigate the family law system and are legally represented when required. Funding must be increased to both generalist and specialist legal services, with additional resources also directed to specialist family violence services, who play a pivotal role in supporting victim/survivors through the family law system and will also face an increased demand. In the long-term, while it is easy to cherry-pick less costly reforms, like legislative changes, for these reforms to function as intended adequate funding must also go to the resource intensive proposals, such as the workforce development plan and information-sharing scheme, that will enhance these legislative changes.

Cultural change

Our previous submission highlighted the ways in which the family law system currently discriminates against victim/survivors and colludes in the abuse perpetrated against them. The Paper's proposals aim to prevent this by increasing the consideration of family violence in family law matters and strengthening the family law system's ability to support victim/survivors of family violence. Strengthening the family law system's response to family violence will not be possible without considerable efforts to foster a mature understanding of the impact, dynamics and nature of family violence among all staff in the family law system. In addition to funding to alleviate immediate barriers, priority must therefore be directed to reforms that will build the capacity and skill of the family law system's workforce in family violence matters.

Co-design

The proposals will increase a range of services, from the commonwealth level right down to local communities. We welcome the Paper's efforts to recognise the voices and experiences of all people who use the family law system, particularly those most marginalised within it. To truly meet the needs of all Australians and those most disadvantaged by current processes, the Australian Government must commit to a process of co-design with state and territory governments and relevant non-government stakeholders, organisations and communities across Australia.

This submission discusses whether the Paper's proposal will achieve holistic change to the family law system, as outlined here, and considers how funding, implementation and cultural change will influence

² Powell, R. 2017. Family court letting families down chief justice says. Australian Broad Casting Corporation, 1 May. Accessed 20 November, <https://www.abc.net.au/news/2017-04-30/family-court-letting-families-down-chief-justice-says/8483858>.

this. In doing so, it also draws significantly from DV Vic's experience in supporting the implementation of the recommendations from Victoria's Royal Commission into Family Violence to provide recommendations on the multi-sectoral proposals such as the Families Hubs and the Information Sharing Scheme.

Key terms and concepts

Family violence

DV Vic recognises family violence as defined in the *Family Violence Protection Act 2008* (Vic). Further to this, DV Vic understands family violence to be a pattern of intimidation, violence and abuse used to gain coercive control over and dominate the other person. DV Vic recognises that family violence goes beyond physical violence, encompassing 'a wide range of controlling, coercive and intimidating behaviours'³ including sexual, emotional/psychological, economic, social, and spiritual violence and abuse. As the most common form of family violence,⁴ this submission predominantly focuses on intimate partner violence. However, DV Vic knows that family violence occurs across all cultures and backgrounds and is perpetrated by family members and other carers in a range of power relationships with victims.

Gendered analysis of family violence

DV Vic applies an explicitly gendered analysis to family violence and family law throughout this document, based on the evidence that the most significant determinant of family violence is gender and gender inequality. Gender refers to 'the socially constructed roles, behaviours, activities, and attributes that a given society considers appropriate for men and women'⁵ and which manifest in social institutions. In this sense, DV Vic understands that women and children's personal and individual experience of family violence and the family law system reflects the patriarchal social structures that dominate societies.

Intersectionality

DV Vic recognises that gender intersects with a range of other structural oppressions experienced by women and children. The interconnectedness of structural oppressions exposes women experiencing violence to overlapping forms of discrimination and marginalisation, which exacerbates the risk and impact of family violence for women who are members of particularly marginalised groups.

³ Our Watch. nd. Facts and Figures, retrieved 1 May 2018, <https://www.ourwatch.org.au/understanding-violence/facts-and-figures>.

⁴ Ibid; Phillips, J. & Vandebroek, P. 2014. *Domestic, family and sexual violence in Australia: an overview of the issues*, Parliament of Australia, retrieved 8 May 2018, https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1415/ViolenceAust; WHO. 2012. *Understanding and addressing violence against women: Intimate partner violence*, retrieved 8 May 2018, http://apps.who.int/iris/bitstream/handle/10665/77432/WHO_RHR_12.36_eng.pdf;jsessionid=2B307B852D750300012863FFA15683E8?sequence=1.

⁵ WHO. 2017. *What do we mean by 'sex' and 'gender'?*, retrieved 8 May 2018, <http://apps.who.int/gender/whatisgender/en>.

In this submission, DV Vic acknowledges that gender and gender inequality overlap with the social construction of disability, race, ethnicity, culture, religion, colonisation, socioeconomic status, sexual identity, age, and geographic location to create diverse and complex experiences of family violence and family law for women as individuals and groups. For many groups of women experiencing transecting social divisions, multiple sites of oppression increase the risk of family violence and result in more frequent and severe experiences of family violence and discrimination within the systemic response.

Social structures also combine in ways that rationalise, reinforce and excuse men who use violence against women,⁶ affording some groups of men more freedom to use violence against women while others are more strongly penalised and disadvantaged in the systemic responses to perpetrators of family violence.

This submission speaks to a largely generic and therefore white, European-Australian experience. However, DV Vic requests that it be read through a lens of intersectionality that takes as a given the cumulative discriminatory, traumatic and difficult experience of family violence and the family law system for women who are survivors of family violence who experience intersecting forms of oppression and marginalisation. DV Vic advocates for specialised and diverse responses to support and assist women in these circumstances.

Victim/survivor

The terms 'victim,' 'survivor,' and 'victim-survivor' have been used interchangeably throughout this document to refer to women, children and others who have experienced or are experiencing family violence in any of *its* forms. Likewise, the term perpetrator is used to refer to individuals who are using violence against a family member. In accordance with the gendered nature of family violence, survivors are referred to as women and children and perpetrators are referred to as men. However, DV Vic acknowledges that men and members of gender and sexually diverse communities also experience and are survivors of family violence.

Objectives and Principles

A rights-based approach to the public health framework

That the public health approach may provide the 'maximum benefit for the largest number of people' is appealing in the context of family law.⁷ It recognises that the majority of separating Australian families resolve matters without court proceedings or dispute resolution services and simply require greater access to information about how to use the family law system.⁸

⁶ Laing, L. & Humphreys, C. 2013. Social work and domestic violence: Developing critical and reflective practice, Sage, London, p.8.

⁷ Australian Institute of Family Studies. 2014. Reflecting on primary prevention of violence against women. ACSSA, No.19, Accessed 5 November 2018. <https://aifs.gov.au/publications/reflecting-primary-prevention-violence-against-women/public-health-approach>.; WHO. 2018. the Public Health Approach. Violence Prevention Alliance. Accessed 5 November 2018. http://www.who.int/violenceprevention/approach/public_health/en/.

⁸ Qu, L., Weston, R. Moloney, L. Kaspiew, R. & Dunstan, J. 2014. Post-Separation Parenting, Property and Relationship Dynamics after Five Years. Australian Institute of Family Studies.

However, given that a public-health approach is usually used to tackle the risk factors of single-issues, such as smoking rates or child abuse, DV Vic is concerned that it is not appropriate for reforming the multiple and systemic problems in the family law system. We feel that attempting to apply it to family law reforms fails to understand how different issues facing families are often interrelated and reinforced by the legal system itself. Especially in the context of family violence, we feel that a public health approach will obscure the fact that, as a gendered issue, the power imbalances that produce family violence are currently reflected and compounded by family law processes and outcomes.

To address this, we recommend the ALRC adopt a human-rights based approach to reforming the family law system. All people have the right to safety and justice within the family law system. This should be the system's primary responsibility. A right-based approach 'emphasises how human rights are achieved' and understands that to realise these rights 'all forms of discrimination must be prohibited, prevented and eliminated'.⁹ Embedding this approach within the objectives and principles of the family law system would therefore reflect an understanding of the pervasive injustices experienced by victim/survivors, particularly women and girls from diverse contexts and backgrounds,¹⁰ while also underpinning a transformation of the current culture within family law that privileges the rights and entitlements of men/fathers over those of women/mothers.

As a human-rights based approach embeds policy reforms in the broader discourse of international human-rights obligations, taking this approach also ensures the reforms will meet our commitments under the *Convention on the Elimination of All Forms of Violence Against Women* (CEDAW) and the *Convention on the Rights of the Child*.¹¹ Moreover, framing these reforms in the context of individual rights also gives greater significance to the role of Family Law Commission and policies such as the proposed Cultural Safety Framework, as these proposals will hold the family law system accountable for any acts discriminating against these rights.

Legal principles

Eradicating presumption of equal-shared decision-making responsibility (Proposals 3-3 to 3-9)

DV Vic strongly welcomes to the proposal to prioritise safety when considering the best interests of the child, yet we are concerned the proposals do **not** go far enough and will not erase a presumption for shared decision-making where family violence has occurred. On these proposals, we support WLSV position that, while the proposals do significantly alter the decision-making pathway and the presumption of equal shared parenting responsibility, they could be clarified further. In particular, we feel that Proposals 3-3 to 3-7 do not make it clear enough that *both* shared decision-making responsibilities and shared time must be considered when assessing the safety risk of parenting arrangements.

⁹ Australian Human Rights Commission. N.d. Human-rights based approaches. Accessed 15 November, <https://www.humanrights.gov.au/human-rights-based-approaches>.

¹⁰ Balchin, C. 2009. Last but not least: CEDAW and family law, 50.50 gender, sexuality and social justice, retrieved 26 April 2018, <http://www.deakin.edu.au/students/studying/study-support/referencing/harvard>.

¹¹ United Nations. 1989. Convention on the Rights of the Child, retrieved 3 May 2018, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>.

Changing the language from parental responsibility to ‘parental decision-making responsibility’ will not sufficiently address the potential for this misunderstanding if the presumption is not clearly removed from the legislation. We are specifically concerned that victim/survivors will continue to be forced into orders that are unsafe. In the experience of our members, victim/survivors are often either advised not to raise their experience of family violence in family law proceedings and/or they are unaware that they are not required to consent to equal shared decision-making responsibilities and equal shared time.

We reiterate our previous call for the legislative provisions governing parental responsibility to clearly erase the presumption of equal shared parenting.¹² These changes should ensure that a victim/survivor’s safety is prioritised *as well as* that of their child(ren)’s. To do this, we propose that arrangements for shared decision-making be made based on a scale of risk, where the safety of victim/survivors and their children is prioritised over the entitlement of the perpetrator to make decisions about his children.

To help families understand this change, we welcome Proposal 3-9 to commission evidence-based information resources to help families formulate care arrangements for children and recommend that a specialist family violence prevention and response organisation be commissioned to prepare these resources.

Amendments to finance and property provisions (Proposals 3-10 to 3-17)

DV Vic supports the proposals to make family violence relevant to provisions governing finance and property matters. Family violence places victim/survivors at risk of economic insecurity, can impact their ability to maintain employment, and increases their risk of housing insecurity, homelessness and poverty following separation.¹³ On these matters, we continue to support the recommendations of WLSV’s research report, *Small Claims, Large Battles*, and endorse WLSV’s recommendations in response to these proposals. We wish to emphasise our support for their proposal that the Australia Tax Organisation (ATO) release information about the value of a former partner’s superannuation funds via an information sharing mechanism with the courts.¹⁴

Early release of superannuation (Question 3-2)

We do not, however, support the early release of superannuation to assist a party experiencing hardship as a result of separation. On average, at retirement age Australian women have 53.2% less superannuation than men.¹⁵ The gender wage gap, women’s overrepresentation in part-time work and unpaid care and under representation in leadership and management positions all cumulatively contribute to this disparity, and after a lifetime of increased financial economic security, women are

¹² DV Vic. 2018. ALRC Review of the Family Law System Issues Paper Submission, p17.

¹³ Cortis, N. & Bullen, J. 2016. Domestic Violence and Economic Security: Final Report. ANAROWS Horizons Research Report, no.5.

¹⁴ WLSV, 2018. ALRC Review of the Family Law System: Discussion Paper Submission, p23.

¹⁵ Workplace Gender Equality Agency. 2017. Women’s economic security in retirement: insight paper. Commonwealth of Australia. Accessed 6 November 2018, <https://www.wgea.gov.au/sites/default/files/insights-paper-womens-economic-security-in-retirement.pdf>.

left economically disadvantaged in their older age.¹⁶ According to most recent data, 38.7 percent of elderly single Australian women live in poverty compared to 33.8 percent of elderly single men.¹⁷

Giving victim/survivors early access to superannuation alleviates temporary economic insecurity, only to further their economic vulnerability in the future. Increasing the availability of LADR, encouraging mandatory disclosure through the sharing of records held by the ATO and making spousal maintenance more accessible are far fairer means of securing financial security for victim/survivors in both the short and the long-term. For further information, please refer to our submission to the Commonwealth Treasury on *Early Release of Superannuation Benefits Discussion Paper*.¹⁸

Awareness, information, access and engagement

National awareness campaign and information package (Proposals 2-2 to 2-8)

Greater awareness and understanding of family law for Australian families is an important aspect of providing them with access to the most appropriate assistance as soon as possible. However, like the Australian Women Against Violence Alliance (AWAVA), we are concerned that implementing such a campaign without first increasing resources to the family law system increases demand before increasing supply.¹⁹ Victim/survivors of family violence usually have limited financial means and struggle to self-fund litigation,²⁰ particularly when the process is drawn out. Abusive partners often deliberately seek legal advice from community legal centres to ‘conflict’ their partners out of legal representation. This leaves victim/survivors unrepresented and vulnerable to poor family law outcomes and safety risks.

We support AWAVA’s recommendation that the Australian Government’s first priority must be to provide greater funding for legal assistance and representation to victim/survivors of family violence. We echo AWAVA’s call for funding to go to specialised women’s legal services, Aboriginal and Torres Strait Islander women’s legal services and multicultural women’s legal services, who apply a specialist trauma-informed approach to family violence and family law.

We support recommendations for the family law system information package to be user tested, tailored and available in a range of languages and mediums. But we recommend that this user-testing is coupled with a user-design process, where victim/survivors of family violence are able to provide meaningful consultation on what the resources should include and the form they should take. In order to be accessible and relevant to victim/survivors most disadvantaged within the family law system, this process must mandate the inclusion of victim/survivors with disabilities and from Aboriginal and Torres Strait Islander, CALD and LGBTI communities. We also support AWAVA’s emphasis on the need to explicitly include specialist women’s services, including women’s legal services, in the description of the

¹⁶ Ibid

¹⁷ Ibid

¹⁸ DV Vic. 2018. Early Release of Superannuation benefits discussion paper: Response. Accessed 6 November 2018, <http://dvvic.org.au/publications/response-to-early-release-of-superannuation-benefits-discussion-paper/>.

¹⁹ AWAVA. 2018. Submission to ALRC Review of the Family Law System: Discussion Paper

²⁰ WLSV. Small Claims, Large Battles Research Report 2018. Accessed October 22, 2018.

<https://womenslegal.org.au/files/file/WLSV%20Small%20Claims%2C%20Large%20Battles%20Research%20Report%202018.pdf>

implementation working group and that their participation in this process be guaranteed. In the long-term, the information package will only be helpful when other systemic issues, such as the understanding of family violence among practitioners in the family law system, are progressed.²¹

Families Hubs (Proposals 4-1 to 4-4)

In principle, DV Vic supports the use of Families' Hubs to help separating families access a range of legal and support services before they progress to the courts. The Families' Hubs could potentially form part of the psychosocial support we called for in our previous submission, linking each party, particularly victim/survivors, to a case-manager able 'to coordinate and broker the family law system, while also providing practical and emotional support throughout'.²² This would link victim/survivors to services and information earlier, reduce the safety risks posed by family law processes and potentially reduce their need to go to court.

However, we have significant concerns that the Families' Hubs may duplicate existing services and/or dilute the specialist responses already provided in each state and territory. This could be a significant issue given the number of similar 'one-stop-shop' style services that already provide support to families in the family law and justice system. In Victoria, these existing services include:

- Safety and Support Hubs (the Orange Door) – recommended by the Royal Commission into Family Violence and designed to respond to family violence,
- Multidisciplinary centres – set-up to respond to sexual assault and child abuse and, in some locations, family violence
- Neighbourhood Justice Centres – designed to offer a one-stop shop of justice services, including the Magistrate's Court and parts of the Children's Court (Criminal Division), the Victorian Civil and Administrative Tribunal and the Victims of Crime Tribunal alongside legal agencies, police prosecutions, community correctional services and a range of individual support services.

Centres such as these each have a different purpose, which we feel should be maintained. **We are therefore concerned adding Families' Hubs to this list of services risks spreading already stretched resources even thinner.** If implemented, we recommend the Families' Hubs do not detract from existing and additional funding to specialist family law, family violence and legal services - especially specialist services such as women's legal services, Aboriginal and Torres Strait Islander legal and family violence services and services supporting CALD women. **We also recommend that the Families' Hubs are not merged with existing 'one-stop-shops', and particularly in Victoria's case we would not recommend that the Families Hubs being co-located or 'merged' with the Orange Doors.**

The Families' Hubs should be treated as a separate mechanism that creates a 'single-point' of entry into the family law system. This means that though they may have co-located services, their role primary role must be to act as a referral point for specialist support services.

To achieve this intent, it is crucial that the roles and referral pathways between the Families' Hub and other similar services are clearly defined and designed to complement and boost the existing family law

²¹ AWAVA. 2018. ALRC Review of the Family Law System Discussion Paper: Submission

²² DV Vic. 2018. ALRC Review of the Family Law System Issues Paper Submission, p8.

resources in each state. The development and implementation of Victoria's Safety and Support Hubs offers important insights into how to implement good practice when delivering multi-disciplinary referral services. Based on our experience working on the Support and Safety Hubs in Victoria, if the proposed Families Hubs go ahead:

- Their purpose must be clearly articulated across the country through nationally agreed upon outcomes, before implementation begins
- They must be co-designed with the community services sector in each state, particularly specialist family violence services
- There must be an opportunity to consult with victim/survivors and their children, particularly those currently marginalised within family law
- They must not duplicate existing services in each state
- Their 'shared priority of advancing the safety and wellbeing of separating families and their children' must come from a strong understanding of the nature and dynamics of family violence
- A clear specialist family violence screening, intake, assessment, case-management framework must be implemented.
- The referral responsibilities and pathways must be established before the Families' Hubs go live
- They must be properly resourced to meet on-going demand
- Their physical and organisational design must prioritise safety and accessibility for all
- They should establish an inclusive practice that provides a safe and welcoming space for all, particularly peoples from Aboriginal and Torres Strait Islander, CALD and LGBTI communities and people with a disability.
- Their design must be evidence-based with a clear monitoring and evaluation plan designed from the outset.

In addition to these principles, we emphasise that the specialist family violence sector must be stipulated as a key stakeholder in the development of the Families' Hubs. The specialist family violence sector's expertise in the impact, nature and dynamics of family violence is crucial to ensuring the Families' Hubs are developed from a trauma informed and specialist family violence framework. This will be important in ensuring the Families Hubs do not encourage victim/survivors into family law pathways that they do not want to do or pathways that are unsafe. DV Vic would especially welcome the opportunity to offer more detailed information to the ALRC and Commonwealth Government on how experience from the establishment of Victoria's Safety and Support Hubs could be applied to the Families Hubs.

Expansion of FASS (Proposals 4-5 to 4-8)

DV Vic welcomes the call to expand FASS to courts across Australia and supports the proposal to include separate legal and family violence services for both victim/survivors and perpetrators. The lack of affordable legal services is an ongoing source of stress and disadvantage for the victim/survivors our services support. From our members' experience, perpetrators often access the only community legal service in an area to create a conflict interest and prevent victim/survivors from accessing affordable legal representation. Extending the FASS and providing specialised legal assistance directly to victim/survivors is fundamental to giving them the access to justice they deserve. As highlighted above, this must also coincide with increased funding to community legal and specialised legal services, more generally.

To expand the FASS, we recommend that the legal and family violence services working in FASS at the courts also have a presence in the proposed Families Hubs. Consultations with DV Vic member organisations emphasised the benefits of FASS, but several members noted that many families are not interested in family violence support and case-management by the time they reach court and 'just want their matter to be heard'.

Offering FASS in the Families Hubs will help to initiate the psychosocial casework model described in our previous submission and will ensure families are offered a continuum of support whether they go to court or not. Ensuring FASS workers have a presence in the Families Hubs would also reduce the risk of artificially siloing this response to the courts.

To fully provide this continuum of support, FASS should be rolled out to both permanent and circuit family court registries, as well as the proposed family law registries in local courts (6-8). To fulfil the 'navigator role' envisaged in our [previous submission](#), referral pathways between FASS and specialist services, such as Aboriginal and Torres Strait Islander Legal Services, must be developed. Moreover, to make FASS accessible to all, it must be provided alongside access to high-quality interpreter services, as AWAVA and WLSV also recommend.

Dispute resolution (Proposals 5-1 to 5-10 & 10-2)

We welcome the extension of Family Dispute Resolution (FDR) to property and finance matters. We know that victim/survivors of family violence are likely to have limited financial means and that the current avenues leave them vulnerable to further financial abuse, drawn-out legal proceedings and poor outcomes.²³

In response to Question 10-2, we emphasise that legislative guidelines for FDR will not be enough and that all FDR practitioners must be trained in screening for all forms of family violence, particularly financial abuse, and must employ a trauma-informed approach. This will help to prevent FDR occurring in unsafe circumstances or where it would exacerbate any existing power imbalances between the parties', such as an imbalance in their knowledge of one another's financial circumstances. This will also be essential if FDR practitioners participate in the proposed information sharing scheme. If FDR

²³ WLSV. Small Claims, Large Battles Research Report 2018. Accessed October 22, 2018. <https://womenslegal.org.au/files/file/WLSV%20Small%20Claims%2C%20Large%20Battles%20Research%20Report%202018.pdf>

practitioners misidentify perpetrators, as is common practice with police officers, or make inaccurate assessment of risks, victim/survivors will continue to face safety risks and poor outcomes both during FDR and at court. To facilitate full disclosure of financial circumstances, we reiterate our support for WLSV's call for courts to be able to obtain information about parties' assets from the ATO.²⁴

In response to Question 5-2, we caution against criminal penalties for non-disclosure or punitive civil penalties, as they may destabilize the financial circumstances of victim/survivors who rely on their ex-partners for financial support. Given that times of financial insecurity or crisis are associated with family violence, such penalties may also carry safety risks. Instead, mechanisms to encourage full disclosure should be the focus of these reforms.

Supporting developments of Legally Assisted Dispute Resolution

DV Vic welcomes Proposal 5-9's call for supporting the further development of culturally appropriate and safe models of Legally Assisted Dispute Resolution (LADR). We continue to support Women's Legal Services Australia's recommendation that the 'Australian government fund a national legally assisted dispute resolution program appropriate for family violence cases that is supported by specialist family violence lawyers and family violence and trauma informed family dispute resolution practitioners.'²⁵

This service should be delivered by existing community legal organisations, such as Legal Aid and women's legal services, which already employ a family violence and trauma-informed approach to family law. We support proposals to provide culturally appropriate and safe LADR, in relation to Aboriginal and Torres Strait Islander Families, people from CALD and LGBTI communities and people with a disability, and recommend that mediation approaches that address the dynamics of family violence in the context of forced marriage also be considered.²⁶ Culturally appropriate and safe models of LAFDR must be co-designed with their relevant communities, and access to qualified interpreters with family violence will also be essential to ensuring these services improve access to justice for victim/survivors from CALD backgrounds.

Reshaping the adjudication landscape (Proposals 6-1 to 6-12)

Determining evidence of family violence in family law matters (Questions 6-2)

We welcome the Paper's acknowledgement that the adversarial system entrenches existing hostility and disempowers victim/survivors of family violence. However, if family violence is to be appropriately incorporated into a broader range of matters, it will require changing how family violence is identified in the family law system.

²⁴ WLSV. Small Claims, Large Battles Research Report 2018. Accessed October 22, 2018.

<https://womenslegal.org.au/files/file/WLSV%20Small%20Claims%2C%20Large%20Battles%20Research%20Report%202018.pdf>

²⁵ WLSA. 2018. ALRC Review of the Family Law System Issues Paper: Submission, p12.

²⁶ For example, transformative mediation processes in Denmark and Norway aim to promote dialogue between victim/survivors and their parents that focus on guaranteeing the victim's safety, (Danna, D. & Cavenaghi, P. 2011. Transformative Mediation in Forced Marriage Cases. *Interdisciplinary Journal of Family Studies*. Vol.17, no.2.)

As our previous submission highlights, the need to produce evidence of family violence in family law matters continues to deter victim/survivors from raising family violence in the family law system, particularly in court proceedings. Some victim/survivors may not have supporting evidence, such as a protection order, because their first disclosure of family violence may be when they access the family law system, and for many their fears of not-being believed and the combative nature of the adversarial system deter them from disclosing and encourage them to settle for unsafe and unfair outcomes.²⁷

We support WLSV's view that there must be early determination of family violence and that a distinction must be made between the process used to determine a victim/survivor's current safety risk and the process for determining whether family violence is an issue in a matter. Changes to the court triage process and information sharing will support better risk management of family violence. However, to determine evidence of family violence DV Vic calls for processes that enable decisions to be made without the encumbrance of fact findings.

We agree that fact-finding processes risk focusing too heavily on an incident-based assessment of family violence. If evidence of family violence is not found during these hearings, victim/survivors may be forced to agree to orders that are unsafe and unjust. Similarly, as victim/survivors may not have disclosed their experience of family violence before they reach the Family Courts, early determinations of family violence that are not sensitively assessed would risk simply perpetuating current disadvantages and risks victim/survivors face within family law. To prevent this, we advocate for a lower threshold of evidence, such as a balance of probabilities, to be used when determining whether family violence is an issue in a matter and that this determination be done by practitioners with specialist expertise in family violence.

In our previous submission, we advocated for 'further exploration and expansion of inquisitorial models'. In line with this, we also contend that focusing too narrowly on fact-finding hearings misses an important opportunity to promote more innovative and transformative changes that would go further still in providing a safer, fairer and more empowering process for all parties, particularly victim/survivors. We recommend that further consideration be given to whether the Family Court can implement alternative decision-making models that, for instance, rely on trauma-informed multi-disciplinary decision-making panels, allow clients to choose a legal or non-legal advocate, or incorporate elements of restorative justice approaches. For further a discussion of this, please see our previous submission.

Court lists and triage

DV Vic broadly supports the creation of the three specialist courts list and notes that this will also be supported by the proposals to increase the accessibility and safety of the courts. As family violence is likely to be an issue in matters eligible for the Small Claims List and the Indigenous List, we recommend that:

- Clear guidance and decision-making frameworks must be developed to allocate matters to the most appropriate list.

²⁷ See also ALRC. 2010. Evidence of Family Violence. Family Violence: A National Legal Response. Final Report. Accessed 5 November 2018, <https://www.alrc.gov.au/publications/family-violence-national-legal-response-alrc-report-114>.

- There must be a clear definition of what constitutes ‘high-risk’ in relation to family violence matters in the guidance and decision-making frameworks.
- Registrars must have mandatory training and ongoing professional development on the impact, dynamics and nature of family violence and trauma informed case-management.
- The uptake and impact of this training should be audited regularly, and the results should then inform the development of future training.

The success of the Family Violence list will also rely on establishing an in-depth understanding of the nature and dynamics of family violence amongst the judges on the list. We acknowledge that training for the judiciary is not mandatory and recommend the courts develop a strategy for actively encouraging training attendance. Additionally, we recommend that the family violence list operate on a rotational basis within the Family Court to ensure that overtime the judges will increase their specialisation in family violence matters.

These changes are also acutely related to those proposed in the Federal Circuit and Family Court Bill 2018. We support WLSA’s position and ask that a review of court structures be included in the terms of reference of this review process and that the deadline for the ALRC’s final report be extended to allow for further consultation on this issue.

Co-location

DV Vic supports the expansion of the ‘one court principle’ through the co-location of the family courts within magistrate’s courts across all states and territories. Alongside proposals for information sharing between commonwealth and state jurisdictions, this will reduce the stress, confusion, costs and safety risks currently posed by jurisdictional fragmentation.

Successful colocation will rely on a combination of adequate funding and capacity building for the family court and magistrates court. Increased funding should ensure that rural and remote areas, as well as metropolitan courts, have co-located registries and judicial officers, and must also cover the cost of increasing the family law matters dealt within the magistrates’ court. Training for both family law judiciary and local magistrates in family violence and family law matters is imperative to ensure that specialisation in family law and family violence is amplified and not diluted.

Finally, we strongly encourage the ALRC to consider how co-location proposals could go beyond the administrative level and truly establish a one-court model where the criminal and civil matters many victim/survivors of family violence face can be dealt with in the one place at the one time.

Post-order parenting support service

DV Vic welcomes the proposal to introduce a post-order parenting support service that is trauma-informed, evidence based and designed in collaboration with both the social science and specialist family violence sector. Given that it also possible that victim/survivors will not have disclosed their experience of family violence and/or for family violence to commence in the post-order process, we recommend that this service also incorporates family violence training for all staff. Strong referral pathways and relationships between this service and specialist family violence services will also be essential. To facilitate the specialist and holistic psychosocial case-management mechanism proposed

in our previous submission, the post-order parenting support service could be linked to or run through FASS. This would create greater support and continuity within the system for victim/survivors.

Children's Experiences (Proposals 7-1 to 7-10)

Children's voices

DV Vic supports making the best interests and safety of the child the family law system's primary concern and the aspiration to increase the opportunities for children to express their opinions in family law proceedings. The Australian Institute of Families Studies (AIFS) research shows children and young people who have been involved with family law want to have their views taken seriously, particularly when it came to safety concerns, and want to be informed about legal proceedings, processes and decisions affecting them.²⁸ As such, we support Proposal 7-1 to increase age-appropriate information for children about the family law system as well as Proposal 7-2 to include specialised children's workers in the proposed Families Hubs. We also welcome Proposals 7-3, 7-4 and 7-11 to strengthen legislation to ensure children have an opportunity to contribute to matters affecting them.

Family Consultants, Children's Advocates and Independent Children's Lawyers

However, we feel it will take much more than increased information and improved legislation to increase children's voices in the Family Court. For our members, a key challenge to increasing children's voices is the power and influence of Family Consultants over court decisions and the recommendations made by Independent Children's Lawyers' (ICL). In their experience, Family Consultants:

- Lack the skills, experience and understanding to recognise signs of family violence
- Do not spend enough time with each family member – usually a few hours at most – to uncover instances of family violence or child abuse, and
- Often exhibit significant prejudice against victim/survivors, with many women our members saying they feel like the report writer had “made their mind up about me as soon as they saw me.”

Despite these issues our members find that ‘too often the ICL takes the easy way out and follows the recommendations of the Family Report Writer, whereas it should be further, sustained, independent assessment.’

There is therefore limited benefit to adding in an additional role, such as a Children's Advocate, when the views of Family Consultants remain problematic and influential. Instead, we recommend that the ALRC choose between either the ICL or the Child Advocate, and that all staff performing this role apply trauma-informed practice with a mature understanding of the nature and dynamics of family violence. Under the Family Law Act, the ICL must form an independent view of the child's interests and is **not** a

²⁸ Carson, R. Dunstan, E. Dunstan, J. Roopani, D. 2018. Children and Young People in Separated Families Family Law System Experiences and Needs. Melbourne: Australian Institute of Family Studies. Accessed 5 November 2018. <https://aifs.gov.au/publications/children-and-young-people-separated-families-family-law-system-experiences>.

child's legal representative.²⁹ Because of this, we feel that a specialised social science professional may ultimately be in a better position to challenge or question the views of the Family Consultant and thus may act as a stronger safeguard against biased reports. Moreover, given the varied activities the ICLs often perform, a strong background in therapeutic services and case-management is necessary for the role. To ensure this position represents the needs and rights of all children, it is imperative they are also culturally competent and sensitive.

Reducing harm (Proposals 8-1 to 8-6, and 9-1 to 9-7)

Definition of family violence

We welcome the ALRC's support for retaining 'coercion and control' as the contextual core of the FLA's definition of family violence and support the proposals to modernise the language in a manner consistent with state and territory definitions and recent research. As such, we support replacing 'assault' with 'an act that causes physical harm or fear of physical harm and replacing 'repeated derogatory taunts' with 'emotional or psychological abuse'.³⁰

A focus on coercion and control recognises that family violence is, at its core, a decision to exercise and abuse one's power over another person. DV Vic maintains that extensive lists of examples can be detrimental when those applying the law do **not** have a strong understanding of the nature and dynamics of family violence and the common tactics used to perpetrate it. Maintaining an emphasis on coercion and control prevents this and can encompass the diverse circumstances and experiences of victim/survivors, such as women working in the sex industry or women whose partners have accessed child abuse material.

However, we also recognise that the non-exhaustive list of examples can be important educational guides for the community and legal profession. We therefore support proposals to broaden some of the examples and suggest that forced marriage should also be included. However, we emphasise that including these additional examples will not be effective without ongoing, comprehensive, culturally sensitive, trauma-informed family violence training for all staff within the family law system.

Misuse of legal system

We support proposals to consider the misuse of systems and processes as family violence and for the broadening, simplifying and rationalising of the proposals governing unmeritorious proceedings. Current powers to dismiss vexatious matters are not used enough and explicit acknowledgement of this form of abuse in the legislation will educate both the public and the legal system. The proposal for courts to consider whether there is a history of family violence when deeming proceedings as unmeritorious will also help to make the connection between repeated initiation of court proceedings and family violence.

However, DV Vic members are against the apportioning of costs following a finding of unmeritorious proceedings. Research shows that victim/survivors in the family law system are already financially

²⁹ Family Law Act 1975 (Cth), ss 68LA(4)(a) – (b); ALRC. 2018. Review of the family law system: Discussion paper, p. 166.

³⁰ ALRC. 2018. Review of the family law system: Discussion paper, p. 188.

vulnerable.³¹Our members note that as some victim/survivors may rely on their ex-partner's ability to provide them with some form of financial assistance, apportioning costs to perpetrators may limit their ability to do so. Given that evidence also shows family violence is closely associated with financial hardship, apportioning costs may also increase their risk.³²

Sensitive records

Subpoenas for sensitive records can cause victim/ survivors considerable distress and harm and create risks to their safety. This process is also expensive and time consuming for specialist family violence services, whose limited resources are better spent on frontline support to victim/survivors. The proposed changes do not sufficiently protect victims/survivors and will continue to place the burden of contesting these orders on survivors and the services that support them. DV Vic therefore reiterates its call for **all** confidential counselling records related to family violence and sexual assault to be subject to absolute privilege.

Welfare provisions and supported decision-making frameworks

DV Vic continues to support other disability and human rights organisations in recognising forced sterilisation as a violation of human rights and a form of violence against women. We endorse Women with Disabilities' concerns about question 9-1 and reiterate their call for:

- the Australian Government to legislate to end forced and coerced sterilisation.
- The Family Law Act to be amended to remove all provisions allowing it to provide authorisation for such procedures, except where there is a serious threat to life.
- The Australian Government to enact immediate national legislation prohibiting, except where there is a serious threat to life, the use of sterilisation of girls, regardless of whether they have a disability, and of adult women with disabilities in the absence of their fully informed and free consent.
- An apology to victim/survivors of forced sterilisation and the establishment of a redress scheme

We fully endorse Women with Disabilities Victoria's (WWDV) recommendations on the proposals concerning a supported decision-making framework and parenting support for people living with disabilities. On these proposals we emphasise that:

- the development of these proposals must be done in meaningful co-design with people with disabilities and the organisations representing them
- any specialist professionals and services supporting people with disabilities to engage with family law system must have sufficient specialised training in family violence, and

³¹ WLSV. 2018. Small Claims, Large Battles Research Report. Accessed October 22, 2018.

<https://womenslegal.org.au/files/file/WLSV%20Small%20Claims%2C%20Large%20Battles%20Research%20Report%202018.pdf>

³² Australian Institute of Health and Welfare. 2018. Family, domestic and sexual violence in Australia 2018. Accessed 5 November 2018, snapshot <https://www.aihw.gov.au/reports/domestic-violence/family-domestic-sexual-violence-in-australia-2018/contents/summary>.

- The family law system must recognise that the real source of danger to children of women with disabilities is the family violence being perpetrated against their mothers and not the challenges society creates for mothers with disabilities.

Like WWDV, we also support the Family Court building links with the NDIA in order to increase the NDIA's understanding of family violence and parenting issues and to build up the Family Court's knowledge of disability services. But we repeat WWDV call that the courts must meet their responsibilities to the Disability Discrimination Act and provide accessible services and information for people with disabilities regardless of whether they are among NDIS funded recipients.

Information Sharing (Proposals 11-1 to 11-12)

We continue to endorse legislative reforms and changes to court protocols that will increase information sharing between the Family Court and courts and services in other jurisdictions. At present, protection orders implemented in state courts are often contradicted by parenting orders. From our members experiences, this puts victim/survivors and their children in dangerous and potentially deadly contact with perpetrators. A national scheme will help prevent this and places the onus on the courts, rather than victim/survivors, to share this relevant information. Information sharing will also support the implementation of the proposals to increase/alter the consideration of family violence in parenting, finance and property matters.

However, as WLSA and Women's Legal Services NSW (WLSNSW) state, 'information sharing is not a panacea'. Experience shows information sharing may be limited by:

- A lack of disclosure or downplaying of family violence prior to contacting the family law system
- Unsuccessful or inappropriate responses from police or child protection, that then undermine the credibility of victim/survivors in Family Court and/or is then interpreted as indicating a low level of risk
- The perpetrator's ability to manipulate the available evidence
- The way in which the information is recorded by service providers.
- errors in the information shared across jurisdictions, and
- an uninformed interpretation of the information shared.³³

Apart from these risks, we wish to highlight that a key issue is also how to maintain and prioritise consent of victim/survivors when sharing information. Sharing victim/survivor information without consent may discourage victim/survivors from seeking assistance because they may fear losing control of their information and having it shared across services and in the courts. For example, Victim survivors are already discouraged from seeking counselling because they fear this information may be

³³ WLSNSW. 2016. Sense-and-Sensitivity: Family law, family violence and confidentiality. Accessed November 5, 2018. <http://www.wlsnsw.org.au/wp-content/uploads/WLS-NSW-Sense-and-Sensitivity-web.pdf>.

subpoenaed and shared in court. The proposal to share health records poses similar risks. We do not support the sharing of health records and recommend that issues of **consent are carefully prioritised in the development of a national scheme.**

Based on our experience consulting on the Victorian Information Sharing Schemes, we recommend that the legal framework proposed by Proposal 11-3:

- stipulates the role of consent in the sharing of information
- provides highly prescribed roles and responsibilities for organisation's captured under the scheme
- Mandates and monitors workforce training in family violence informed risk assessment for all staff involved
- is supported by a national risk management framework
- allows only risk relevant information to be shared and sets out safeguards against the inappropriate use of information
- does not allow perpetrators to access information about women and children affected by violence
- does not perpetuate the misidentification of primary aggressors, and
- prescribes robust, independent, governance mechanisms to implement, monitor and evaluate the scheme.

Ultimately, the proposed national scheme must be governed by an intensive consultation process between the states and territories, specialist family violence services, the legal sector and other relevant agencies. In this process, we feel that first priority should be given to ending contradictions between family-law parenting orders and state-level protection orders. This could be achieved by progressing information sharing protocols between the Family Court and courts in other state and territory jurisdictions before developing a more comprehensive national information sharing scheme.

34

³⁴ DV VIC, VLA, WLSV, FedCLC & LIV. 2017. Joint-submission on the Family Violence Protection Amendment (Information Sharing) Consultation Draft Bill 2017. Accessed 5 November 2018, <http://dvvic.org.au/publications/joint-submission-on-the-family-violence-protection-amendment-information-sharing-consultation-draft-bill-2017>.

A skilled, supported and accountable workforce (Proposals 10-1 to 10-9 & 12-1 to 12-9)

Workforce capability and cultural change

DV Vic fully supports the proposed workforce capability plan for the family law system and notes that it is consistent with the approach taken in Victoria's new *Building from strength: 10-year industry plan for family violence prevention and response*.³⁵ The numerous gaps in the knowledge and understanding of family violence among professional groups across the family law system pose significant barriers to the success of many the proposed reforms and transforming this should be one of the Government's highest priorities.

To be successful these efforts must 'fundamentally disrupt the misogynist culture of the family law system.'³⁶ In our members' experience, the implementation of family violence training too often focuses on the number of staff-members trained, rather than the quality or content of the training. To address this, we recommend that the workforce capability training be approached like effective gender equality training, which in addition to a policy commitment requires:

- legislation setting out the competency and implementation requirements
- sufficient resources to fulfil the strategy
- staff being actively encouraged to attend the training, either through attendance requirements or innovative engagement strategies, and
- an adequately resourced accountability system to monitor and evaluate the implementation of the training.³⁷

The proposed Family Law Commission and its accreditation responsibilities will create a legislative framework and an accountability system. However, to operationalise a commitment to disrupting and transforming the misogynist culture of the family law system, DV Vic would like to see the Family Law Commission develop and implement an Institutional Change Framework (the Framework). This differs from the Cultural Safety Framework, as its purpose would be to engender the family law system with an understanding of how gender and other structural oppressions intersect to create overlapping forms of discrimination and marginalisation that can exacerbate a person's risk of family violence and also marginalise them within the family law system.³⁸ In developing this understanding, the Framework would make addressing this discrimination a core principle for the family law system and would encourage all family law professionals to play an active role in achieving this objective. In addition to

³⁵ Victorian State Government. 2017. Building from strength: 10-year Industry plan for family violence prevention and response. Accessed 5 November 2018, <https://www.vic.gov.au/familyviolence/family-safety-victoria/industry-plan.html>.

³⁶ DV Vic. 2018. ALRC Review of the Family Law System Issues Paper Submission, p 21.

³⁷ European Institute for Gender Equality. 2018. What is gender equality training. Accessed 5 November 2018, <https://eige.europa.eu/gender-mainstreaming/toolkits/gender-equality-training/what-gender-equality-training-get>.

³⁸ Hankivsky, O. & Cormier, R. 2011. Intersectionality and Public Policy: Some Lessons from Existing Models. Political Research Quarterly 64, no. 1, p 217–29.

covering the training and workforce capability improvements, the Framework should also set out a range of other activities focused on shifting cultural attitudes around gender, family violence, power and privilege. Such activities could include a primary prevention campaign on gender equality for family law for judicial officers and staff, mandated quotas or targets for female judges and judges from diverse backgrounds, and, as proposed earlier, developing a more inquisitorial model within the court.

To implement the Framework, the proposed Family Law Commission should also partner with agencies experienced in primary prevention work and other stakeholders within the community services sector to develop a “theory of change” for the Framework. Theories of change provide clear short-term and long-term outcomes for organisations wanting to change an overarching issue or problem.³⁹ Articulating a clear theory of change will help to communicate to family law staff and stakeholders what the Framework wants to change and how it proposes to do this.

Core Competencies

DV Vic supports including an understanding of family violence, child abuse (including child sexual abuse and neglect) and trauma-informed practice in the proposed core competencies. We also welcome the inclusion of diversity, disability and LGBTI training and cultural competency training for Aboriginal and Torres Strait Islander peoples and CALD communities. We endorse AWAVA’s proposal for including additional competencies addressing the intersection of family violence and the nature and effects of economic abuse and sexual violence.

To implement our proposed Institutional Change Framework, general training on privilege, unconscious bias and intersectionality should also be implemented. This type of training helps to highlight structural inequalities and how these systemic biases can disadvantage and discriminate against an individual within the legal system. This training would also help develop a more empathetic environment within the family law system by alerting staff to their respective privilege and relative power.

Role specific qualifications

Child Contact Service Workers

We support the proposal for all Child Contact Service workers to have a Working with Children’s Check. That some Child Contact Service workers may not have a Working with Children’s Check is extremely concerning. We also support further accreditation for this workforce and recommend that they be required to have at least a Diploma of Community Services. As Children under the supervision of these workers are among the most vulnerable in our state and their families are likely to be experiencing multiple complex needs, including family violence, these workers must also have specialist training in understanding the nature and dynamics of family violence to ensure they are able to identify and manage any safety risks to these children and their carers.

Judiciary

We support the proposal to consider federal judicial officers’ knowledge and professional experience in matters involving family violence when deciding future appointments to the Family Court (Proposal 10-8). Additionally, family violence training should be a mandatory part of the Continuing Professional

³⁹ Taplin, D.H. & Clark, H. 2012. Theory of change basics: a primer on theory of change. ActKnowledge theory of results report. Accessed 5 November 2018, <https://www.theoryofchange.org/library/publications/>.

Development units for practicing legal professionals and, as stated above, the Family Law Commission should also implement a strategy to encourage the judiciary to participate in family violence training.

Family Consultants

We support the proposed national accreditation system, minimum standards, and public list of accredited family report writers. These minimum standards and the accreditation system should be developed in conjunction with the specialist family violence sector and other community support services. In addition to this, we recommend that family consultants have social science qualifications.

We support WWDV significant concerns about the Proposal 10-13 for report writers' to assess how people with disabilities can be supported in their parenting and to what extent their disability affects their parenting and caution that there is a risk discrimination against mothers with disabilities could increase. Such reports could perpetuate negative attitudes towards people with disabilities and be used by perpetrators seeking to abuse the family law system.

We support proposals to require cultural reports and plans to be done for all Aboriginal and Torres Strait Islander families and children. However, we again note that misconceptions and misunderstandings about Aboriginal families' kinship and family structures and parenting traditions regularly result in non-Aboriginal court staff making negative decisions towards an Aboriginal or Torres Strait Islander mother and family. It is therefore critical that cultural reports and planning is led by the Aboriginal and Torres Strait Islander community.

Qualifications for interpreters

We also recommend that the proposed Workforce Capability Plan include qualifications for interpreters. Interpreters are critical to ensuring access to justice for victim/survivors from culturally and linguistically diverse backgrounds. For these survivors, language is just one barrier to accessing the service system. Gender norms, stigma, fear of being cut off from their community and visa issues can all be barriers to disclosing family violence and navigating the court system.⁴⁰

At present, not all interpreters are trained in family violence or able to navigate these complex issues. This can lead to communication breakdowns and in some cases, interpreters from local communities may reinforce attitudes that prevent the woman from pursuing a family law matter. DV Vic recommends that interpreters must be qualified, professional interpreters with ongoing professional development requirements. Like AWAVA, we recommend that the Judicial Council's *Cultural Diversity's National Standards for Working with Interpreters in Courts and Tribunals* standards be applied as best practice to family law.

⁴⁰ Intouch & Good Shepherd. 2018. The practice of dowry and the incidence of dowry abuse in Australia. Submission to the Senate Standing Committee on legal and Constitutional Affairs; National Advisory Group.2018; Segrave, M. 2017. Temporary migration and family violence: An analysis of victimisation, vulnerability and support. Melbourne: School of Social Sciences, Monash University. Accessed 5 November 2018, <https://arts.monash.edu/gender-and-family-violence/projects/temporary-migration-and-family-violence/>.

Family Law Commission

As stated, we support the proposal to create the Family Law Commission as a new governance mechanism for the family law system with powers to resolve complaints against family law practitioners and to conduct independent inquiries. This is a great step towards holding the system to account and will help drive many the proposed reforms.

We particularly welcome the Cultural Safety Framework and the strong commitment to improving cultural safety for Aboriginal and Torres Strait Islander families and other diverse families such as those from CALD and LGBTI communities.⁴¹ We also endorse AWAVA's proposal for Aboriginal and Torres Strait Islander and multicultural liaison officers to be employed in Family Courts and for advisory groups, similar to the proposed Children and Young Peoples Advisory Board, to be established to represent the voices of Aboriginal and Torres Strait Islander, CALD and LGBTI communities and people with disabilities.

The Family Law Commission will also be central to driving the cultural change we describe in our Institutional Change Framework. Its implementation should therefore be made a priority alongside the Workforce Capability Plan and the broader Cultural Change Framework. We also support the creation of a Judicial Commission to increase accountability and transparency among judicial officers under the Family Law Act.

⁴¹ ALRC. 2018. Review of the Family Law System: Discussion Paper. p303.