

BRIEFING PAPER

FAMILY VIOLENCE

THE **ESSENTIAL** MEMBERSHIP FOR
THE LEGAL PROFESSION

Prepared by the Law Society of Western Australia

lawsocietywa.asn.au

November 2020

FAMILY VIOLENCE

Issue

The vast majority of dangerous, abusive and violent behaviour that occurs in the privacy of people's homes is committed by men against women. *As we see the rates of Family and Domestic Violence (FDV) escalate in our community, it is clear that early legal help matters.*

Background

The following basic statistics help demonstrate the prevalence and severity of violence against women:

- On average, at least one woman a week is killed by a partner or former partner in Australia.
- One in three Australian women over the age of 15 has experienced physical violence.
- One in five Australian women has experienced sexual violence.
- One in four Australian women has experienced physical or sexual violence by an intimate partner.
- One in four Australian women has experienced emotional abuse by a current or former partner.
- Women are at least three times more likely than men to experience violence from an intimate partner.
- Women are five times more likely than men to require medical attention or hospitalisation as

a result of intimate partner violence, and five times more likely to report fearing for their lives.

- Of those women who experience violence, more than half have children in their care.
- Violence against women is not limited to the home or intimate relationships. Every year in Australia, over 300,000 women experience violence – often sexual violence – from someone other than a partner.
- Eight out of ten women aged 18 to 24 were harassed on the street in the past year.
- Young women (18 – 24 years) experience significantly higher rates of physical and sexual violence than women in older age groups.
- There is growing evidence that women with disabilities are more likely to experience violence.
- Aboriginal and Torres Strait Islander women experience both far higher rates and more severe forms of violence compared to other women.

In early 2015, the Council of Australian Governments (COAG) agreed to take urgent collective action to address the unacceptable level of violence against women in Australia.

The third and final report of the COAG Advisory Panel on Reducing Violence Against Women and Their Children was provided to COAG on 1 April 2016. The Panel found that despite a lot of good work, rates of violence against women in Australia

remain unacceptably high.

The Panel's final report includes 28 recommendations for COAG's consideration, with innovative, practical and deliverable options for further joint Commonwealth, state and territory work to reduce violence against women and their children.

Further, the Victorian Government's Royal Commission into Family Violence final report was tabled in Parliament on 30 March 2016. The Commission's 227 recommendations are directed at improving the foundations of the current system, seizing opportunities to transform the way that we respond to family violence, and building the structures that will guide and oversee a long-term reform programme that deals with all aspects of family violence.

In May 2017, the Australian Law Reform Commission (ALRC) was directed to conduct the first comprehensive review into the family law system since the commencement of the *Family Law Act 1975 (Cth)* (the Act).¹ The ALRC's *Review of the Family Law System: Discussion Paper* (Discussion Paper) was released in October 2018, asking 33 questions and making 124 proposals for change to the family law system.

In June 2020, the Commonwealth Standing Committee on Social Policy and Legal Affairs adopted an inquiry into family, domestic and sexual violence to inform the next *National Plan to Reduce Violence against Women and their Children*.

Policy Position

Law Council of Australia

At the Law Council of Australia Directors' meeting on 27 June 2015, the Law Council established a new Domestic and Family Violence (DFV) Working Group to:

- promote the alignment of domestic violence order legislation;
- progress the cooperative information initiatives already commenced with the Australian Medical Association; and
- investigate opportunities for external funding.

The DFV Working Group is also responsible for reviewing the Government's Women's Safety Package, released in September 2015. The Package was welcomed by the Law Council, but it was noted that if we are serious about assisting victims of domestic and family violence then we must be serious about ensuring they have access to justice. Substantially greater funding for legal assistance is needed to ensure access to justice can be achieved (media release 24/09/15).

The Law Council provided a submission to the ALRC's Discussion Paper. The Law Council noted that whilst the Discussion Paper has a large scope, it did not address the failure by governments to properly resource the existing family law system, and whether the family law system would be the best practice model for family law if it were properly resourced.² The Discussion Paper also did not address the anticipated cost or funding of initiatives, or how current funding might be allocated between current services and new initiatives.

The Law Council agreed with numerous proposals in the Discussion Paper, but also noted that some of the measures duplicate provisions that are already in existence under the *Family Law Act 1975* (Cth).

Community Legal WA

As we see the rates of Family and Domestic Violence (FDV) escalate in our community, it is clear that early legal help matters. Community Legal Centre across WA are at the front-line assisting individuals impacted by FDV. The CLC sector has provided advice to Government regarding the importance of the legal process surrounding a FDV cases and the importance of a coordinated response from Courts and the legal profession. This includes:

- [Media Comment: Release of Inquiry Report into the Magistrates Court.](#)
- [Submission: Inquiry into the Magistrates Court of Western Australia's management of matters involving family and domestic violence.](#)
- [Submission: WA Government – 10 Year Strategy for Reducing Family & Domestic Violence.](#)

Legal help matters for the victims and the perpetrators of family and domestic violence. When legal support is provided at an early stage there is a focus on legal rights, safety of victims, accountability of perpetrators, and an ability to address the full a range of client needs for both victims and perpetrators.

A reasonable person given appropriate information regarding their rights, responsibilities and the pathway through the justice system is empowered to make informed decisions and take informed

actions, reducing the likelihood of adverse consequences, trauma and tragedy.

Accessible, early legal assistance

Legal Services must be accessible by all West Australians, and in all areas of law related to FDV with long-term, sustainable and predictable funding provided for legal assistance services to those who lack the means to pay for private lawyers.

The value of Community Legal Centres must be recognised for the provision of localised, expert, trauma informed, culturally appropriate and specialised services, particularly in meeting the needs of vulnerable cohorts such as clients in remote and regional WA.

The area of Child protection requires recognition as a consequence of FDV and a legal process in its own right; affected parents and children require urgent access to adequately resourced holistic services.

As the majority of victims of FDV are women, specialised resourcing is required particularly for women in prison, from CaLD backgrounds and women with complex child protection matters.

Mindful of the high rate of FDV for First Nations women, escalating number of First Nations children in care and high incarceration rates among First Nations people (that are often a consequence of FDV) there be recognition that Aboriginal controlled organisations are best placed to provide legal assistance and social support services to First Nations Australians and achieve better outcomes.

Social return on investment models should be deployed to allow measurement and evaluation of all FDV legal assistance funding and ensure

that policy decisions are made with a better understanding of the impact.

Resourcing of the legal profession for FDV should include recognition of the value of and support for ongoing community legal education.

Courts

All WA Courts, must be “fit for purpose” to address concerns about victim safety, with separate waiting areas for victims and perpetrators at Court, for example, should be expected as a minimum standard.

Comprehensive and ongoing family and domestic violence training for judicial and court staff situated in courts exercising jurisdiction in FDV related matters must be mandatory.

Law Society of Western Australia

On 24 February 2014, the Law Society provided a submission to the Law Reform Commission of WA in response to their Enhancing Family and Domestic Violence Laws Discussion Paper.³

On 13 August 2019, the Law Society provided comments on proposed amendments to the *Criminal Code under the Family Violence Legislation Reform Bill*.⁴

On 26 June 2020, the *Family Violence Legislation Reform Act 2020 (WA)* was passed. The Act includes increased penalties for certain offences relating to family violence, and introduces new offences of non-fatal strangulation and persistent family violence. A range of additional sentencing options, including electronic monitoring of offenders sentenced for family violence offences and declarations of serial family violence offending will be available to the sentencing court, and in

post-sentence supervision orders (for certain offenders). The Act also introduces a range of amendments to the *Restraining Orders Act 1997 (WA)* and the *Bail Act 1982 (WA)* aimed at enhancing victim safety.

On 30 June 2020, the Law Society provided input for a Law Council submission to the Commonwealth Standing Committee on Social Policy and Legal Affairs’ inquiry into family, domestic and sexual violence.⁵

The Law Society has representatives on the Law Council’s DFV Working Group.

The Law Society also supports White Ribbon Day each year.

Funding implications

In early 2015, the COAG agreed to jointly contribute \$30 million for a national campaign to reduce violence against women and their children, and also created an action plan with numerous objectives, including the establishment of a national DVO scheme. In October 2018, the Federal Government confirmed that they will cease the funding of the Keeping Women Safe in their Homes program, for which they had provided funding of \$1.47 million which support more than 700 women and their families in 2017.⁶

The State Government committed to using emergency funding to organisations to ensure that services were not stopped, and committed more than \$20 million of new funding as part of a comprehensive plan to address family violence.⁷

Bill Shorten, then Leader of the Labor Party, announced that Labor would spend \$18 million on the Keeping Women Safe in their Homes program to extend it to 2021-22, as well as committing to

developing a 10 year plan with the intention to reduce instances of domestic violence.⁸

The State Government also developed a \$1.6 million grant process to ‘build cross cultural awareness of family and domestic violence to enable Aboriginal and culturally and linguistically diverse (CaLD) victims to access support services.’⁹

Applications for the grants were open until 14 February 2019, and were focused on assisting service providers, and raising awareness and skills within the Aboriginal and CaLD communities in responding to domestic and family violence.

On 22 July 2020, the State Government announced a \$28.1 million support package for victims of family and domestic violence. The support package includes \$8.6 million of funding for an extra 23 outreach workers in refuges across Perth and regional areas to provide support to women and children experiencing or at further risk of family and domestic violence. Almost \$6.7 million will bolster the State’s family and domestic violence response teams, through a partnership between the Department of Communities, the WA Police Force and the community services sector. A further \$4 million will enable the expansion of two women’s refuges being built by the State Government in Peel and Kwinana.¹⁰ The support package is in addition \$3.1 million of Commonwealth funding for family and domestic violence measures in Western Australia announced in May 2020.¹¹

Policy Position

The Law Society of Western Australia seeks the support of all parties to:

- provide long term, sustainable and predictable

funding for Legal Services in all areas of law related to FDV and in particular:

Funding for and recognition that Aboriginal controlled organisations are best placed to provide legal assistance and social support services to First Nations Australians

Funding for and recognition that the area of Child protection require urgent access to adequately resourced holistic services

specialised resourcing is required particularly for women in prison, from CaLD backgrounds and women with complex child protection matters.

Funding for Courts dealing with family law matters, as well as family violence support services;

- Comprehensive, ongoing and mandatory family and domestic violence training for judicial and court staff situated in courts exercising jurisdiction in FDV related matters.

Continue to develop and implement domestic violence strategies including community education for particularly vulnerable groups, including Indigenous Australians and those from CALD communities; and

NOTES

1. ‘Review of the family law system’, Australian Law Reform Commission (Web page, 31 May 2018) <<https://www.alrc.gov.au/inquiries/family-law-system>>.
2. ‘Review of the Family Law System: Discussion Paper’, Law Council of Australia (Web page) page 5 <<https://www.lawcouncil.asn.au/resources/submissions/review-of-the-family-law-system-discussionpaper>>.
3. Law Society of Western Australia, Submission to Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws* (25 February 2014) <<https://www.lawsocietywa.asn.au/wp-content/uploads/2015/09/submission-domestic-violence-law-reform-commission-february-2014.pdf>>.
4. Law Society of Western Australia, Submission to Department of Justice, *Family Violence Legislation Reform Bill – Consultation Draft* (13 August 2019) <<https://www.lawsocietywa.asn.au/wp-content/uploads/2015/10/2019AUG13-Letter-to-Dept-Justice-Family-Violence-Legislation-Reform-Bill-DEPARTMENT-OF-JUSTICE.pdf>>.

5. Law Society of Western Australia, Submission to Law Council of Australia, *Inquiry into Family, Domestic and Sexual Violence* (30 June 2020) <<https://www.lawsocietywa.asn.au/wp-content/uploads/2015/10/Law-Council-Inquiry-into-Family-Domestic-and-Sexual-Violence.pdf>>.
6. Government of Western Australia, 'Federal Government fail to fund successful program to keep women safe' (Media Statement, 28 October 2018) <<https://www.mediastatements.wa.gov.au/Pages/McGowan/2018/10/Federal-Government-fail-to-fund-successful-program-to-keep-women-safe.aspx>>.
7. Ibid.
8. Paul Karp, 'Labor promises \$18m for anti-domestic violence program after funding discontinued', *The Guardian* (News article, 27 November 2018) <<https://www.theguardian.com/australianews/2018/nov/27/labor-promises-18m-for-anti-domestic-violence-program-after-funding-discontinued>>.
9. Government of Western Australia, 'Grant to boost culturally appropriate domestic violence supports' (Media Statement, 20 December 2018) <<https://www.mediastatements.wa.gov.au/Pages/McGowan/2018/12/Grant-to-boost-culturally-appropriate-domestic-violence-supports.aspx>>.
10. Government of Western Australia, 'Comprehensive package to support WA family violence response' (Media Statement, 22 July 2020) <<https://www.mediastatements.wa.gov.au/Pages/McGowan/2020/07/Comprehensive-package-to-support-WA-family-violence-response.aspx>>.
11. Government of Western Australia, '\$3 million strengthens pandemic response to violence in the home' (Media Statement, 11 May 2020) <<https://www.mediastatements.wa.gov.au/Pages/McGowan/2020/05/3-million-dollars-strengthens-pandemic-response-to-violence-in-the-home.aspx>>.

Policy Position

The Law Society of Western Australia seeks the support of all parties to:

- provide long term, sustainable and predictable funding for Legal Services in all areas of law related to FDV and in particular:
 - Funding for and recognition that Aboriginal controlled organisations are best placed to provide legal assistance and social support services to First Nations Australians
 - Funding for and recognition that the area of Child protection require urgent access to adequately resourced holistic services
 - specialised resourcing is required particularly for women in prison, from CaLD backgrounds and women with complex child protection matters.
- Funding for Courts dealing with family law matters, as well as family violence support services;
- Comprehensive, ongoing and mandatory family and domestic violence training for judicial and court staff situated in courts exercising jurisdiction in FDV related matters.
- Continue to develop and implement domestic violence strategies including community education for particularly vulnerable groups, including Indigenous Australians and those from CALD communities; and



The Law Society of Western Australia

Level 4, 160 St Georges Tce, Perth Western Australia 6000

Postal address: PO Box Z5345, Perth WA 6831 or DX 173 Perth

Phone: (08) 9324 8600 **Fax:** (08) 9324 8699

Email: info@lawsocietywa.asn.au **Website:** lawsocietywa.asn.au

The Law  Society®
— OF WESTERN AUSTRALIA —
The voice of the legal profession in Western Australia