

D O M E S T I C
V I O L E N C E
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Submission on the Australian Law Reform Commission

Review of the Family Law System

November 2018

Prepared by DVNSW

About Domestic Violence NSW

Domestic Violence NSW Inc (DVNSW) 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 and response. We work with communities and the media to increase awareness and represent the sector on a number of state and federal advisory bodies. 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 our policy development. DVNSW thanks the specialist services and practitioners who have developed best practice over decades of working with women and children and shared their expertise with us. We also pay tribute to those who have experienced domestic or family violence and to our advocates, colleagues and partners in government and non-government agencies.

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Endorsement of submissions

DVNSW endorses the submission of **Women's Legal Services Australia (WLSA)**, which provides WLSA's responses to many of the questions raised in the Discussion Paper. DVNSW endorses the submission of **No to Violence (NTV)**, which attempts to answer and provide guidance to several questions raised by the ALRC Discussion Paper (2018). We also refer to our previous submission in May 2018 on the ALRC Issues paper.

Key concerns of DVNSW

DVNSW welcomes a significant number of the proposals following the issues paper to reform and improve the family law system. We are pleased that many of the concerns we had previously raised in our submission to the Issues paper in May 2018 have been addressed. However, we have concerns about the following general areas. Later in this submission we will go into more detailed comments on specific proposals. Below are some of our general concerns.

Women's safety matters

DVNSW is pleased that the safety and best interest of the child are a paramount consideration and we commend ALRC on this approach. We also acknowledge the commitment to ensure safety of families. However, we advise that women's safety should be considered as an equal priority in these reforms.

Our submission is guided by WLSA's five-step plan Safety First in Family Law, which has the goal of creating a family law system that keeps women and children safe. Steps include the following measures:

- Step 1 – Develop a specialist response for domestic violence cases in family courts
- Step 2 – Reduce trauma and support those who are most at risk of future violence and death
- Step 3 – Intervene early and provide effective legal help for the most disadvantaged
- Step 4 – Support women and children to financially recover from domestic violence
- Step 5 – Strengthen the understanding of all family law professionals on domestic violence and trauma.¹

The 2018 CEDAW Concluding observations on Australia are particularly helpful, specifically the recommendation to ensure "gender-sensitive approaches to the family violence" in the family law system.²

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

Family violence is common and increasingly coming before courts. An Australian Institute of Family Studies report found that family violence is "the most commonly raised factual issue in litigated proceedings".³ Therefore it's important that reforms always include family violence considerations. Domestic violence specialist courts, or specialist workers in family courts would assist in addressing this. It's also critical that judiciary and all other relevant professions have an understanding and competency in family violence, as well as cultural competency, trauma informed practice, and disability awareness.

Better funding of the family law system

Funding of the family law system needs to be improved, with funding to specialist domestic and trauma informed, culturally competent and disability aware support services, family dispute resolution services, and legal services. There should be adequate funding for specialist courts, and workers, as well as addressing the lack of specialised legal aid grant pathways for domestic violence victims/survivors in family law matters.

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

² Committee on the Elimination of Discrimination against Women (2018) Concluding observations on the eighth periodic report of Australia, para 28(e).

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

Responses to ALRC proposals and questions

Section 2: Education, Information and Awareness

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

DVNSW supports these proposals, however, we recommend that access to interpreters is guaranteed. For guidance the Recommended National Standards for Working with Interpreters in Courts and Tribunals developed by JCCD provides best practice guidelines.⁴ We recommend championing them in the family law system to ensure consistency.

Where an in person interpreter is not available telephone interpreters should be used. Anecdotal evidence from service providers suggests that when an interpreter is not at court, especially at the time of the first court hearing/listing, the court proceeds without one.

It is noted that the Family Violence Best Principles for the Federal Circuit Court and the Family Court do not list best practice of working with interpreters among other principles when reviewing family violence matters. We believe that the Recommended National Standards for Working with Interpreters in Courts and Tribunals should be listed there as best practice.⁵

Section 3: Simpler and Clearer Legislation

Proposal 3-2 (review of court forms)

We support this proposal but there needs to be enough funding to the courts to implement this proposal.

Proposal 3-3, 3-4, 3-5 (The principle of safety and best interests of the child)

DVNSW supports the reforms proposed in prioritising the best interests of the child, especially the proposed language that 'arrangements for children should be designed to advance the child's safety and best interests' and also that 'arrangements for children should not expose children or their carers to abuse or family violence or otherwise impair their safety'. We are pleased that the language of 'equal shared time' has been removed from the language, as recommended in our submission to the ALRC's Issues Paper.

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

However, we still have concerns about the proposed term 'decision making responsibility', as it is not clear how this would operate in the context of family violence, and could create risk that women and children will still be manipulated by the perpetrator. It should be made clear that if family violence has occurred the final decision making responsibility is with the affected party. This was also raised as a concern in our submission to the ALRC's Issues Paper.

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

DVNSW welcomes the amended provisions to more clearly articulate the process used by the courts for determining the division of property in family law matters, specifically that the courts must take into account the effect of family violence. As we identified in our submission to the ALRC's Issues Paper, there are barriers to receiving fair property outcomes in the family law system, family law property proceedings are so complex and expensive that they are unaffordable for many poor families. The difficulties in obtaining proper financial disclosure by uncooperative partners is a real problem, despite the law saying that full disclosure is mandatory. This better recognition of domestic violence in property matters, will go some way in addressing this.

⁴ JCCD (2017) Recommended National Standards for Working with Interpreters in Courts and Tribunals. Available at: <http://jccd.org.au/wp-content/uploads/2018/02/JCCD-Interpreter-Standards.pdf>

⁵ See: <http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/reports-and-publications/publications/family-law/family-violence-best-practice-principles> and <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/publications/family+violence/family-violence-best-practice-principles>

Section 8. Reducing Harm

Proposal 8-1 (family violence definition)

DVNSW supports the proposal under Section 8. Reducing Harm to amend the definition of family violence to include other behaviours such as emotional, psychological and technology facilitated abuse, as well as the misuse of systems and processes. However, we recommend also including reproductive coercion and also dowry abuse.

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

We welcome this proposal to examine the strengths and limitations of the definition of family violence in the Family Law Act 1975 (Cth) in relation to the experiences of Aboriginal and Torres Strait Islander people, people from culturally and linguistically diverse backgrounds; and LGBTIQ people, but we also recommend including people with a disability.

Proposal 8-3 (systems abuse)

DVNSW also welcomes Proposal 8.3, that the definition of family violence in *the Family Law Act 1975* (Cth) should be amended to include misuse of legal and other systems and processes in the list of examples of acts that can constitute family violence in s 4AB(2) by inserting a new subsection referring to the 'use of systems or processes to cause harm, distress or financial loss'.

Section 10. Skilled and supported workforce

Proposal 10-3 (identification of core competencies)

DVNSW supports this proposal, in particular the need for an understanding of family violence; an understanding of trauma-informed practice; an understanding of the impact on children being exposed to ongoing conflict; cultural competency and disability awareness, and an understanding of the family violence and child protection systems and their intersections with the family law system, to be included as core competencies for professionals working in the sector. However, we recommend also including a competency on sexual violence as this understanding is important and often intersects with domestic violence.

Proposals 10-6 (professional development of all legal practitioners), 10-7, 10-8, 10-9 (accreditation of Children's contact services, and appointment of judges with DFV knowledge, accreditation of family report writers)

These proposals are supported by DVNSW as it's important to ensure professionals working in the family court system have up to date knowledge and understanding of domestic violence.

Section 12. System Oversight and Reform Evaluation

Proposal 12-1 (establishment of Family Law Commission)

DVNSW welcomes the establishment of a Family Law Commission but recommends that there are also advisory boards established for Aboriginal and Torres Strait Islander people, culturally and linguistically diverse people, LGBTIQ people, and people with a disability. We also recommend employing Aboriginal and Torres Strait Islander and multicultural liaison officers in family courts.

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

DVNSW supports these proposals, as cultural safety is integral to providing support and safety in the family law system. We are pleased that the framework will be developed in consultation with relevant cultural organisations.