

Parliamentary inquiry into
family, domestic and sexual
violence

Legal Aid NSW submission to the
Standing Committee on Social
Policy and Legal Affairs

July 2020

323 CASTLEREAGH ST

HAYMARKET NSW 2000 / DX 5 SYDNEY

Legal Aid 
NEW SOUTH WALES

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About Legal Aid NSW

The Legal Aid Commission of New South Wales (**Legal Aid NSW**) is an independent statutory body established under the *Legal Aid Commission Act 1979* (NSW). We provide legal services across New South Wales through a state-wide network of 24 offices and 221 regular outreach locations, with a particular focus on the needs of people who are socially and economically disadvantaged.

We assist with legal problems through a comprehensive suite of services across criminal, family and civil law. Our services range from legal information, education, advice, minor assistance, early resolution legal assistance, extended legal assistance, dispute resolution and duty services, through to an extensive litigation practice. We work in partnership with private lawyers who receive funding from Legal Aid NSW to represent legally aided clients.

We also work in close partnership with LawAccess NSW, community legal centres, the Aboriginal Legal Service (NSW/ACT) Limited and pro bono legal services. Our community partnerships include 27 Women's Domestic Violence Court Advocacy Services, and health services with a range of Health Justice Partnerships.

The Legal Aid NSW Family Law Division provides services in Commonwealth family law and state child protection law. Specialist services focus on the provision of Family Dispute Resolution Services, family violence services (as outlined below) and the early triaging of clients with legal problems through the Family Law Early Intervention Unit. Legal Aid NSW provides duty services at a range of courts, including the Parramatta, Sydney, Newcastle and

Wollongong Family Law Courts, all six specialist Children's Courts and in some Local Courts alongside the Apprehended Domestic Violence Order (**ADVO** or 'protection order') lists. Legal Aid NSW also provides specialist representation for children in both the family law and care and protection jurisdictions.

The Civil Law Division provides advice, minor assistance, duty and casework services from the Central Sydney office and 20 regional offices. It focuses on legal problems that impact on the everyday lives of disadvantaged clients and communities in areas such as housing, social security, financial hardship, consumer protection, employment, immigration, mental health, discrimination and fines. The Civil Law practice includes dedicated services for Aboriginal communities, children, refugees, prisoners and older people experiencing elder abuse.

The Criminal Law Division assists people charged with criminal offences appearing before the Local Court, Children's Court, District Court, Supreme Court, Court of Criminal Appeal and the High Court. The Criminal Law Division also provides advice and representation in specialist jurisdictions including the State Parole Authority and Drug Court.

Legal Aid NSW welcomes the opportunity to make a submission to the parliamentary inquiry into family, domestic and sexual violence. Should you require any further information, please contact:

Meagan Lee
Senior Law Reform Officer
Strategic Law Reform Unit
Policy Planning and Programs



Introduction

Legal Aid NSW welcomes the opportunity to provide a submission to the Standing Committee on Social Policy and Legal Affairs (**Committee**) inquiry into family, domestic and sexual violence (**Inquiry**).

Legal Aid NSW previously made a submission to the Committee's 2017 inquiry into a better family law system to support and protect those affected by family violence (**2017 Parliamentary Inquiry**) (**Attachment 1**). We also contributed to, and endorsed, the National Legal Aid (**NLA**) submission to that inquiry (**Attachment 2**).

Furthermore, we contributed to the NLA submission to the Joint Select Committee on Australia's Family Law System in 2020 (**Attachment 3**). The recommendations in these submissions should also inform the Committee's Inquiry.

We note the intersection between domestic and family violence and elder abuse. However, given that these matters involve different power dynamics, and that this Inquiry is intended to inform the next National Plan to Reduce Violence against Women and their Children, this submission focuses on violence against women and children.

Legal Aid NSW services

Legal Aid NSW services for victims¹ of domestic and family violence

Legal Aid NSW receives funding from the Federal Government to provide specialist domestic and family violence legal and non-legal services to clients who have experienced domestic and family violence.

Legal Aid NSW provides a holistic, wrap around service to clients experiencing domestic and family violence, with the aim of meeting their legal and non-legal needs. For example, Legal Aid NSW's Domestic Violence Unit (**DVU**) is a trauma-informed multidisciplinary service made up of lawyers, social workers and financial counsellors who work together to assist women escaping domestic and family violence to address their legal and non-legal needs. The DVU provides duty lawyer services alongside the Apprehended Domestic Violence Order (**ADVO**) list days at Bankstown, Burwood, Fairfield, Liverpool and Wyong Local Courts each week and on the roster at Port Kembla and Toronto Local Courts. The DVU also provides state-wide telephone advice to clients, free outreach advice clinics and conducts litigation casework for matters involving complex domestic and family violence problems.

¹ Victim is used in this submission to denote a person who is the victim or complainant or alleged victim of domestic and family violence or sexual violence. Some people who experience violence prefer the term 'victim' and others prefer the term 'survivor'. In this submission, the term 'victim' is intended to be inclusive of both victims and survivors. This submission acknowledges every person's experience is unique and individual to their circumstances.

*Mina's story*²

Mina was referred to the DVU lawyer at Bankstown Local Court for advice and representation. She was the named defendant in an ADVO only matter. The DVU identified Mina as a long-term primary victim of domestic and family violence. Mina called the police during a domestic violence incident in late 2019 and when the police arrived, Mina's husband spoke to the police first. Mina can speak a little English, but for legal matters she requires an interpreter. The police spoke to Mina without an interpreter and applied for a provisional ADVO against Mina.

The DVU lawyer adjourned the matter on the first mention date to write representations to the police. On the next mention date, the police had still not replied to the representations and the DVU lawyer advocated with the prosecutor for the ADVO to be withdrawn. The prosecutor reviewed the representations, withdrew the ADVO matter against Mina and indicated to the court that, based on Mina's statement, the police will now investigate the matter against Mina's husband as Mina is the victim in this matter.

Mina was not receiving an income and was at risk of homelessness after separation. The DVU social worker and financial counsellor assisted Mina to apply for the Centrelink special benefit and advocated with Centrelink for urgent processing. The DVU assisted Mina to apply for the Victims Services Immediate Needs Support Package (**INSP**), and she was approved for \$5,000 for rent and household items. Mina was referred for emergency relief and received utility vouchers, food parcels, clothing and a washing machine.

Legal Aid NSW's DVU also uses the Domestic Violence Safety Assessment Tool (**DVSAT**) in the provision of services to clients. The use of a consistent risk assessment tool across the state allows a co-ordinated response between agencies to better respond to incidences of domestic and family violence.

Typically, Legal Aid NSW receives around 1,000 telephone calls to the DVU service each year. Since 4 March 2020, Legal Aid NSW's DVU has received over 1,870 telephone calls and since 23 March 2020, the DVU has received over 1,200 email referrals. This has been a significant increase in demand for Legal Aid NSW's services. We welcome the announcement of additional Commonwealth funding for Legal Aid NSW in response to the increase in demand for services, including domestic and family violence services, during the COVID-19 pandemic.

Research highlights that it can take seven to eight times for a victim of domestic and family violence to leave the relationship.³ Research also shows that it can take a number of

² All case studies in this submission have been de-identified.

³ 'Family & Friends', *West Connect Domestic Violence Services Inc* (Web Page) <https://www.wcdvs.org.au/how-can-we-assist-you/family-friends-how-to-help/>; 'Why It's So Difficult to Leave', *Women Against Abuse* (Web Page) <https://www.womenagainstabuse.org/education-resources/learn-about-abuse/why-its-so-difficult-to-leave>.

appointments for a client to disclose the domestic and family violence perpetrated against them, and longer for disclosures to be made around sexual assaults.⁴ The response that a victim of domestic and family violence receives to a disclosure can also impact on whether further disclosures are made. It is the experience of the DVU that access to services and the response a client receives to their disclosures of violence by services impacts on their decision and ability to flee the violence.

The DVU social workers can assist clients with access to emergency relief, Centrelink crisis payments, housing, Victims Services and other services. As part of their psychosocial assessment, they undertake safety planning and risk assessment. Where necessary, they can refer clients into the Safer Pathways Safety Action Meetings for a coordinated safety response from NSW government agencies, including Police, Housing, Education, Health etc. The DVU financial counsellors can assist with financial health checks, budgeting, emergency relief, mortgage and other finance stress, negotiations and advocacy around sexually transmitted debts incurred as a result of financial control.

Nella's story

Nella's husband, Paulo, lost his job as a result of COVID-19, forced Nella to sign Centrelink documents, gambled the family's savings away and became increasingly violent. Paulo made threats that if Nella left, he would kill her and their children.

The DVU gave Nella urgent advice about an ADVO and family law matters. It was difficult to speak to Nella as Paulo was still in the home and monitoring her phone. The DVU sent Nella a safe phone, arranged times to speak with her via her work email and used safe words during calls. The DVU social worker completed the DVSAT and Nella was rated at extreme risk of lethality. The social worker discussed safety planning and planning to leave the home, and provided a culturally sensitive, psychotherapeutic intervention within an empowerment and trauma-informed framework. The DVU financial counsellor assisted her with a financial health check, to prepare a budget in anticipation of Nella fleeing the family home, and to do a credit check because Paulo had used Nella's name to take out loans. The financial counsellor was successful in having debts Paulo incurred in Nella's name waived.

The DVU social worker remained engaged with Nella and helped her to find alternate accommodation and apply for Victims Services, emergency relief and Start Safely. Once Nella and the children had moved out, the social worker assisted Nella to report the violence to the police, and referred her to a local service that could provide ongoing counselling and case management for her and the children.

⁴ Domestic Violence NSW, *Good Practice Guidelines for the Domestic and Family Violence Sector in NSW* (August 2017); Victorian State Government, *Multi Agency Risk Assessment Management (MARAM) Practice Guides* (July 2019); Department of Health, *Pregnancy Care Guidelines: 29 Family Violence* (May 2019).

The Family Advocacy and Support Services (**FASS**) was established nationwide under Australian Government funding. As part of the FASS, Legal Aid NSW provides specialist domestic and family violence duty lawyer services at the Sydney, Parramatta, Newcastle and Wollongong Family Law Court Registries. The FASS bridges an important gap in NSW between the state-based domestic violence and care and protection systems and the federal family law system. Legal Aid NSW's DVU partners with the Women's Domestic Violence Court Advocacy Services (**WDVCASs**) to provide social support services as part of the FASS. The WDVCASs provide continuity of service for clients traversing both the state based and federal systems. Families who have been affected by domestic and family violence can access the FASS.

The success of the FASS also highlights the success in providing co-ordinated, multidisciplinary services that bridge jurisdictional gaps.

Ruby's story

Ruby is referred to a FASS social support worker by her local WDVCAS. Ruby is a young mum of three children who separated after a violent incident where her ex-partner assaulted her in front of the children. The police applied for an ADVO on Ruby's behalf and Ruby and the children moved out of the family home.

The local WDVCAS has been helping Ruby with her ADVO matter at the local court. Ruby told the court support worker that she has been served with court papers about the children and has to be in the family court in three weeks. After hearing this, the WDVCAS makes a warm referral to the FASS social support worker so that Ruby did not need to tell her story over again. The WDVCAS also emails the FASS support worker the Local Coordination Point (**LCP**) referral and a copy of the DVSAT they got from the police. They provide an update in relation to the status of the local court proceedings and the ADVO. They also send through the information about the referrals they have already made for Ruby and suggest that a safety plan will be needed at court.

When the FASS social support worker meets with Ruby, it becomes clear that Ruby hasn't had any family law advice. She has been served with court papers but didn't know about the duty lawyer service at the court. The FASS social support worker refers Ruby for legal advice. The FASS duty lawyer meets with Ruby, helps her complete an application for Legal Aid and appears in court for her on a duty basis on the first return date.

The FASS social support services also provide a key role in bridging the gap for victims of domestic and family violence to access these services.

Without access to legal, social worker, financial counsellor, housing, health and other services, many victims of domestic and family violence are not in a position to flee the violence. This is particularly evident for women who are in Australia on temporary visas and do not have access to social and financial supports in Australia. For this reason, many

victims of domestic and family violence on temporary visas feel unable to flee the violence (see also our response to (h) below).

Legal Aid NSW supports the expansion of the FASS, as recommended by the Australian Law Reform Commission in its 2019 final report on its review of the family law system.⁵ In particular, we support the expansion of FASS to each state and territory to include a family violence specialist legal service and a family violence specialist support service to assist clients who have experienced or are experiencing all forms of family violence. We also support its expansion to all courts that the family law court circuit to in NSW. This would permit greater access to specialist domestic and family violence services for vulnerable and disadvantaged families affected by such violence, particularly Aboriginal and Torres Strait Islander women, and women who live in regional and remote areas.

We also recommend that the DVU be expanded to provide greater capacity to reach regional and remote clients through an expansion of the DVU state-wide specialist domestic and family violence telephone advice line. An expansion of the DVU telephone advice line would also provide greater access to clients with a disability who are unable to attend in person FASS services at the Sydney, Parramatta, Newcastle and Wollongong Family Law Court Registries.

Women in regional, rural and remote areas versus metro areas

According to the latest data from the NSW Bureau of Crime Statistics and Research (**BOCSAR**), rural, regional and remote areas have higher rates of domestic violence related assault and sexual assault than metro areas. Far West and Orana had the highest rate of domestic violence related assaults in NSW over the 12 months to March 2020, recording 3.7 times the state average.⁶ Far West and Orana also had the highest rate of sexual assault over that period, recording 2.3 times the state average, followed by New England and North West at 2.1 times the state average.⁷

These latest statistics indicate that, in the 24 months to March 2020, the number of recorded domestic violence related assaults increased by 4.1%, and the number of sexual assaults rose by 7.9%.⁸

Seven of the 13 statistical areas showed a significant increase in recorded rates of domestic violence related assault over this period – namely, Riverina (up 16.3%), Murray (up 14.8%), Central West (up 12.4%), Capital Region (up 10.2%), Mid North Coast (up 9.1%), New England and North West (up 6.4%), and Far West and Orana (up 5.2%). Sexual assault increased significantly in the Hunter Valley (excluding Newcastle) (up 18.8%).⁹

⁵ Australian Law Reform Commission, *Review of the Family Law System* (Report No 135, March 2019).

⁶ NSW Bureau of Crime Statistics and Research, *NSW Recorded Crime Statistics: Quarterly Update March 2020* (Report, March 2020).

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

Several areas of Sydney also saw significant increases in reports of domestic violence related assault during this period – namely, Baulkham Hills and Hawkesbury (up 38.7%), Sutherland (up 31%), Inner West (up 14.9%), Eastern Suburbs (up 12.1%), Parramatta (up 8.0%) and Inner South West (up 4.4%). Sexual assault increased in two Sydney Statistical Areas – namely, Sutherland (up 50.7%) and Blacktown (up 16.6%).¹⁰

Women's Domestic Violence Court Advocacy Services

Through its Women's Domestic Violence Court Advocacy Program (**WDVCAP**), Legal Aid NSW administers NSW Government funding to 27 non-government organisations to provide WDVCSs. WDVCSs provide women experiencing domestic and family violence and their children with information, safety planning, referrals and support in relation to the court process at all NSW Local Courts. WDVCSs also provide women with information and referrals for their ongoing legal, social and welfare needs. The services are the main frontline, specialist support service for domestic and family violence victims in NSW, and operate in every location across the state. WDVCSs receive referrals of all domestic violence reports made to NSW police about women and children under the NSW Government 'It Stops Here: Safer Pathway' state-wide domestic and family violence reforms.

WDVCASs play a key role in the Safer Pathway program. In particular, the services provide victim liaison and secretariat support for Safety Action Meetings, which are cross-agency meetings in local areas aimed at supporting victims identified as at serious threat of injury or death due to domestic and family violence.

In 2018/19, WDVCSs supported over 47,000 women. The services work in close partnership with the NSW Police Force, Courts and Tribunal Services, the Legal Aid NSW DVU and Domestic Violence Duty Service, and a range of other government and non-government services.

Legal Aid NSW Family Law Early Intervention Unit

In 2011, Legal Aid NSW utilised funding from the National Partnerships Agreement to establish the Family Law Early Intervention Unit (**EIU**). The intention was to create a new statewide service that was firewalled from existing litigation services and could potentially provide a short service to the other party in an existing litigation matter such as advice, duty, minor assistance or Early Resolution Legal Assistance (legal advice and support during a mediation). In this way, more members of the community can access a service from Legal Aid NSW. EIU solicitors provide enhanced duty services at Newcastle, Sydney, Parramatta and Wollongong family law registries. As part of these duty services, EIU solicitors will provide extensive assistance to clients seeking to protect a child from harm often due to family violence by seeking urgent recovery or airport watch list orders. The EIU has established partnerships with 35 agencies across NSW and provides legal

¹⁰ Ibid.

outreach services to vulnerable clients who access these agencies. Partnerships are with a variety of services, including Local Health Districts where Health Justice Partnerships (HJPs) have been created, services focused on reaching a local Aboriginal community, Family Relationship Centres, Migrant Resource Centres, local community services and women's domestic violence services. The EIU also provides telephone advice to residents across NSW on the full range of family and care and protection legal issues. By reaching out to connect up with services that have established and strong connections with the most isolated and vulnerable members of our community, we can reach these people in a safe and sustainable way.

Services to Aboriginal and Torres Strait Islander people

The EIU provides extensive services to Aboriginal and Torres Strait Islander people through a number of outreach locations where Aboriginal people are well connected, as well as our duty services. When the Federal Circuit Court established the Indigenous List at the Sydney Registry in 2016, the EIU started providing a dedicated solicitor to that list each time it sits. Our solicitors work with the Aboriginal caseworkers from a variety of organisations who attend that list and provide therapeutic services to clients.

Annie's story

Our solicitor at our HJP at a Sydney Hospital was asked to assist a young Aboriginal woman, Annie, aged 14. Annie was living in Sydney as a boarder at a private girls' school and had been brought to hospital with severe abdominal pain. Annie was in labour. Annie's home was in a remote community and she had suffered a sexual assault, resulting in her pregnancy.

Annie's life was in the balance due to the impact of several sexually transmitted diseases she had contracted during the assault. Annie's mother had flown to Sydney to support Annie and her grandchild. Annie was also well supported by her school and various supports provided by the local Health District.

As Annie's health improved, our solicitor spoke with Annie. Annie wanted to return home with her mother to raise her child. Our solicitor drafted a parenting plan for Annie and her mother to sign, showing how they would work together to look after Annie's baby. With the permission of Annie and her mother, our solicitor spoke to NSW child protection services and the police, who had become involved due the circumstances of the baby's birth. Our solicitor negotiated that Annie and her mother would be able to return home with the baby, avoiding the infant being taken into care in NSW.

12 months on, during Reconciliation Week, our solicitor received a photo from Annie's mother showing Annie's baby, now walking, and a lovely thank you message.

Aunty's story

Aunty was first seen at one of our HJP locations and then assisted to make an application to the Indigenous List in the Sydney Registry.

Aunty instructed our solicitor that:

- she was the aunty of an unborn child
- both the parents of the child were ice users and violence flared regularly in their relationship. Their older children had all been removed from their care
- since discovering she was pregnant, the mother had evaded any contact with health and child protection services, and
- the parents had agreed that the child should go into Aunty's care when it was born.

Our solicitor drafted an urgent application for the child to live with Aunty and for her to have sole parental responsibility for the child. This application was then filed in the Indigenous List at the Sydney Federal Circuit Court.

Our solicitor appeared on Aunty's behalf when the matter was listed, and the parents appeared by phone, confirming their consent to the agreement. The NSW Department of Communities and Justice were advised of the application and consented to this arrangement.

As a result, consent orders were made within hours of the child being born, that she should live with Aunty with sole parental responsibility for the child. Our solicitor then assisted Aunty to make arrangements to travel to collect the child.

Our involvement avoided the need for proceedings to be commenced in the Children's Court, and ensured that from the time the baby left hospital, she went to a loving home with her Aunty.

Supports provided to culturally and linguistically diverse clients

One of the key groups of people that the EIU wants to reach are culturally and linguistically diverse (**CALD**) women, particularly those impacted by violence in their intimate relationships. We have partnered with several services that are already well connected with the CALD community, such as Settlement Services International (**SSI**). In our partnership with SSI, we provide regular legal services to women impacted by violence at six locations: Western Sydney Migrant Resource Centre at Liverpool, CORE Community Services at Cabramatta and Fairfield, Diversity Services at Auburn, and Metro Assist at Campsie and Ashfield. We also regularly provide a legal outreach to the Muslim Women's Association in Lakemba, West Connect Women's Refuge at Penrith, the Deli Women's and Children's Centre at Eastlakes, and Rose Cottage at Wyong.

Another benefit of providing these services in these community locations is that our solicitors can refer clients to the therapeutic services provided in the locations we visit, thereby providing a holistic service that meets a broader range of our clients' needs. We

then work collaboratively with the services in the outreach location to address new issues as the client raises them with us.

Below are several case studies of services provided for CALD women impacted by violence in EIU outreach clinics.

Amira's story

In recent months, we have assisted Amira, a mother of two children. The referral was through a caseworker at one of our CALD women's outreaches. Amira was originally from a middle eastern country impacted by war. She has lived in Australia for some time and obtained Australian citizenship. The parties had lived separately for almost two years, with the children living with the mother, but the father had recently told the mother that he would not divorce her unless she agreed to him having the children.

Amira instructed that there had been family violence perpetrated by the father throughout the relationship and following separation, with a recent incident involving police just two weeks prior. The father had also threatened to take the children back to the country of origin where his family live. He had the Australian passports for the children and Amira had reason to believe that he was planning imminent travel.

Our solicitor had a full day of appointments, so was limited in her capacity to herself assist Amira immediately. She advised Amira that the children needed to be placed on the Family Law Watchlist as a matter of urgency. With Amira present, our solicitor called the children's school and spoke to the principal. The solicitor explained Amira's genuine concerns and the principal agreed that should the father attend the school that day to pick up the children, the school would notify Amira immediately. Our solicitor then arranged for a duty solicitor at the Family Court to assist Amira to make an urgent court application. By the close of business, that day, the children were placed on the Family Law Watchlist, the Australian Federal Police were notified of the children to prevent their exit from Australia and an ongoing solicitor, via a grant of legal aid, was arranged for Amira.

Sabrina's story

Our client, Sabrina, was booked in for a family law legal appointment by her Migrant Resource Centre (**MRC**) caseworker. There was a history of significant family violence when the parties lived overseas. After coming to Australia on a refugee visa the violence began escalating; Sabrina was experiencing emotional, verbal, and physical abuse; the husband was also physically violent towards her even in front of the children, often after she returned from her English classes. The husband was intimidating and controlling towards Sabrina and had threatened to kill her and the children or take the children away from her and back to their country of origin.

Sabrina wanted to separate but told our solicitor that she feared her husband finding out if she had approached a Legal Aid NSW office. She could only obtain the legal advice as the solicitor was based at the MRC.

The EIU solicitor assisted Sabrina with safety planning and linking her in with the WDVCS and Legal Aid NSW duty solicitor for further assistance with obtaining an ADVO. Sabrina was able to safely end the relationship and remain in the family home with the children.

Sabrina has subsequently been assisted by the EIU solicitor with her parenting matter, where she was provided extended legal assistance to negotiate arrangements for the children and then assisted at a Family Dispute Resolution conference initiated by the husband.

Sabrina also re-engaged with our service when she was eligible to apply for a divorce and was assisted under a grant of legal aid.

Sabrina is not only an example of a woman experiencing domestic and family violence who would not have otherwise been able to access our service had it not been for its location within the MRC, but also that our service in turn becomes a trusted service for that client and her first point of contact for future legal problems.

Jenna's story

Jenna was booked in for an appointment at an MRC by a domestic violence worker she was engaged with. Jenna was on a temporary partner visa and had left a very abusive relationship. She had experienced an array of family violence, including social isolation and psychological abuse perpetrated not only by her husband but the paternal family with whom the parties lived. Jenna was living at a refuge but was concerned that she was being monitored. She was receiving threats of physical harm from her husband and in-laws, including threats of physically harming her elderly mother who lived overseas in their country of origin. As Jenna felt she was being monitored she was concerned about approaching a community legal centre or Legal Aid NSW office.

After her domestic violence caseworker facilitated the appointment with the Legal Aid NSW lawyer, Jenna felt comfortable in attending a face-to-face appointment with our solicitor. Jenna had no understanding or previous knowledge of the legal system in Australia and was worried about the threats the husband had made. The husband had given her false information, claiming that she would be taken to gaol for reporting the violence to the police as she was not an Australian citizen, and deported as she is not a permanent resident.

After providing her with family law advice, Jenna's stress levels dropped considerably. She was also assisted with a warm referral to one of our female solicitors within the Immigration Outreach Team to provide advice and assistance in relation to her immigration matter.

Jenna later re-engaged with our service for further advice in relation to divorce and appeared a lot calmer and happier.

In 2014, Legal Aid NSW asked the Law and Justice Foundation of NSW to undertake an evaluation of the services in Migrant Resource Centres. The Law and Justice Foundation report, *Reaching in by Joining-Up*,¹¹ found that:

- 88% of clients in SSI clinics are of CALD background, and
- while SSI services represent only 2.5% of overall services, they represent 21% of all assistance to people here less than two years.¹²

The Law and Justice Foundation study reinforced the experience of our solicitors highlighted in the above case studies – that people who have been in Australia for less than two years feel most comfortable obtaining legal services in locations where they already feel connected. These case studies demonstrate the accessibility of our legal services to women experiencing family and domestic violence due to its location in a CALD-focused service. These are just a few examples of many similar clients who have accessed our service because of our presence within these centres. Our outreach partners provide a neutral location, commonly approached by CALD and refugee clients to see their settlement worker, to gain information about other services, and to request vouchers when they are in need. It provides women impacted by violence with the opportunity to safely reach out.

Civil Law Service for Aboriginal Communities

Legal Aid NSW's Civil Law Service for Aboriginal Communities (**CLSAC**) provides holistic civil law services to Aboriginal women.¹³ CLSAC assists victims of domestic and family violence, including child sexual abuse, to access support payments and counselling services and obtain identification documents. CLSAC assists Aboriginal and Torres Strait Islander women leaving custody through fortnightly advice clinics and monthly community legal education sessions at Silverwater Women's Correctional Centre. Follow-up appointments are arranged via audio visual link (**AVL**).

CLSAC provides targeted legal assistance focused on addressing barriers to housing, including assisting current tenants to remain in public housing, advocating for high priority tenancy reinstatements, challenging debts and negative classifications which are often related to domestic and family violence, and challenging poor quality decisions of housing providers. We also collaborate with our clients' criminal law solicitors.

CLSAC provides financial counselling support to our clients, in recognition that many legal problems can emerge from financial hardship. CLSAC's Aboriginal Financial Counsellor

¹¹ Law and Justice Foundation of NSW, *Reaching in by Joining-up* (Report, September 2014).

¹² Ibid viii.

¹³ The service grew out of a 2013–14 project which identified a need for ongoing legal assistance and reform, as outlined in Legal Aid NSW's 2015 report entitled *Aboriginal Women Leaving Custody: Report into Barriers to Housing* ('Aboriginal Women Leaving Custody Report').

assists Aboriginal clients who are experiencing non-legal financial problems including by: helping people understand their options, developing and managing a budget, helping clients access their credit file, negotiating hardship variations or agreements, advocating for debt waivers and write off, assisting clients to access superannuation due to financial hardship and applying for bankruptcy.

Restrictions on accessing correctional centres due to COVID-19 meant that we have been unable to conduct face-to-face advice and community legal education sessions. CLSAC quickly pivoted towards providing legal advice and assistance via AVL. Demand for CLSAC's services via AVL has been strong, particularly amongst women who have re-entered custody.

In addition to advice, casework and representation services, CLSAC works collaboratively with community legal centres and community services to ensure that women in custody are able to access legal assistance outside of Legal Aid NSW's scope and pre- and post-release casework support. CLSAC attends the bi-annual expo at Dillwynia Correctional Centre in partnership with Corrective Services NSW and other stakeholders.

CLSAC works with other teams in Legal Aid NSW to provide community legal education to women in custody on issues such as housing, fines and social security law, in a manner that encourages interactive learning in a culturally safe way. We have been unable to provide community legal education in custodial settings since COVID-19 began.

Elder Abuse Service

Legal Aid NSW has recently established a specialist Elder Abuse Service (**EAS**) at the Gosford office. The service has federal Government funding for three years under the *Protecting the Rights of Older Australians Elder Abuse Service Trials*.

The service is focused on supporting older people at risk of or experiencing elder abuse. It provides advice to older people on a range of issues, including Apprehended Violence Orders, physical and sexual abuse, financial abuse, and psychological abuse (bullying, harassment, isolation and neglect).

As mentioned above, Legal Aid NSW acknowledges the intersection between domestic and family violence and elder abuse. However, given that these matters involve different power dynamics, we consider that the adequacy of legislative and policy responses to address elder abuse should continue to be examined as part of the Federal Government's *National Plan to Respond to the Abuse of Older Australians (Elder Abuse) 2019–2023*. Consistent with the current *National Plan to Reduce Violence against Women and their Children 2010–2022*, the next National Plan should continue to acknowledge other relevant strategies, including the National Plan to Respond to Elder Abuse.

Children's Civil Law Service

Legal Aid NSW's Children's Civil Law Service (CCLS) provides civil law and youth casework assistance to highly disadvantaged young people in Sydney who are or have been in the criminal justice system. Clients are referred into the CCLS by criminal lawyers from the Legal Aid NSW Children's Legal Service (CLS), Shopfront Youth Legal Centre

and the Aboriginal Legal Service NSW/ACT (ALS). Clients must meet CCLS eligibility criteria in order for the referral to be accepted.

The CCLS is a multi-disciplinary team made up of solicitors, paralegals, a social worker and an Aboriginal-identified youth case worker. The CCLS aims to provide a holistic service addressing as many of their civil law needs as possible, and some clients are also able to receive youth casework support.

The CCLS also engages in advocacy to influence laws, policies and practices that affect our clients, including on issues affecting young people in residential out-of-home care or Intensive Therapeutic Care.

Consumer law advice for people affected by family and domestic violence

Legal Aid NSW has generalist civil law solicitors across the state of NSW who provide advice and casework assistance to victims of domestic and family violence who are or have experienced financial abuse. Financial abuse often results in victims accruing large debts and being excluded from financial products and other essential services.

Access to legal services and financial counsellors are essential for victims to be able to identify inappropriate debt and advocate for reduction and/or waivers. In many cases clients will have multiple debts with numerous lenders. Their ability to be able to manage multiple debts without the assistance of legal and financial counselling services is highly challenging.

Legal Aid NSW legal services provide a trauma-informed practice to assist clients navigate disputes during difficult time when they may not be able to effectively advocate for themselves.

Domestic and family violence advice for refugees and in immigration matters

Legal aid is available to women escaping domestic violence in NSW for representation with the Department of Home Affairs for family violence exemption applications (partner visas).¹⁴ Legal Aid NSW has specialist immigration lawyers, including immigration outreach lawyers, who see clients in disadvantaged areas of Sydney, particularly in western and south western Sydney. A large portion of the Legal Aid NSW immigration practice involves people (mainly women) on temporary visas who have experienced domestic or family violence in Australia. We receive referrals from other areas of Legal Aid NSW's practice, the Women's Domestic Violence Courts Advocacy Services, refuges, women's health centres, hospitals, and migrant resource centres. In the 2019/20 financial year, Legal Aid NSW immigration lawyers provided over 300 legal advices to victims of family violence and provided representation on around 30 cases with the Department.

¹⁴ 'Civil Law Matters – When Legal Aid is Available', *Legal Aid NSW* (Web Page, 14 September 2018) [https://www.legalaid.nsw.gov.au/for-lawyers/policyonline/policies/6.-civil-law-matters-when-legal-aid-is-available/6.18.-migration-matters#6.18.5%20Visa%20applications%20and%20representation%20in%20the%20AAT%20\(Migration%20and%20Refugee%20Division\)](https://www.legalaid.nsw.gov.au/for-lawyers/policyonline/policies/6.-civil-law-matters-when-legal-aid-is-available/6.18.-migration-matters#6.18.5%20Visa%20applications%20and%20representation%20in%20the%20AAT%20(Migration%20and%20Refugee%20Division)).

Legal Aid NSW also has a state-wide specialist Refugee Service, which helps to improve refugees' legal literacy through community legal education and increased access to legal services to prevent their legal problems from escalating. It provides outreach and telephone advice, minor assistance, extended legal assistance and grants of aid in some instances, across a broad range of legal issues including domestic and family violence. The Refugee Service also has a dedicated family lawyer who delivers community legal education around issues of domestic and family violence, and provides extensive assistance to clients who have experienced domestic and family violence..

Sexual Assault Communications Privilege Service

Legal Aid NSW provides the Sexual Assault Communications Privilege Service (**SACPS**) - a state-wide victims' legal service that helps protect the privacy of counselling notes and other confidential therapeutic records in criminal proceedings involving sexual offences. Legal Aid NSW provides legal advice and representation to victims of sexual assault and other "protected confidants" who want to prevent or restrict the disclosure of sensitive sexual assault communications in court. We also assist complainants who wish to consent to the release of private documents in an informed way.

The service aims to protect confidential counselling and therapeutic relationships. Disclosure of private records causes further trauma to a victim if that information is revealed to the accused or in a public court room, and therefore stopping the disclosure of these records may encourage the reporting and prosecution of sexual assaults.

Criminal law services for ADVO defendants provided by Legal Aid NSW

The Criminal Law Division assists people charged with criminal offences appearing before the Local Court, Children's Court, District Court, Supreme Court, Court of Criminal Appeal and the High Court. The Criminal Law Division also provides advice and representation in specialist jurisdictions including the State Parole Authority and Drug Court.

Criminal law duty solicitor services are provided in every Local Court in NSW, either by Legal Aid NSW in-house solicitors, or by private practitioners co-ordinated by Legal Aid NSW. Criminal law solicitors from each office including Inner City Local Courts in Central Sydney, Bankstown, Blacktown, Burwood, Campbelltown, Coffs Harbour, Dubbo, Fairfield, Gosford, Lismore, Liverpool, Newcastle, Nowra, Orange, Parramatta, Penrith, Port Macquarie, Albury, Wagga, Wagga, Sutherland, Tamworth, Walgett, Wollongong, and Broken Hill provide services on behalf of the in-house practice.

At Local Courts not serviced by in-house solicitors, private solicitors appointed to the Duty Solicitor Scheme and Legal Aid NSW private practitioners panels provide duty and casework services. Both the Duty Solicitor Scheme and private practitioners panels are managed by the Grants Division.

The Children's Legal Service (**CLS**) advises and represents children and young people under 18 involved in criminal cases and Apprehended Violence Order applications in the Children's Courts. CLS or Criminal Indictable Section lawyers also represent children in the District, Supreme or High Court. CLS lawyers conduct weekly visits to juvenile

detention centres and give free advice and assistance to young people in custody. Furthermore, CLS lawyers provide telephone legal advice via the Legal Aid Youth Hotline, both during business hours and after hours.

The head office of the CLS is located at the Parramatta Justice Precinct (**PJP**). CLS solicitors are also located at Campbelltown, Wollongong, Newcastle and Central Sydney. Solicitors at a number of regional offices also represent children and young people in specialist Children's Courts at Broadmeadow, Goulburn, Port Kembla, Raymond Terrace, Singleton, Sutherland, Woy Woy and Wyong, as well as Local Courts sitting as Children's Courts throughout the state. These include Albury, Coffs Harbour, Dubbo, Lismore, Nowra, Orange, Port Macquarie, Tamworth, Wagga and other courts serviced by those offices.

Legal Aid eligibility test for adult defendants in ADVO matters

Under eligibility policies, in the absence of an accompanying criminal charge, legal aid is only available to adult defendants to Apprehended Domestic Violence Orders (ADVOs) where:

- Legal Aid NSW is satisfied that the applicant for legal aid is a victim of domestic violence, or
- there are exceptional circumstances, including that the defendant is at "special disadvantage." This test is met where the applicant for aid is a child/their representative, or where he/she would have substantial difficulty in dealing with the legal system by reason of a psychiatric condition, physical or developmental disability, or an intellectual impairment (for example).

Where there is an accompanying criminal charge, legal aid is only available to defend the charge where:

- if convicted, there is a real possibility of a term of imprisonment being imposed for the matter, or
- there are exceptional circumstances. This test will be satisfied if the defendant is a victim of domestic violence.

Legal aid is not available for standalone ADVO matters if:

- Legal Aid NSW is satisfied that the application for an order is frivolous or vexatious, or
- there are no reasonable prospects of success, or
- for an applicant in ADVO proceedings, if the application is made by a police officer.

The above policies are also subject to a means test.

Children and young people

The CLS represents young people who are defendants in ADVO proceedings, regardless of whether there are associated charges and with no means test requirement.

With certain exceptions, ADVO matters involving juvenile defendants are dealt with under the Children’s Court Practice Note No 8 *Apprehended Domestic and Personal Violence Proceedings in the Children’s Court*. This note promotes opportunities for the defendant to engage in family/relationship and/or individual counselling and other interventions to address underlying issues. Even where such opportunities are not taken up, the court will usually make an interim ADVO for 5 months, after which the application for final order is withdrawn.

This practice is supported by the Children’s Court Assistance Scheme operating in most dedicated Children’s Courts in NSW. Funded and administered by Legal Aid NSW, the Scheme is run by four Community Legal Centres to provide services in seven Children’s Court locations in NSW. Schemes provide rosters of trained youth workers to work with young people and their families before, during and after the day of court. They provide information about court processes and outcomes, support for young people and their carers on the day at court, informal counselling and conflict resolution, and referral to welfare services such as drug and alcohol programs, counselling and accommodation.

Community legal education

Legal Aid NSW develops and delivers community legal education (**CLE**) for community workers who work with victims of domestic and family violence about how to engage with lawyers, support their clients to engage with lawyers and the legal system, to ensure that victims experiencing domestic and family violence receive the support they need. Legal Aid NSW also develops CLE materials, such as fact sheets, to individuals, which covers a range of issues regarding domestic and family violence.

Terms of reference

(a) Immediate and long-term measures to prevent violence against women and their children, and improve gender equality

As outlined in the ‘Introduction’ section above, the WDVCAS is a specialist domestic and family violence service in NSW with state-wide coverage. Safer Pathway, which is part of the NSW Government response to domestic and family violence, provides a coordinated, integrated service system response to victims of domestic and family violence. The program enables specialised domestic and family violence services to engage with victims to put immediate safety measures in place to support the safety of the victim and reduce and mitigate further harm and prevent ongoing violence. The WDVCAS provides this service for all female victims. Some immediate safety measures include risk assessment using a standardised risk assessment tool (Domestic Violence Safety Assessment Tool), safety planning and case coordination, as well as liaising with police and local courts to seek legal protection for victims.

Legal Aid NSW considers that, going forward, increased funding of both short and long-term domestic and family violence services is crucial. As the need for domestic and family

violence services increases (as victims feel more supported reporting the violence), funding for these specialised services must also increase so that all victims can be provided with a service tailored to their specific needs. As it is with Safer Pathway, domestic and family violence responses should be coordinated across agencies to ensure no victims fall through the cracks.

Legal Aid NSW has observed that a service gap exists for medium-term and long-term case management services in NSW. Case management is a medium-term measure where women are provided with in-depth support, referral and monitoring to prevent further violence and assist with their safety and recovery. Case management enables workers to assist victims to understand their options, link women to longer term supports, such as safe stable housing and financial support to reduce risk and prevent domestic and family violence.

While many existing domestic and family violence services provide case coordination and assist with immediate needs, there is a lack of case management services to refer to. As such, victims are left without ongoing support at a time when they may be beginning their life again or considering leaving a relationship. Funding for long-term case management support would provide victims with assistance at a time of huge change and turmoil, and may increase their chances of leaving an abusive relationship for good. We note that funding for case management requires an increase in funding for domestic and family violence-related services (e.g. housing, childcare, education, family law assistance etc).

We support the Australian Law Reform Commission's recommendation that the FASS's social support services be expanded to provide case management to clients who are engaged with the family law system.¹⁵

In our view, improving gender equality will require structured social change in all areas of society (e.g. equal pay, access to health services and better health outcomes etc). Gender equality will require a coordinated prevention and early intervention response, so children grow up with the idea, rather than having to be taught it later in life when ideals are already strongly established.

(b) Best practice and lessons learnt from international experience, ranging from prevention to early intervention and response, that could be considered in an Australian context

Legal Aid NSW considers that the concept of women's police stations and community engagement teams that focus on domestic and family violence (such as those that operate in Argentina) is worth investigation,¹⁶ and may have particular benefits for women who

¹⁵ Australian Law Reform Commission, *Family Law for the Future – An Inquiry into the Family Law System* (ALRC Report 135, March 2019) 23.

¹⁶ Kerry Carrington, Maximo Sozzo and Vanessa Ryan, 'What Australia Can Learn from Women's Police Stations to Better Respond to and Prevent Gender Violence: Report of Community and Workforce Surveys' (2020) 2 *QUT Centre for Justice Research*.

have come from countries where police are major perpetrators of violence and/or there is little trust in police.

Our immigration lawyers observe great reluctance from many newly arrived women from CALD communities to contact the police or to make a formal statement to police. Among the many reasons for this reluctance are a fear of sexual harassment, sexual abuse, or ridicule by male police officers (sometimes based on their experiences with police officers in their home country); and extreme embarrassment to discuss personal, relationship or sexual issues with a male police officer. These women are more likely to seek police assistance if they can be guaranteed to speak with a female police officer, particularly one who has special training in domestic and family violence, including forms of domestic and family violence that are seen in different cultural contexts. Furthermore, female police officers are likely to have better engagement with some CALD women's groups, to deliver community information and education to women.

(c) The level and impact of coordination, accountability for, and access to services and policy responses across the Commonwealth, state and territory governments, local governments, non government and community organisations, and business

Coordination across government

There are various domestic and family violence strategies and policy responses that have been developed across Federal, state and territory governments, local government, non-government and community organisations. Whilst an Australia-wide and all of community response to domestic and family violence is required, we consider that the limited resources of the public sector may be better expended on government agencies coming together to formulate a more collaborative and cohesive response to domestic and family violence issues. Any funding from government towards domestic and family violence initiatives for state-based agencies or organisations is positive, but funding may not be sufficient or is only offered for short periods, such as one to three years. This makes it difficult to implement programs, recruit staff and develop expertise in the field.

Legal Aid NSW submits that all levels of government must adopt a cohesive approach to domestic and family violence, with a focus on holding perpetrators to account, ensuring victims have access to supports, proactively identifying ways that the agency can assist victims, and avoiding victim blaming language and responses.

Increased coordination between departments and key sectors is vital to ensuring that services do not work in isolation when supporting victims of domestic and family violence. Coordination enables strong processes and referral pathways to be developed to holistically support victims. In particular, Legal Aid NSW suggests improved co-ordination between public and social housing providers, child protection and out-of-home care

agencies, and correctional services to proactively identify intervention points to assist victims.

Given the prevalence of trauma within human service settings, we suggest that training for government workers in understanding the complexities of domestic and family violence, the impacts of trauma, the potential for re-traumatisation and the principles of trauma-informed service delivery, will assist government and non-government responses to domestic and family violence. Resources should be invested into reviewing current practices and embedding trauma-informed care and practices into all aspects of service delivery as a means of ensuring that people with lived experiences of trauma are supported and provided with high quality service responses. In addition, when changes are made to existing processes, women impacted by domestic violence should play a key role in the design and implementation of such changes to ensure they are responsive to the needs of service users.

Coordination between domestic and family violence services may be improved through embedding a standardised risk assessment tool to identify domestic and family violence (such as within health and housing services). This would ensure appropriate identification of risk and referral to adequate support services.

Safer Pathway

In NSW, Safer Pathway drives a coordinated response to victims of domestic and family violence through a network of specialist domestic and family violence services (WDVCASs for female victims and Local Support Services for men), which liaise and collaborate with relevant government and non-government agencies to develop strong referral pathways and improve accessibility to services for victims.

As part of Safer Pathway, Safety Action Meetings (**SAMs**) encourage a process of multi-agency collaboration, coordination, information sharing and accountability. These multi-agency meetings promote proactive information sharing to develop timely safety actions and generate referrals for victims to reduce immediate threat to their and their children's safety. SAMs also provide an opportunity for specialist domestic and family violence workers to educate SAM members on the complexities and dynamics of domestic and family violence to improve the broader service system response for victims. SAM members are held accountable as the process enables oversight of each agency's responsibility for implementing the Safety Action Plan for the victim. This coordinated approach enables cross referrals, timely access to support for victims if they choose and oversight over each department's response. Extensive multiagency collaboration improves outcomes for clients.

Legal Aid NSW submits that there must be a focus on improving coordination between Safer Pathway and the child protection system, particularly for victims who are experiencing domestic and family violence and child protection issues. Support must be provided to address both issues together and to ensure that victims are not re-victimised through the child protection process.

The lack of coordination between both systems was a central theme in the NSW Domestic Violence Death Review Team's 2017-2019 report,¹⁷ and has been highlighted within numerous inquiries such as the Victorian Royal Commission into Family Violence.¹⁸ The lack of coordination impacts on the ability for the child protection system to adequately respond to children living with violence as well provide effective support to adult victims of domestic and family violence.

This includes inconsistent administration of the DVSAT within child protection, and differing approaches to risk assessment and intervention thresholds. Child protection agencies may not view exposure to domestic and family violence as adequately serious in child protection assessments, as it is acknowledged that child protection reports where domestic and family violence is present may not meet the threshold of Risk of Significant Harm (ROSH) for intervention.¹⁹ As a result, the child and family do not receive support from child protection despite the ongoing and cultivation effects of harm on the child.

In situations where a child protection matter in the context of domestic and family violence is investigated, the adult experiencing domestic and family violence may not receive support or active referral into Safer Pathway. In addition, Legal Aid NSW is aware that the NSW Department of Communities and Justice (**DCJ**) is reviewing and strengthening policies and practices in relation to responding to domestic and family violence, as there is an awareness that the female victim may be re-traumatised as part of the child protection response. For example, the female parent is often held responsible for the protection of children and may be blamed for the child's exposure to violence, then fails to receive support for their experience of violence.

Improved coordination between the systems, as well as consistent approaches to domestic and family violence and risk assessment, will strengthen the response to vulnerable families experiencing violence who are concurrently involved with child protection systems.

Clear mechanisms and a governance structure should be in place for frontline services to escalate concerns to inform policy development and funding decisions, such as feeding into the Safer Pathway Steering group. Services should be aware of processes to raise concerns, issues and advocacy efforts through streamlined communication channels.

Coordination and information sharing between the family law, family violence and child protection jurisdictions

Legal Aid NSW supports greater coordination and information sharing between the state-based domestic violence system and care and protection system and the federal family law system.

In our view, the lack of information sharing between state and federal courts and agencies may place victims and children at further risk of harm. Presently, there is no coordinated

¹⁷ NSW Domestic Violence Death Review Team, *Report 2017-2019* (Report, 2020) ('*Death Review Team*').

¹⁸ *Royal Commission into Family Violence* (Report, March 2016).

¹⁹ *Death Review Team* (n 17) 122.

response permitting state-based courts' access to existing family law parenting orders or family law courts' access to existing ADVOs. State-based child protection agencies are not mandated to share information relating to child risk and safety to the federal courts where family law matters are heard. This may lead to the family court arriving at decisions relating to the safety and welfare of a child without having access to information under the *Children and Young Persons (Care and Protection Act) 1998* (NSW). Parenting orders issued by a federal court may also not align with state-based civil protections such as ADVOs, potentially exposing the victim and child/children to risk if the family court requires contact and negotiation between parties for child contact.

We submit that the family law, family violence and child protection jurisdictions should be better integrated. The jurisdictional divide between the family law jurisdiction for matrimonial, parenting and financial matters in the Commonwealth courts and the family violence and child protection jurisdictions in the state courts, results in unacceptable complexity, costs and delays for many families. Improvements can be made relating to the interaction and information sharing between the family law system and state and territory child protection systems. Families in crisis often have their first interaction with the legal system via the care and protection, state-based domestic violence or criminal jurisdictions, but in our view, where there is family breakdown, often the most effective solutions lie within the family law jurisdiction.

It is our experience that the state police will not enforce section 68B and section 68C orders made under the *Family Law Act 1975* (Cth) (**Family Law Act**). Section 68B permits a court to grant an injunction to protect the welfare of a child or parent, and section 68C gives the police the power of arrest if they believe the injunction has been breached.

Legal Aid NSW is supportive of coordinated reforms to state legislation that enable the children's courts to make orders under the Family Law Act, including parenting orders, recovery orders and Family Law Watch List Orders. This is consistent with the Family Law Council's recommendation that sections 69J and 69N be amended to remove any doubt that children's courts, no matter how constituted, have the power to make orders under Part VII.²⁰ In our view, the children's courts should also have the power to transfer appropriate cases to the family courts.

We support initiatives aimed at improving information sharing and achieving better collaboration between the child welfare agencies, the police and the family courts to better protect children and family violence victims.

We welcome the introduction of the National Domestic Violence Order (**DVO**) scheme in 2017, which has provided for all domestic violence orders issued in an Australian state or territory to be automatically recognised and enforceable across Australia. However, in practical terms, there is difficulty in the implementation of the scheme in that there is no national electronic database where all DVOs can be accessed by state and territory police or family courts. Such electronic access would make the process of enforcing DVOs much

²⁰ Family Law Council, *Families with Complex Needs and the Intersection of Family Law and Child Protection Systems* (Report, 2016) 203.

easier for the victims of family violence with the benefit of a DVO outside the state or territory where the DVO was issued.

Legal Aid NSW supports the 2019 recommendations of the Australian Law Reform Commission and NSW Law Reform Commission that there be a national register of family violence orders which is readily accessible by family courts.²¹ This would be best supported by funding to support training for data entry so that it is standardised.

We support improved information sharing between police and the courts in order to better protect those experiencing family violence, including providing for access by police to interim and/or final orders in parenting matters, so that appropriate protective orders may be sought in any DVO proceedings.

We also support greater coordination between the state-based domestic violence and care and protection systems. In our experience, there has been an underutilisation of the ADVVO provisions in the legislation.

Requirement for consent from the Secretary to commence proceedings in the family court

Section 69ZK of the Family Law Act prevents a family court from making any order under the Family Law Act (other than a child maintenance order) about a child or young person who is under the care of a person under a child welfare law, unless the order comes into effect when the child is no longer in care or with the consent of the relevant child welfare officer.

Legal Aid NSW questions the efficacy of section 69ZK insofar as it fetters parties' access to the specialist expertise of the family courts when a child welfare order has been made. Parties need the consent of the Secretary of DCJ to commence proceedings in the family court. This is the case if the child welfare order was made many years prior and the case is about the most suitable parenting arrangements for children. There are matters in which the Secretary seeks to limit the issues that can be canvassed in the family courts, such as by limiting the issues to contact. If parties disagree, the Secretary may not give consent and that avenue is effectively closed. In light of recommendations to give state and territory courts powers to make family law orders and family law judges the ability to exercise child welfare powers, we consider this section to be an anomaly.

Similarly, there are care matters which, at the final hearing stage, are no longer about the involvement of the Secretary/State and out-of-home care arrangements – instead, they are about competing care arrangements, more akin to family law proceedings. We suggest that the Children's Court should be able to transfer such matters to the specialist jurisdiction of the family courts to access the expertise regarding parenting arrangements inherent in that system. Not all cases will involve family, domestic or sexual violence but these considerations go to better case management overall and to streamlining processes for the families, particularly the most vulnerable, by enabling the courts to exercise discretion in circumstances where state involvement is no longer warranted or relevant.

²¹ Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence — A National Legal Response* (ALRC Report No 114, NSWLRC Report No 128, October 2010) 46.

We have been involved in cases which have proceeded in the family courts for some time but due to risk issues, DCJ seeks care orders in the Children's Court. This effectively ousts the jurisdiction of the family court in which proceedings are effectively stayed. The impact on families of this kind of seismic shift in jurisdiction is well recorded.

We support consideration being given to legislative amendments that would:

- enable proceedings to be commenced in the most appropriate jurisdiction and seen to finality in that jurisdiction, and
- give judges and magistrates in both the federal and state and territory courts the discretion to transfer proceedings between jurisdictions where the court considers it appropriate.

Involvement of child protection agencies

We refer to recommendation 9 of our submission to the 2017 Parliamentary Inquiry, and support legislative amendments and other measures so that DCJ can be compelled to intervene in family law proceedings. We note the reported reluctance of DCJ to intervene in proceedings, and support legislative and other amendments that would allow judges in the family and children's court to order meetings similar in format to the Safety Action Meetings, in appropriate cases. We suggest that the facilitation of a multi-agency commitment to supporting vulnerable families would be a highly effective way of keeping families safe, and could elevate the significant burden on DCJ when asked to intervene in complex matters in which children are at risk.

We query whether the memorandum of understanding that currently exists with DCJ could be extended to other agencies to facilitate information exchange and engagement.

We have experience of involvement by agencies elevating vulnerable clients on waiting lists for housing and other services. We note that there are cases in which the court is reluctant to make a parenting order in relation to a mother due to a lack of accommodation. A multi-agency approach to supporting a family in these kinds of cases would be highly effective. It may also alleviate the risks that would lead the DCJ to transfer a matter. Referral to a Safety Action Meeting could be included in the checklist of recommendations available to the family consultant in preparation of a section 11F memorandum and/or Children and Parents Issues Assessment.²²

Access to court files

It is also our experience that gaining access to a court file from another registry can be a difficult and often slow process. Whilst requests can be made for access to a court file

²² Under section 11F of the *Family Law Act 1975* (Cth), a family law court may refer a party to attend, or arrange for a child to attend, an appointment with a family consultant. The purpose of a section 11F memorandum is to see what the issues are and if there are settlement prospects to assist the court. A Children and Parents Issues Assessment is written by the family consultant. This preliminary assessment provides a summary of the main issues identified in relation to the child/ren and parents, the feedback given to the parents and the subsequent discussions. Both processes involve early intervention meetings with family consultants.

from another registry/jurisdiction, that file may not be able to be produced to the family law courts at the relevant time for reasons including that the proceedings are still on foot or an appeal has been lodged.

National Strategic Framework for Information Sharing

We support the National Strategic Framework for Information Sharing between the Family Law and Family Violence and Child Protection Systems, which was endorsed in principle by the Council of Attorneys-General on 29 November 2019.²³ We understand that the National Framework is designed to facilitate the two-way exchange of information between the family law courts exercising federal family law jurisdiction on the one hand, and the state and territory courts, agencies and organisations responsible for responding to and managing family safety risk on the other, to ensure that decision-makers in these institutions have access to all relevant information about family violence risk, which will enable them to make sound decisions that protect family safety. The National Framework provides high-level principles for sharing and using information. We support reforms and guidance around section 69ZW orders²⁴ and embedding child care and protection workers and police in the family law courts.

(d) The way that health, housing, access to services, including legal services, and women’s economic independence impact on the ability of women to escape domestic violence

Legal Aid NSW recognises that women who are experiencing domestic and family violence often have multiple complex legal and non-legal problems, and that a woman’s safety and economic independence impacts on her ability to flee domestic and family violence. Legal Aid NSW provides comprehensive trauma-informed services that are integral to the ability of clients to access a range of legal assistance, social and financial services to enable them to escape domestic and family violence.

Access to housing, health and other services

In order to assist with a woman’s decision to leave an abusive relationship, she must be aware of her options and have access to services to safeguard her and her children’s safety and welfare. The experience of violence and access to services and support can be different for each woman, therefore support must be tailored to their individual needs.

²³ We understand that the National Strategic Framework for Information Sharing between the Family Law and Family Violence and Child Protection Systems is to be operationalised over 12 months, through further consultation with relevant agencies and heads of jurisdiction, and additional consideration of legislative barriers, practicalities and solutions.

²⁴ Under section 69ZW of the *Family Law Act 1975* (Cth), the court may make an order in child-related proceedings requiring a state agency to provide the court with the documents or information specified about suspected child abuse or suspected family violence affecting the child.

Despite this, commonalities exist and without access to health, housing, legal services and financial stability, women may not feel safe enough to leave. These long-term measures and supports must be available to assist a woman to make informed decisions and be able to leave. Service gaps limit the ability of workers to provide the best possible support for women considering leaving.

WDVCASs have identified service gaps in the lack of available housing and access to appropriate health services such as trauma counselling. As such, workers are not able to refer women to necessary services to assist them with leaving or changing their situation.

In our view, the availability of housing is a critical component of supporting domestic and family violence victims. Unaffordable housing can increase the risk of homelessness and place the woman and her children in an unsafe situation. Options must be available, particularly when considering the safety and welfare of children.

In NSW, it is difficult to find long-term housing options for women escaping abusive relationships. Commonly, women are placed in temporary accommodation which may only be available for two to three nights. After this, victims are required to move properties again. If a woman also has children with her, they are usually taken out of school at this time. Without a long-term housing option, women are unable to re-enrol children in school. Extended leave from school can then lead to involvement from Community Services which can increase the stress and trauma when leaving a relationship.

Legal Aid NSW is supportive of legislative reforms that support victims' choice around housing. For example, the *Residential Tenancies Act 2010* (NSW) was amended in 2019 to allow tenants subject to domestic and family violence to end their tenancy without penalty, particularly in circumstances where the perpetrator is a co-tenant. This enables tenants, particularly private tenants, experiencing domestic and family violence to choose to leave their tenancy. However, in the experience of our solicitors, these remedies are not practically able to be accessed by public housing tenants, who will be rendered homeless if they terminate their tenancy due to the lack of affordable housing for people on low incomes.

For example, in NSW there has been a transfer of a large portion of Housing NSW stock to community housing providers, which has led to differences in the policy positions of Housing NSW and community housing providers in relation to domestic and family violence, often to the detriment of our clients who live in housing managed by community housing providers. The Tenants' Union of NSW and Law and Justice Foundation of NSW's March 2020 report, *Change Management: Social Housing Management Transfers Program Best Practice Report – Tenants' Experience*, drew attention to this issue:

As former FACS tenants transferees were covered by a detailed and explicit policy that builds upon Residential Tenancies Act provisions to clearly protect the tenancies of victims of domestic violence. CHIA [Community Housing Industry Association] and a number of CHPs [Community Housing Providers] have also done significant policy development work on tenancy management policies related to this issue but this has not been taken up by all providers. The DCJ policy statement reflect baseline best practice but it is not mirrored by all CHPs some of

whom provide referral and support but, for example, were still found to require co-tenant victims to pay for domestic violence related damage.²⁵

We recommend that, in the next National Plan, targeted strategies focusing on access to housing for victims of domestic and family violence should be applied consistently and must be inclusive of public and social housing tenants.

Specific issues for Aboriginal and Torres Strait Islander women in custody

Our clients in custody frequently – if not entirely – report being homeless before coming into, and on release from, custody. Homelessness takes the form of unstable or unsuitable housing arrangements, such as couch-surfing, sleeping rough, living in overcrowded housing, and entering domestic relationships with men with secure housing. Each of these situations exposes our clients to risks of domestic and sexual violence, risks to their mental and physical wellbeing, as well as risks of drug and alcohol dependency, related or re-offending, and returning to custody. Additionally, for women with children, secure accommodation is vital to retaining care of their children following release.

Legal Aid NSW's experience of delivering legal services to Aboriginal and Torres Strait Islander women in custody has shown the link between homelessness, an absence of support services and recidivism, which is reflected in the data on women released from custody in NSW:

During 2019, of the 2760 women released from NSW prison, at least 900 were released into homelessness or unstable accommodation. There are, at most, only 9 dedicated beds available in NSW for women immediately after leaving prison. Five of these are short term beds and 4 are negotiated transitional placements (beds in transitional community housing properties that providers agree to use for women leaving custody if they also have community support).

...At best, only 22% of women (615 individuals) receive any kind of service on release from prison.²⁶

Talina's story

Talina had been homeless for a number of years after abandoning her previous public housing tenancy to escape domestic violence. While a tenant, Talina had requested an urgent transfer on the basis of domestic violence. However, this transfer request was not processed as Talina had failed to provide sufficient evidence. She was not supported to provide that information and evidence. Because Talina abandoned her tenancy, she was given a less than satisfactory former classification and the evidence of domestic violence does not appear to have been taken into account in assigning her that classification. After abandoning her tenancy, Talina became homeless and her drug

²⁵ Tenants' Union of NSW and Law and Justice Foundation of NSW, *Change Management: Social Housing Management Transfers Program Best Practice Report – Tenants' Experience* (Report, March 2020).

²⁶ Keeping Women Out of Prison Coalition, *Profile of Women in Prison in NSW* (Report, December 2019).

and alcohol use escalated, resulting in her admission to a drug and alcohol rehabilitation centre and ultimately her incarceration.

In Legal Aid NSW's experience, the lack of affordable housing, declining public housing stock, long waitlists and other barriers to housing undermine women's ability to achieve stability and independence once they leave custody. There is a clear need to increase the availability and duration of transitional accommodation and resources to enable support services to meet demand.

A large proportion of women that Legal Aid NSW assists who are former tenants of Housing NSW or community housing providers have a negative classification and are therefore not on the waitlist. Legal Aid NSW solicitors continue to assist a large number of Aboriginal and Torres Strait Islander women who have fallen into rental arrears or have a debt raised against them for property damage due to the domestic and family violence itself, or where the tenancy is terminated due to the woman abandoning the property or due to 'breach' and a negative classification is applied.

In some circumstances, the housing provider is aware of the occurrence of domestic and family violence but has not taken steps to review their decision in light of the impact of the violence on the woman's liability. In others, due to the stigma and judgement often attached to domestic and family violence, or the absence of an opportunity, the former tenant may not notify the housing provider of the violence. Legal Aid NSW advocates for Aboriginal and Torres Strait Islander women in both of these circumstances by lodging appeals to the housing provider and the Housing Appeals Committee if necessary, to have the client's negative classification removed, debt incurred because of the violence waived, and the client placed on the waitlist for high priority tenancy reinstatement.

Former tenant classifications can create indefinite barriers to victims accessing public housing, as they do not have an end or expiry date unless the tenant takes action to rectify the issue. These classifications include:

- less than satisfactory former tenant (e.g. for debt) – any new application is suspended for six months while debt payments made)
- unsatisfactory former tenant (eviction) – must rent in private market for six months before applying again, and
- ineligible former tenant (illegal use or nuisance) – not eligible for social housing ever.

This is different to a person blacklisted for a private rental, which lasts for three years and is then removed.

Often, our clients do not know they have a negative classification, how this impacts on their ability to obtain public housing, or that they can challenge a negative classification until they seek legal assistance. In our casework experience, negative classifications that create barriers to getting onto public housing waitlists, often results in homelessness and recidivism.

Delta's story

Delta was involved in a domestic violence relationship where she was subjected to both verbal and physical abuse. She was a social housing tenant at the time. After the relationship broke down, her ex-partner commenced breaking into her property. She would frequently come home and find him in her property, hiding in a manhole in the roof, or hiding in common areas (e.g. he set up a makeshift bed near the bins).

Delta eventually abandoned her property in fear of her own safety. She had nowhere to go (she has a difficult relationship with her mother which often results in AVOs being taken out, etc), and stopped paying rent in order to cover temporary accommodation.

Delta reported the domestic violence to Housing NSW but did not receive any assistance. She has since been in and out of custody, and upon each release, has had periods of homelessness and living rough.

We assisted Delta by appealing Housing NSW's decision to classify her as an unsatisfactory former tenant, and we have since assisted her to re-apply for priority housing.

We recommend that housing providers proactively identify points of intervention when they become aware that a tenant is experiencing domestic and family violence – for example, by assisting a tenant to apply for a transfer rather than terminating the tenancy, not raising debts that are related to property damage or rent arrears due to domestic and family violence, and focusing on tenancy sustainability. There is also the need for greater coordination across agencies such as Housing NSW, NSW Health, Corrective Services NSW and DCJ to prioritise access to adequate housing to women in custody, prior to release.²⁷

Legal Aid NSW supports policy interventions that support women experiencing domestic and family violence to retain their tenancies, for example, by extending the period of time that people in custody can be absent from their tenancy (in NSW, Housing NSW has extended this timeframe from three to six months, which is consistent with the time period a tenant can be absent from the property due to domestic and family violence).

²⁷ Following a recommendation made in the *Aboriginal Women Leaving Custody Report*, Housing NSW implemented a priority housing pilot. The aim of the pilot was to examine whether women in custody could be assessed for priority housing before being released. The pilot did not produce the results expected due to inadequate coordination across agencies, inadequate data recording, barriers in certain correctional centres, and consent forms not being obtained so that clients could be referred to Legal Aid NSW for further assistance.

At the end of 2019, a further pilot was launched but limited to Parklea, Dillwynia, Wellington and Macquarie Correctional Centres for clients being released to Western Sydney, South-Western Sydney and Nepean/Blue Mountains. The outcome of this pilot is unclear, but illustrates the need for greater interagency coordination to prioritise access to housing for people at risk of homelessness.

Legal Aid NSW also recommends that Services and Programs Officers (**SAPOs**) could play a role to assist women in custody impacted by domestic and family violence. We encourage SAPOs to play a proactive role in making referrals to legal and support services and assisting women to complete applications for housing, authority forms and similar documentation, in the absence of adequately funded and culturally responsive throughcare services.

Access to victims support payments and counselling

Legal Aid NSW considers that timely and supported access to victims support payments and counselling services are critical to ensuring victims' economic independence.

In Legal Aid NSW's experience, victims support payments can provide a pivotal means for victims escaping violence to set themselves up in safety, particularly to access housing, and ensure their children can remain with them. When these payments are delayed, it can extend the period of crisis. At times, this means that new circumstances of violence arise, preventing the establishment of safety and resulting in further separation of victims and their children.

It is vital that victims support agencies ensure that the provision of services to victims who have suffered complex trauma and are in crisis due to domestic and family violence are simple, accessible and remove the onus from the victim throughout the application process. It is particularly critical to ensure that government processes do not inadvertently create additional barriers for victims who may experience intersecting forms of disadvantage, such as Aboriginal and Torres Strait Islander people, people from culturally and linguistically diverse backgrounds, people with disability, people with low literacy, migrants and refugees, people in custody, people who are homeless, LGBTIQ people, people living in regional, rural and remote areas, and children and young people.

In our view, an accessible and inclusive victims support scheme should:

- provide support to victims to complete applications (including over the phone and/or with the assistance of interpreters), and assist them to obtain supporting documentation and identification documents
- avoid processes that re-traumatise victims or place the evidentiary burden on them
- absorb the costs of obtaining documentation
- provide assistance to locate counsellors for victims and their children, and
- provide clear and accurate information on the full range of supports and payments available to the victim in their circumstances (e.g. advising applicants that they may be entitled to separate claims for separate acts of violence).

Additionally, we consider that flexibility needs to govern approaches to identification – when in the process it is required, in what form, and what support is provided to obtain it. Overly proscriptive identification requirements may create barriers for victims who do not have access to government identification documents, particularly when urgently fleeing

the violence or where documents are retained by the perpetrator, and for Aboriginal and Torres Strait women who face barriers in obtaining and retaining identification documents.

Indigenous list for family law matters

Legal Aid NSW notes the success of the Indigenous list in the Sydney registry of the family court in protecting women and children who are victims of family violence. We recommend that consideration be given to the very positive aspects of the Indigenous list being replicated in courts, like Dubbo, which service communities with relatively greater volumes of Aboriginal and Torres Strait Islander families, as well as other cultural communities, including African refugee families. Such communities have complex social and family values that impact on attitudes about family violence. Also, women often have issues with communicating in English in circumstances where agencies may select interpreters from a pool of male community leaders who may have social connections with the family.

The introduction of such a 'list' in both metropolitan and regional family courts could marshal essential services, such as registered culturally appropriate translators, specialist social workers and other support services. Ideally, such lists would be conducted by judiciary who have received mandatory training in relation to the special needs of such families, and parties would be represented by legal practitioners who have had continuing education relevant to their specialised needs.

Financial abuse

Legal Aid NSW has generalist civil law solicitors across the state of NSW which provide advice and casework assistance to victims of domestic and family violence who are experiencing, or have experienced, financial abuse. Financial abuse often results in victims accruing large debts and being excluded from financial products and other essential services.

A common scenario is unauthorised transactions on a joint account with the abusive partner. There are often warning signs which the lender should be aware of. Often the victim does not receive the benefit of the funds.

We see instances of debt accrued on a fraudulent basis by the abusive partner in the victim's name without their knowledge. It is difficult to keep personal information secure in a relationship, which can result in debts and contracts being entered into (often online) without the victim's knowledge.

We also see clients who have been coerced into entering a loan facility or service contract under threat from their partner. Often our clients receive little to no benefit from the loan but are then responsible for the remaining debt. Our clients also experience issues with reporting loans taken out fraudulently in their name by their partner. Clients often require evidence that they have reported the conduct to the police when raising a dispute with the service provider. When clients try to report the fraud to the police, they experience differing responses. Some are told this is a family law issue and the police decline to make a report. Others are told this is a civil law issue and again are turned away without a report. Some

clients have to try to attend a police station multiple times or attend different police stations, until a fraud report is able to be made.

Financial abuse can be a leading factor that prohibits victims from leaving an abusive relationship. In our casework experience, debt that has accrued as a result of the abusive relationship significantly impacts on victims in their attempts to recover and re-establish their life after leaving an abusive relationship.

Sandy's story

Sandy was a victim of domestic violence. She had obtained an ADVO order against her partner after physical abuse. Her partner did not have a good credit rating, so Sandy's partner coerced her into signing up for a car loan for \$34,000 and a phone contract solely for her partner's benefit. The car and phone were for her partner's use, and her partner was making payments for the car and phone. However, after the domestic violence and the ADVO, Sandy's partner stopped paying towards the loan and Sandy was straddled with the debts from the agreements.

Legal Aid NSW assisted Sandy to inform the car lease company that she was a victim of domestic violence. The company had a trauma-informed domestic violence policy, and agreed to the following:

- Repossess the car with Sandy's authority, without her having to communicate with her partner. The repossession team obtained the partner's details, and communicated with him about the time and place of the repossession.
- Sell the car and waive the outstanding debt after the sale.
- No entry on Sandy's credit report.

Legal Aid NSW also advocated to the telecommunications provider. They applied their domestic violence policy and did the following:

- Without requiring Sandy to communicate directly with her partner, the telephone contract was converted into a pre-paid connection in the partner's name.
- The partner had a choice of either returning the device for no fee or paying to retain the device and the number.

Legal Aid NSW considers that access to legal services and financial counsellors are essential for victims to be able to identify inappropriate debt and advocate for reduction and/or waivers. In many cases, clients will have multiple debts with numerous lenders. Managing multiple debts without the assistance of legal and financial counselling services is highly challenging.

We submit that legal services should use a trauma-informed practice to assist clients to navigate disputes during difficult times when they may not be able to effectively advocate for themselves. Most primary industries like major banks, insurers and external dispute

resolution schemes have developed policies and industry codes on how matters involving domestic and family violence are considered. However, victims still often require legal assistance to identify and advocate under these policies.

We welcomed the introduction of the Australian Financial Complaints Authority (AFCA) Approach to Joint Facilities and Family Violence²⁸ and the Australian Banking Association Family Violence Guideline.²⁹ These documents set best industry practice in identifying inappropriate debts and resolving disputes related to domestic violence and debt.

The following case studies highlight the inconsistent approaches between financial institutions that victims need to navigate.

Janet's story

Janet is a victim of domestic violence. Her husband had thrown her and her five-year old child out from their family home. Her husband had used five credit cards that were obtained in her name and had accrued a debt of over \$34,000. Her debts with credit cards issued with the main banks were as follows:

- Bank 1: \$17,000
- Bank 2: \$7,000
- Bank 3: \$4,000
- Bank 4: \$2,000
- Bank 5: \$4,000

Legal Aid NSW assisted Janet to make a police complaint after a referral to our Family Law Early Intervention Unit. With the copy of the police complaint, we assisted Janet to:

- apply for Immediate Needs Support from Victims Services;
- write to all the banks:
 - advising that she is a victim of domestic violence
 - advising that she is currently homeless and caring for a 5-year-old son
 - asking for a debt waiver or debt freeze, and
 - highlighting that she accrued the debt due to financial abuse.

The responses from the banks were different and varied. Banks 3 and 4 responded within 12 hours. They waived all the debts without seeking any further information and offered support to Janet.

²⁸ Australian Financial Complaints Authority, *The AFCA Approach to Joint Facilities and Family Violence*.

²⁹ Australian Banking Association, *Industry Guideline: Financial Abuse and Family and Domestic Violence Policies* (November 2016).

Bank 5 responded after seven days asking for further information and evidence that Janet was a victim of financial abuse. Legal Aid NSW assisted Janet to submit a statutory declaration specifying her family circumstances and the nature of the financial control. Bank 5 eventually agreed to waive the debt in full.

Bank 1 requested the following information from the client:

- Was the credit card obtained under duress?
- When did the customer initially fall into financial hardship and was this when she first became a victim of financial abuse and domestic violence?
- When did she first become a victim of financial abuse / domestic violence and is this the sole reason for her financial hardship?
- Is she currently employed? If not, does she have plans to start working any time soon?
- What are her sources of income? If she has no sources of income whatsoever, how is she getting by?
- Will there be any improvements in her situation in the foreseeable future?
- Is she able to commit to any repayments towards the credit card whatsoever? If so, how much and how frequently?

Legal Aid NSW assisted the client to respond as follows:

- The client is unemployed, in unstable housing, and caring for a five-year-old child
- She was not under duress when she applied for the credit card. However, the use of the credit card was substantially controlled by the husband, though the client did benefit when the credit card was used to buy groceries, etc. The client cannot quantify the personal benefit
- She is undergoing financial hardship due to domestic violence, and
- Provided a budget from the financial counsellor indicating financial hardship.

Bank 1 waived the \$17,000 debt in full.

We have observed that some non-primary lenders are not covered by industry codes and do not have their own internal policies. There are lenders that purposely structure loans to avoid the credit protection laws. Often, they are loans purported to be business loans which give the victim no rights under the consumer protection laws.

Further, other industries' policies are less advanced in this area. For example, the telecommunications industry recently implemented the Communications Alliance Ltd Industry Guideline assisting customers experiencing domestic and family violence.³⁰ In our view, while this is a step in the right direction, the protections afforded to consumers

³⁰ Communications Alliance Ltd, *Industry Guidelines G660:2018 Assisting Customers Experiencing Domestic and Family Violence* (2018).

experiencing domestic and family violence in the banking space are more robust. The Energy and Water Ombudsman also now has a position statement on family violence,³¹ but some individual energy providers do not have their own internal policies. Where no policy exists, it is significantly more challenging to advocate for appropriate remedies for victims.

Debt collection agencies often do not have their own policies or guidelines regarding dealing with customers experiencing family violence. Further, where lenders refer debts to collectors, they are not obliged to follow the original lender's policies that may have applied to the debt when the contract was entered into.

Negative credit listings as a result of domestic and family violence debt are also a hurdle to financial recovery. With negative credit ratings, victims can be precluded from accessing credit once they have left the relationship, which can limit their ability to financially recover.

Separate advocacy is often required to contact credit reporting agencies to remove inappropriate default credit listings. This is an onerous task. Assistance from legal services and financial counsellors is required to identify and advocate on this issue. In our view, policy reform is needed to establish a more streamlined approach to correcting fraudulent or inappropriate listings on credit reports.

Helen's story

Helen was a victim of domestic violence and was referred to Legal Aid NSW for assistance in relation to four debts. After enquiries were made, it was discovered that Helen had in fact 11 debts with various creditors. All the debts were incurred from her former partner who used her personal details without her knowledge to apply for loans and services online. Legal Aid NSW assisted Helen to do a credit check where it was discovered that her ex-partner had made enquiries about multiple products which were refused. This meant that Helen had multiple refusals on her credit report, which impacted her credit score.

Legal Aid NSW contacted the credit reporting agency and provided proof of the domestic violence and fraudulent activity including a copy of an ADVO. The credit reporting agency advised that Helen would need to contact each credit provider separately and make submissions to them about removing the listings. This is onerous for clients who are seeking to recover from domestic violence and already dealing with a range of other legal problems.

Family support services

Legal Aid NSW considers that the health, safety and wellbeing of children is best supported by properly resourced family support services. In family law matters, expert reports are often required to assist the court to determine what arrangements will be in

³¹ Energy and Water Ombudsman NSW, *Position Statement: EWON's Approach to Dealing with Family Violence* (2018).

the best interests of children. These reports are prepared by a range of experts, but most commonly by family consultants in the Court's Child Dispute Services. Family consultants are psychologists and/or social workers who specialise in child and family issues after separation and divorce. Child Dispute Conferences, Child Inclusive Conferences and Family Reports provided by family consultants can assist by providing information and analysis on critical risk factors, particularly family violence.

However, it is our experience that there are insufficient family consultants employed by the court, so there are long lead times in getting reports prepared. For example, the wait time for an expert family report in the Sydney registry before the COVID-19 pandemic was 12 months. Parties are able to pay for private single expert reports that can be prepared much quicker, however these are very expensive (\$10,000 to \$30,000) and are outside the reach of many vulnerable clients.

In our view, the above reports and processes provided by family consultants require adequate funding to ensure urgent matters are dealt with.

Better resourcing of supervised contact centres

We support better resourcing of supervised contact centres, as per recommendation 10 of our submission to the 2017 Parliamentary Inquiry. Delays and costs associated with access to contact centres are significant. Contact centres will not accept families who require supervision of contact long-term, due to limited resources. In our experience, perpetrators of family violence often obtain orders for them to see their children. These orders can extend for years. There is a growing and significant need for supervised contact changeovers. It is not always possible for changeovers to happen at schools. There are matters in which it is never appropriate for children to see their parents in contact with each other and in which victims of family violence should always be protected from coming into contact with the perpetrator. There are very limited subsidised services, and private services are very expensive and beyond the reach of many families.

Codify family violence as a consideration in property division

As per recommendation 15 of our submission to the 2017 Parliamentary Inquiry, we support amendments to the Family Law Act to enable the impact of family violence to be taken into account in the court's consideration of a party's contributions pursuant to section 79(4) and future needs pursuant to section 75(2). The current case law continues to require a finding that the violence had a "significant adverse impact" on the victim's contribution or otherwise made those contributions "significantly more arduous".³² The threshold remains high and accordingly 'Kennon orders' are not often made. We continue to support an amendment to section 75(2) so that the impact of violence on a victim is specifically referred to as a consideration, rather than as is currently the case.

³² *Kennon v Kennon* (1997) 22 Fam LR 1; (1997) 139 FLR 118; (1997) FLC 92-757.

Early allocation of funds to people leaving an abusive relationship, and improved processes for division of small property pools

We refer to recommendations 16 and 17 of our submission to the 2017 Parliamentary Inquiry. We support financial assistance being provided to people leaving abusive relationships so that they can look after their children and recover financially, in circumstances where a father may have business tax arrangements such that his income tax is minimised, and consequently the payment of child support is reduced. In order to prevent a cycle of poverty and abuse, there is also a greater need for simplified processes to reduce the delay in making applications for spousal maintenance and partial property settlements.

Legal Aid NSW is piloting small property pool mediations. These are most successful when both parties are represented. If a perpetrator of violence is not represented, the mediation can become a continuation of power imbalance and abuse with few satisfactory outcomes for vulnerable parties, or the matter can be considered unsuitable due to the level of violence. We submit that adequate funding needs to be made available as it has been for the section 102NA (cross-examination) scheme.

(e) All forms of violence against women, including, but not limited to, coercive control and technology-facilitated abuse

Legal Aid NSW services

Legal Aid NSW has developed and rolled out compulsory domestic and family violence training for all Legal Aid NSW staff to ensure that staff have the appropriate skills to identify and respond to matters involving domestic and family violence. As part of this education and training, Legal Aid NSW has also developed tip sheets for staff and clients around technology-facilitated abuse.

Forms of domestic and family violence

Domestic and family violence is behaviour that coerces, controls or causes a person to be afraid, and is often about a pattern of behaviour that causes fear. Domestic and family violence incorporates physical violence, sexual violence, emotional and psychological abuse, verbal abuse, social isolation, financial abuse, spiritual abuse, damaging property, stalking and harassment, legal systems abuse, reproductive abuse, forced marriage, technology abuse, and exposing a child to domestic and family violence. Many of these forms of violence are able to be perpetrated against a victim long after they have left the relationship.

In our view, there should be a consistent and expansive definition of domestic and family violence across Australian jurisdictions that incorporates all forms of domestic and family violence.

Technology-facilitated abuse

WDVCASs have highlighted an increase in the use of technology-facilitated abuse, such as the use of the internet, phones, computers, social media and surveillance devices, to stalk, harass, intimidate or humiliate our clients. As such, legal and justice responses may need to be further developed to ensure appropriate safety mechanisms are in place and available for victims of this type of abuse, such as ensuring appropriate protections are included on AVOs.

While there has been an increased understanding and awareness of non-physical forms of violence such as coercive control, technology-facilitated abuse is not as well understood. We submit that frontline services, including police, must improve their knowledge in order to identify this type of violence and understand how controlling behaviours may present in order to appropriately respond. Existing risk assessment tools may need to be updated to reflect this type of control and coercion.

There are specific offences under Commonwealth and State crimes legislation³³ for such issues as distributing intimate images. However, it can be difficult and expensive in family law proceedings to obtain expert evidence of spyware on mobile phones or computers or covert surveillance being used by an ex-partner to monitor a victim.

Modern slavery

The current *National Plan to Reduce Violence Against Women and their Children* includes efforts to respond to trafficking, forced marriage and dowry abuse. There should be consideration given to aligning this National Plan with the *National Plan to Combat Modern Slavery*, for an improved coordinated response and sharing of expertise.

In our 2019 submission to the NSW Legislative Council Standing Committee on Social Issues inquiry into the *Modern Slavery Act 2018* and associated matters,³⁴ we expressed support for amendments that enable victims of forced marriage to access AVOs under the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) and submitted that further protections are needed to protect young people from forced marriage.

Legal Aid NSW continues to advocate for a further protective mechanism to extend who can make an application for an AVO under the CPDV Act, to include the Australian Federal Police (**AFP**) and NSW Family and Community Services. These agencies are often involved in situations of forced marriage. Giving them the ability to apply for these new AVOs would remove pressure from young people to apply for orders against their parents, in circumstances where the NSW Police have not applied for an AVO. In the experience of Legal Aid NSW, it is difficult for young people to apply for orders against their parents. We have found this when we have acted on direct instructions for young people under the *Family Law Act 1975* (Cth) when we have sought orders to prevent their travel overseas by seeking an Airport Watch List (**AWL**) order.

³³ *Crimes Act 1900* (NSW) ss 91P, 91Q and 91R; *Criminal Code 1995* (Cth) s 474.17.

³⁴ Legal Aid NSW, Submission No 100 to the Legislative Council Standing Committee on Social Issues, *Inquiry into the Modern Slavery Act 2018 and Associated Matters* (18 October 2019).

Leyla's story

Leyla is 17 years old and is currently living in youth supported accommodation. Leyla is the victim of an attempted underage forced marriage. She is supported by the Australian Federal Police, case workers and health professionals.

Leyla moved to Australia from Turkey when she was 12 years old, together with her parents, younger sister and younger brother. Leyla left home with the assistance of the Australia Federal Police as her family had made arrangements for her to marry an older cousin in Turkey.

Leyla did not want to get married and she did not want to leave Australia. Leyla told an adult who she trusted about her situation. The adult then made a report to the Department of Family and Community Services who contacted the Australian Federal Police Human Trafficking Program.

After leaving home, with the assistance of her case worker, Leyla engaged with the DVU to make an urgent application to the Federal Circuit Court to have her name placed on the Family Law Watch List to ensure that she could not be taken out of Australia.

As the Department of Family and Community Services has not commenced any proceedings for Leyla's care, her parents continue to hold parental responsibility and decision-making powers for her. This has made it difficult for Leyla to be able to enrol in a new school, get access to identification documents, open bank accounts and get access to money after leaving home.

Moving out of home, moving to an area she did not know, starting at a new school, not having any contact with her family or friends and having to commence court proceedings for her own protection were highly distressing for Leyla. Leyla became overwhelmed, depressed and ultimately self-harmed. Leyla was hospitalised after attempting to commit suicide.

Leyla is scared that her family will find her, force her to go home, punish her, be violent towards her, not allow her to leave the house or go to school, and force her to get married. Leyla is so distressed by her situation and scared at the thought of seeing her family in court that she is too afraid to make any application for AVO. As a result, there are no personal protection orders in place for Leyla.

Due to Leyla's fragile mental health and the stress the current family law proceedings are putting on her, a Litigation Guardian has been appointed in the proceedings. This is to protect Leyla from having to give evidence at court and limit her involvement in the proceedings to a level that she is comfortable with.

Annisa's story

Annisa is 16 years old and living in a refuge. Annisa is the victim of an attempted underage forced marriage. She is engaged with the Australian Federal Police and Red Cross.

Annisa told a teacher at her school about her mother's plan to send her to Indonesia to get married. Her mother had booked flights to Indonesia and was making plans to take her out of school. Annisa was scared and didn't want to get married to an older man in Pakistan.

The DVU, with the assistance of one of the DVU social workers as Annisa's Litigation Guardian, made an urgent application to the Federal Circuit Court to have Annisa placed on the Family Law Watchlist so she couldn't be taken to Indonesia. Orders were also made for Annisa to be able to change her name without notifying her mother, and to have sole parental responsibility for her education and health. This allowed Annisa to enrol herself in a new school so she could continue her education.

Section 68B and s68C orders were also made for Annisa's protection as there was no ADVO in place. To help further protect Annisa, suppression and non-publication orders were made.

Strengthened protections are also required at the federal level. Legal Aid NSW continues to advocate for law reform to implement a Commonwealth Forced Marriage Protection Order scheme. A scheme similar to that for forced marriage protection orders in the United Kingdom would allow the Australian Federal Police to prevent travel for young people aged over 18 who are still vulnerable to forced marriage, often up to age of at least 25.

We reiterate our support for amendments that may be required to enable potential victims of forced marriage to access AVOs and for victims of all acts of modern slavery to access the NSW victims' support scheme.

Training and upskilling for professionals in family law

Ongoing training should be required for professionals in family law, including lawyers and judges, on forms of domestic and family violence to best understand how to protect victims and children. Specialist domestic and family violence workers must be upskilled to identify all forms of violence and specific risk indicators, as appropriate risk identification will inform adequate safety planning and enable tailored referrals to support services. Police also need to be upskilled in learning how to identify and respond to technology-facilitated abuse.

Legal Aid NSW supports the recommendations of the Council of Attorneys-General Family Violence Working Group to improve the family violence competency of professionals working in the family violence and family law systems, including legal practitioners, judicial officers, family consultants, court staff and family law services staff.

(f) The adequacy of the qualitative and quantitative evidence base around the prevalence of domestic and family violence and how to overcome limitations in the collection of nationally consistent and timely qualitative and quantitative data including, but not limited to, court, police, hospitalisation and housing

We are aware of current limitations on data collection, particularly around reporting demographic information on the victim. This is due to several factors including police not being able to obtain this information at the time of the incident, limited options on referral forms for documenting demographics, and victims choosing not to disclose. This is particularly evident for lesbian, gay, bisexual, trans and gender diverse, intersex, and queer and questioning (**LGBTIQ**) people, Aboriginal and Torres Strait Islander people, people who identify as having a disability, and CALD people. As such, the prevalence of domestic and family violence and issues relating to these community groups are not as well understood as current data do not accurately reflect what their engagement is with systems, services and Safer Pathway.

There is an acknowledgement that domestic and family violence is underreported as several barriers exist when reporting to police. Given this, police data on domestic and family violence incidents may not be an accurate representation of the prevalence of domestic and family violence. In addition, an increase in domestic and family violence reporting must be interpreted through a human services lens where increased reporting suggests an increase in confidence to seek support and help, and not an increase in the incidence of domestic and family violence.

We recommend the following to improve data on the prevalence of domestic and family violence:

- A risk assessment tool that identifies domestic and family violence should be embedded across service systems such as health, legal and housing to ensure domestic and family violence is identified, screened and documented.
- Police should be cautioned against asking demographic questions when responding to a domestic and family violence incident. Adequate training should be provided to ensure these questions are asked safely and with sensitivity.
- Efforts should be strengthened to increase external referrals into Safer Pathway to better connect to victims experiencing domestic and family violence and document these experiences.

(g) The efficacy of perpetrator intervention programs and support services for men to help them change their behaviour

Men's Behaviour Change Programs

Men's Behaviour Change Programs (**MBCPs**) are predominantly group-based programs and services that focus on working with perpetrators to enable them to recognise their violent behaviour and develop strategies to stop them from using violence.

Legal Aid NSW supports the recommendation in the Australian Law Reform Commission's 2019 report to expand the FASS, in particular, the social support services provided for men. This provides a key perpetrator intervention service in the family law courts, including facilitating judicial referrals for men who use violence into MBCPs.

However, we acknowledge that current evaluation of the effectiveness of MBCPs is limited and thus difficult to determine their success. We recommend considering variables and nuances around measuring re-victimisation and recidivism outcomes to capture additional program benefits.

In order to assess a genuine and meaningful change in an offender's behaviour, evaluation must take place at different timeframes – during the program, at the completion of the program, and 12 months and two to three years after.

The focus of perpetrator intervention programs should be ensuring the victim's safety. We acknowledge the difficulties for MBCP in changing established behaviour patterns. We submit, as an alternative, that prevention and early intervention programs for children with a focus on gender equality may have better long-term results.

Domestic Violence Electronic Monitoring Program

The Domestic Violence Electronic Monitoring Program (**DVEM**) is a perpetrator-focused program run by Corrective Services NSW, where eligible high risk domestic violence defendants are fitted with electronic monitoring devices. The devices sit alongside existing ADVOs which restrict the defendant from entering certain addresses, suburbs or local government areas. The defendants must wear the device and if they enter the exclusion zone, the device will trigger the responsible team at Corrective Services NSW. If necessary, police will be called to intervene.

When a defendant is referred to the program, a referral for the victim is made to the WDVCAS. If the victim decides to engage with the WDVCAS, they will draft a safety plan for what will happen if the defendant enters the exclusion zone. If a device is available and the victim requests it, they will be issued with a device as well. They are required to have it with them at all times. The device will trigger when the defendant enters the exclusion zone. When this happens, the victim's safety plan is enacted.

WDVCAS workers have requested greater access to monitoring devices to assist in further safety planning for clients at serious threat. Currently there is a limited number of devices available to victims in NSW (through DVEM or Staying Home Leaving Violence). We

suggest that greater access to victim devices may assist in increasing feelings of safety for victims of domestic and family violence.

A feasibility evaluation of DVEM has been undertaken by the Kirby Institute at the University of New South Wales and the report should be released in the near future.

(h) The experiences of all women, including Aboriginal and Torres Strait Islander women, rural women, culturally and linguistically diverse women, LGBTQI women, women with a disability, and women on temporary visas

Legal Aid NSW services

Women have a unique experience of violence, have individual needs and face distinctive barriers to accessing services and support. An intersectional trauma-informed approach must be embedded in specialist domestic and family violence services at a minimum and extended to broader services to ensure workers can respond to the needs of all women.

Legal Aid NSW's DVU has a state-wide telephone advice line to assist women across NSW to gain access to specialist domestic and family violence legal advice and social work and financial counsellor assistance.

Legal Aid NSW works closely with WDVCSs to ensure that service delivery is responsive to the needs of all women. As part of this approach, Legal Aid NSW acknowledges the importance of providing culturally safe services to Aboriginal and Torres Strait Islander women and women from a CALD background.

We recognise the higher rates of referral for Aboriginal and Torres Strait Islander women into Safer Pathway and the distinct issues facing Aboriginal and Torres Strait Islander women and communities experiencing violence. These issues include distrust of police and the welfare system due to past experiences of systemic and institutional racism and discrimination; barriers to reporting violence; lack of culturally appropriate services available to address the specific needs of Aboriginal and Torres Strait Islander women and their children; complex health and welfare concerns such as lack of access to stable housing; socioeconomic disadvantage; drug and alcohol misuse; and geographical remoteness. We acknowledge that these experiences are understood within the specific context of colonisation, racial inequality, discrimination and intergenerational trauma. As such, Legal Aid NSW supports efforts to improve engagement from Aboriginal and Torres Strait Islander women with Safer Pathway and WDVCSs.

Such efforts include administering funding to appoint a full-time Aboriginal Focus Worker in each WDVCS to facilitate a greater degree of culturally appropriate service delivery for Aboriginal women and their communities. This is done through providing referrals to appropriate services, and advice and support to the WDVCS and agencies at Safety Action Meetings. In addition, Aboriginal Focus Workers aim to strengthen relationships with Aboriginal communities in their geographical area to understand the community needs and improve victim and community accessibility and engagement with the service

system. This is done through developing and maintaining partnerships and relationships with local services and delivering targeted community engagement initiatives.

Where funding allows, WDVCSs are encouraged to appoint an additional Focus Worker based on the needs of the local area. For example, multicultural communities, older women, youth, LGBTIQ people and women with disability. These approaches highlight Legal Aid NSW's efforts to provide effective and culturally safe supports to all women experiencing violence.

Policy responses

Legal Aid NSW submits that it is important to understand how systems and structures create vulnerability. For example, women on temporary visas are highly vulnerable due to limitations on accessing financial support, educational opportunities and government-funded housing initiatives. Without access to these supports, women do not have the options and the ability to put safe measures and plans in place and thus lack effective support. Policy responses should provide protections for all women experiencing domestic and family violence, and ensure that there is equal access to support services irrespective of their demographic and visa status, and that responses and referrals can be tailored to victims' individual needs.

Aboriginal and Torres Strait Islander women and children

Aboriginal and Torres Strait Islander women experience domestic and family violence at higher rates than any other group in Australia and the violence experienced is often of greater severity. As noted above, Aboriginal and Torres Strait Islander women also face specific barriers in reporting domestic and family violence to police and other services, including historical, cultural, family and personal experiences of the criminal justice system.

Reluctance to report violence can be due to knowledge of racist police practices, mistreatment in police custody of Aboriginal and Torres Strait Islander men, women and children and, to date, 437 recorded Aboriginal deaths in custody. Other barriers include distance to travel to report and access services, access to technology, distance to, or absence of temporary accommodation or shelters, and a lack of culturally appropriate and trauma-informed support services, particularly in remote areas.

If Aboriginal and Torres Strait Islander women do report violence, insufficient action may be taken by police. Legal Aid NSW lawyers have experience in both advocating to the police on behalf of Aboriginal and Torres Strait Islander women to take prosecutorial action against violent offenders, and in making complaints to the Law Enforcement Conduct Commission in circumstances where police inaction on violence against Aboriginal and Torres Strait Islander women represents a failure to discharge their duties. In our experience, some Aboriginal and Torres Strait Islander women, particularly those in remote and regional towns, are reluctant to make complaints about police inaction for fear of retribution, or because of a perception that they may not receive police assistance in the future, if requested.

Legal Aid NSW considers that there needs to be greater investment of resources into Aboriginal-specific case management support for complex needs, as well as funding for Aboriginal and Torres Strait Islander community-controlled family violence services. There are also significant barriers for Aboriginal and Torres Strait Islander women in accessing suitable housing. In addition to critical gaps in the availability of temporary accommodation, there is an absence of pathways from crisis and transitional housing into stable, secure and long-term accommodation due to an inadequate supply of affordable, suitable housing.³⁵ This means that Aboriginal and Torres Strait Islander women have no realistic way to escape violence.

In our experience, Aboriginal and Torres Strait Islander women are often required to make impossible choices when trying to protect children from violence – stay with the perpetrator due to the absence of housing, risking notifications to child protection services for emotional abuse or exposure of children to violence, or leave the perpetrator without suitable housing and face allegations of child neglect. Either choice may lead to Aboriginal and Torres Strait Islander children being removed and being placed in out-of-home care.³⁶

In some cases, information-sharing between government departments may increase the risk of a child being removed from their family, and may lead to a reluctance by Aboriginal and Torres Strait Islander women to disclose violence or to seek the relevant support.

Lorna's story

Lorna is an Aboriginal client in metropolitan Sydney. Lorna had a number of young children at home with her, living in a home under the father's name, in housing near the children's school. Although she was eventually found to be eligible for priority housing and given a new tenancy of her own with all her kids, during that application process, Lorna had concerns that disclosure of the domestic violence she was experiencing would expose her to having her children removed because of information sharing between the departments. In this process, there was no way to ensure this information would not be used against her.

We recommend that the next National Plan included targeted actions for federal, state and territory governments to ensure that legislation, policies and services acknowledge the interconnections between domestic and family violence, child protection and access to housing issues.

The majority of Aboriginal and Torres Strait Islander women in custody have experienced physical and sexual abuse.³⁷ In many cases, the circumstances leading to incarceration of Aboriginal and Torres Strait Islander women are closely associated with domestic and family violence. We consider that the next National Plan should include targeted strategies

³⁵ K Flanagan, H Blunden, K Valentine, J Henriette 'Housing outcomes after domestic and family violence', *Australian Housing and Urban Research Institute*, (April 2019).

³⁶ *Ibid* 27.

³⁷ Australian Law Reform Commission, *Pathways to Justice—An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, (December 2017), 24.

to ensure that legislative and policy responses to physical and sexual abuse are tailored to meet the particular needs of Aboriginal and Torres Strait Islander women, including responses which take into account the complex nature of domestic and family violence in Aboriginal communities.

Royal Commission into Aboriginal Deaths in Custody

The report of the *Royal Commission into Aboriginal Deaths in Custody* (1991) highlights the problematic treatment of Aboriginal and Torres Strait Islander people within the justice system and from police. Legal Aid NSW considers that the report's recommendations remain relevant to considering how to improve responses to domestic and family violence for Aboriginal and Torres Strait Islander people and communities, and should be reviewed for the development of the next National Plan. Rebuilding trust, ending all deaths in custody, and upskilling and training police to respond effectively and appropriately to Aboriginal and Torres Strait Islander people may increase their confidence to report to police if they are experiencing violence. If Aboriginal and Torres Strait Islander people continue to die in custody, victims of domestic and family violence may feel that they must choose between their own safety and the safety of their partner or family member if police intervention may lead to unsafe criminal justice responses.

Women on temporary visas

As mentioned above, a large portion of the Legal Aid NSW immigration practice involves women on temporary visas who have experienced domestic or family violence in Australia. In recent years, our immigration lawyers have noticed an increase in the number of referrals of matters involving domestic or family violence. Some, but not all, of these women end the relationship. Most are applicants for partner visas who may still be eligible for a permanent partner visa by satisfying the 'family violence' criteria for the relevant visa subclass.

We outline below several issues of concern in relation to women on temporary visas experiencing domestic or family violence, and recommendations to address these barriers.

Initial letters sent by the Department of Home Affairs to applicants, following notification of family violence

Our immigration solicitors often assist victims of domestic and family violence to notify the Department of Home Affairs (**DoHA**) if their relationship has ended (as required by section 104 of the *Migration Act 1958* (Cth)). We generally assist the client to complete Form 1022 ('Notification of changes in circumstances'), stating that the relationship has ended, and that the applicant has experienced domestic or family violence. Detailed evidence of the family violence is usually provided later. In some cases, the visa sponsor separately notifies DoHA that they are withdrawing their sponsorship. The sponsor rarely, if ever, refers to any family violence.

After being notified, DoHA sends one of a variety of 'invitation to comment' letters.

Legal Aid NSW is concerned that some of these letters do not specifically acknowledge the claim of family violence, even when the applicant has identified there has been family violence. There is often a tacit acknowledgment of the family violence by including details about an information pack on domestic and family violence. However, in our view, where a claim of family violence has been made, the response letter from DoHA should specifically acknowledge that claim and make reference to the family violence information pack.

Sometimes visa applicants who have notified DoHA of family violence receive a letter in response that includes a 'withdrawal form', which appears to emphasise withdrawal of the application. Such letters can cause immense anxiety and fear for the visa applicant and unnecessarily exacerbate their trauma, even though they are eligible to pursue the visa under the family violence provisions.

Commonly, while a withdrawal form is included with the letter, the information pack about domestic violence is linked in the letter, rather than provided in hard copy form. If a withdrawal form is to be included in such letters, we would suggest that the information pack also be included, or preferably that they each be linked.

These letters commonly include a 28-day time limit. While we agree that reasonable time limits need to be set for the provision of information, it often takes our clients most or all of this time to access immigration advice about the letter and assistance with a response. Women on temporary visas who have been brought to Australia by violent spouses commonly have no access to funds, may have been very isolated during the relationship, and may have little English and no relatives or friends in Australia.

We would suggest that the letters to people who have self-identified as victims of family violence should include referral information about free immigration advice services in their state or territory.

Finally, some of the 'invitation to comment' letters include a 12-page extract from the Migration Regulations covering various criteria (e.g. Schedule 2 criteria for the permanent partner visa, plus various definitions and various public interest criteria). In our experience, most visa applicants do not find an extract from the Migration Regulations helpful or informative. A plain English summary with referrals to free immigration advice services would be more useful.

Overall, Legal Aid NSW recommends that all visa holders and visa applicants who notify of domestic or family violence be sent a more tailored and customer-focused request for information, which does not emphasise withdrawal of the visa application.

Processing times for family violence provision matters

In our experience, processing times for family violence provisions matters vary widely. Occasionally they are finalised within three to six months. However, many matters appear to remain without active processing 12 to 24 months after lodgement, and well after all relationship and family violence evidence has been provided. This occurs despite attempts by our solicitors to contact the Permanent Partner Processing Section and/or the Family Violence Unit.

We are concerned with these lengthy delays because many of the applicants are living in precarious situations while they await a decision. As holders of temporary or bridging visas, their access to social security and support services is limited, and in some cases non-existent (see 'Lack of accommodation and income support' below).

Victims of family violence are advised that they can apply under the family violence provisions in the migration legislation. However, if they leave their spouse (the perpetrator), there is no guarantee that Centrelink will pay them Special Benefit, they may have difficulty finding emergency accommodation, and DoHA may take up to two years to process their visa application. Not surprisingly, many of these victims choose to stay in violent relationships so that they are not homeless and destitute.

Soraya's story

Soraya came to Australia with a prospective marriage visa, sponsored by her Australian fiancé. The visa provides nine months in which the couple can marry, then Soraya could apply for a partner visa.

Despite some changes in her fiancé's behaviour, including taking control of the savings Soraya had brought from Iran, Soraya married him. She was optimistic things would improve and it was unlikely her parents would welcome her back to the family home if she returned to Iran after a ruined relationship. Even if she wanted to, she was now unable to access her savings to buy a return plane ticket, and her fiancé had hidden her passport.

Soraya and her fiancé lodged her partner visa application, but her fiancé reminded her constantly that if she didn't please him, he could decide not to sponsor her visa anymore. He could also kick her out of the house that he owned, and she would be on the street.

Three months later, the fiancé violently assaulted Soraya and she was hospitalised. A no-contact ADVO was obtained for Soraya. Housing NSW paid for Soraya to stay in a motel for two nights, but could not offer longer housing support because of Soraya's visa (she held a subclass 300 prospective marriage visa, and when that expired, a Bridging Visa A). This was extended for two more nights because no emergency housing provider would offer a place to Soraya because of her visa status, and the likelihood that she would not easily transition to the private rental market. With Soraya's visa type, she had no access to any income support through Centrelink. Eventually a spot in a women's shelter was found for Soraya.

Even after informing DoHA of the end of relationship and providing evidence of the domestic violence, Soraya waited for eight months for a visa decision: she received a permanent partner visa, based on the family violence provisions. However, during those eight months, Soraya had no access to any income support, free English classes that are available to migrants, or the housing products through NSW Housing. She had to remain in the women's shelter the entire time and could not move on with her life until she knew if she could remain in Australia.

We appreciate the need for delegates to make decisions based on all the available evidence, which women in these precarious circumstances can find difficult to obtain in a timely way. Better access to free legal advice and assistance would help to expedite the process. We would also request that DoHA prioritise family violence matters, and undertake to process these matters in a timely way once evidence about the relationship and family violence has been submitted.

We recommend that DoHA dedicate resources and priority processing to visa applications where family violence evidence has been submitted, so that delays are reduced to a maximum of two months.

Lack of accommodation, income support, and other support services

For women on certain temporary visas (including subclass 300 and bridging visas while awaiting partner visa decisions), the chronic lack of emergency and supported accommodation and inadequate or non-existent income support can be an insurmountable obstacle to leaving a violent relationship.

In our experience, there are refuges in Sydney where all of the beds are being used by women on temporary visas, and they generally cannot be exited into their own accommodation until they have a permanent visa. There have been other areas of Sydney where the network of refuges will not assist anyone on a temporary visa because they know that the visa process takes a long time and they cannot support women without any income for that length of time.

While partner visa applicants are granted work rights as temporary residents, for non-English speaking applicants, employment prospects are low. Victims of domestic and family violence on bridging visas, prospective marriage visas, and some other visas are not eligible for any income support, not even Special Benefit payments through Centrelink. Victims of domestic and family violence who are on provisional or temporary partner visas (subclass 309 or 820, respectively) may be eligible for Special Benefit payments through Centrelink, however the rate of this payment is too low to cover living expenses in Sydney (and possibly elsewhere).

In our experience, fear of homelessness and lack of income support are common factors in the decision of some women on temporary visas to remain in abusive relationships (at least until they obtain permanent visas, but often much longer). Leaving the relationship and home of the perpetrator is extremely difficult for someone holding a temporary visa, and ending a relationship is also a time of increased risk to the woman's safety.

In addition to the lack of financial assistance, housing, and support services, there is a power imbalance caused by a two-stage partner visa system, whereby the non-Australian partner is initially only given a temporary visa and is dependent on their Australian partner's support and cooperation to apply for the permanent visa sometime later. In our experience, the threat of withdrawing visa sponsorship is a very common tool used by perpetrators of violence to manipulate and control women on temporary visas, and stops many women from seeking help from police or other services.

A first suggestion would be to allow partner visa applicants, while they are holding a temporary type of visa, to have some access to social security support – for example, the JobSeeker payment for a limited period of time. Being on the JobSeeker payment may then connect the applicant to jobs programs and agencies.

A second suggestion would be to provide English classes for when the applicant first arrives in Australia. This would better prepare the applicant for the job market and reduce the risk of financial abuse or control by the sponsor.

We also recommend that a visa holder should be able to access the family violence provisions and/or the child of the relationship visa provisions while still living with the visa sponsor (even in cases where the victim has not informed the visa sponsor that she is seeking a visa independently of him).

We support Action 10 in the Fourth Action Plan of the current *National Plan to Reduce Violence Against Women and Their Children*, regarding the need for community-led and tailored initiatives to address the unique experiences and needs of CALD women in relation to domestic and family violence. We have observed situations where support services have placed the cohesion of the family and the reputation of the ethnic community above the safety of women and children. In our view, eligibility criteria for government funding for initiatives to address the needs of CALD women should include relevant qualifications and training to ensure victims of domestic and family violence will be well-supported by the service.

Impact of high visa application fees for partner visas

The high visa application fee for prospective marriage and partner visas is also a common factor in conflict between partners and controlling behaviour by the Australian partner.

Maria's story

Maria was 20 years old when she met Victor in her home country of Mexico. They married quickly because Victor was not able to stay in Mexico for long. Victor had Australian citizenship and said he would sponsor Maria for a visa so that they could live in Australia. Victor submitted the paperwork for a visitor visa for Maria (cost of \$135), once it was granted, he bought her a plane ticket.

On arrival in Australia, Maria discovered that Victor regularly abused alcohol and drugs, becoming violent when he did so. He was intensely jealous and paranoid. Maria asked what would happen when her visitor visa expired, and Victor said he would sort out the next visa. However, he never did apply for a partner visa, as he could not afford the \$7,715 application fee. Maria stopped asking about her visa because she risked being beaten for asking.

Maria stayed in the relationship, socially isolated and with no access to Medicare or income support, because she knew that she was now illegally in Australia, and did not want to go to jail or immigration detention.

In our view, the impact of high visa application fees on domestic and family violence against women on temporary visas should be acknowledged, and fees for prospective marriage and partner visas should be revised downwards.

Victims of family violence who are refused a partner visa (perhaps due to lack of evidence, not understanding the correct format for evidence, or their abusive husband controlling all correspondence) can, in theory, seek a review of that decision at the Administrative Appeals Tribunal (**AAT**). In reality, few victims of family violence who are on temporary visas would have access to the AAT filing fee of \$1,826.

We submit that the filing fee at the AAT should be waived or significantly reduced for victims of family violence, so that they can access merits review.

Funding for immigration legal assistance for victims of family violence

Until recently, Legal Aid NSW (and other legal service providers) was funded by DoHA to provide advice and assistance services to disadvantaged clients through the Immigration Advice and Application Assistance Scheme (**IAAAS**). Under this scheme, Legal Aid NSW provided extensive advice, casework and representation in relation to the family violence provisions to clients.

IAAAS was recently ended and new arrangements administered by Settlement Services International have now commenced. These new arrangements mean that free legal services under the IAAAS are limited to people who have arrived in Australia lawfully and seek to engage Australia's protection obligations.

This is a significant reduction to the coverage of the IAAAS, which previously funded various providers (a combination of community-based organisations and private firms) to provide advice and visa application assistance to disadvantaged people in the community who had a meritorious onshore visa application. In particular, the IAAAS also covered advice and representation to (predominantly) women who had experienced family violence and were seeking to rely on the family violence exception to be granted a permanent partner visa.

We are not aware that DoHA has announced any plans to fund legal advice to victims who are seeking to engage the domestic violence provisions in the Migration Regulations. However, the demand for these services is high, and women have limited options to access free immigration legal services. While some refugees have migration agents, Legal Aid NSW continues to receive referrals from women's health centres, hospitals, and migrant resource centres. However, at times we have reached capacity and cannot assist all victims with their family violence provision matters.

Given the demand, the particular vulnerability of women who are in Australia on temporary or bridging visas, and the complex legal requirements associated with the family violence exception in the Migration Act and Regulations, Legal Aid NSW recommends that there should be funding allocated for legal services in this area.

Potentially restricted access to the family violence exemption provisions for victims of family violence due to recent amendments to the Migration Act

Amendments to the Migration Act, which commenced on 10 December 2018,³⁸ introduced many positive changes in relation to the prevention of sponsorship approval for sponsors with a history of family violence. Legal Aid NSW has for many years represented victims of family violence in putting forward evidence of that violence in the course of claiming the family violence exemption for their permanent partner visa. The separation of the sponsorship process from the application process could potentially reduce access to the family violence exemption provisions for many of our clients.

As a result of the amendments, sponsors for a partner visa can be refused sponsorship approval due to family violence and other criminal history (even if many years prior). This means that some victims of family violence who have applied for a partner visa may be refused a partner visa because their Australian partner/sponsor has a criminal history (whether they are still in the relationship, or have left the relationship following domestic and family violence).

Concerns arise in relation to time of application criteria because DoHA currently treats the original sponsor as “the sponsor” even if the relationship has broken down and the visa application proceeds on family violence grounds, or ‘child of the relationship’ grounds. This is demonstrated by the current practice of including the (ex) sponsor’s name on the visa grant letter of victims of family violence.

We recommend that the *Migration Amendment (Family Violence and Other Measures) Act 2018* and relevant policies be amended so that sponsorship approval is not a requirement in circumstances where the family violence provisions are satisfied.

Online visa processing

The move by DoHA to online visa processing and communication has increased the ability of abusive sponsors to control their partner’s visa process, and to withhold information from the actual applicant.

We often see situations where the ImmiAccount (an online account required to lodge a partner visa application) is set up in the Australian husband’s name, with his email address as the address for any correspondence. This may occur because the Australian partner has better access to technology, better computer skills, and/or better English. However, in controlling and abusive relationships, this greatly assists the perpetrator by ensuring that the victim (visa applicant) cannot access any of their visa information without the perpetrator’s assistance or knowledge. This is over and above situations where a perpetrator of domestic and family violence is monitoring all online activity of the victim.

We recommend that all women who are contacted by DoHA in relation to their initial partner visas or prospective marriage visas be informed, in their own language, that their sponsor cannot ‘cancel’ their visa, that there are special provisions where the relationship ends (family violence and ‘child of the relationship’ provisions), and that support services

³⁸ *Migration Amendment (Family Violence and Other Measures) Act 2018* (Cth).

are available in the community. Similarly, DoHA should consider written information in the relevant language and how that can be sent or provided directly to the visa applicant / visa holder, without being intercepted by the Australian partner.

Use of interpreters

For victims of domestic and family violence who do not speak English, we have seen many examples where police and hospital screening tools incorrectly record a negative answer for the presence of domestic violence or minimise the risk factors. We believe this occurs because professional interpreters are not used in all situations where the victim needs an interpreter to communicate effectively. Sometimes family members are used as interpreters, including children with better English than their parents.

In our experience, clients' children have been used by the police as interpreters in domestic and family violence situations. This has led to gaps in communication and victims leaving out crucial details to minimise the impact on their children or because they do not want to discuss sexual abuse in front of their child or other family member. Not only can this result in inadequate police protection for the victim, it can also jeopardise a victim's immigration matter because they later have to explain apparently inconsistent or inaccurate recordings of facts.

In medical settings, we see situations where the perpetrator of domestic and family violence communicates for the victim, or is not asked to leave the room for domestic violence screening questions.

We recommend that training be provided to all police and health professionals about:

- the need to interview women in private (without their partner being present), regardless of their English-language ability, and
- how to access professional interpreters (e.g. telephone interpreters) in their particular professional setting.

Lack of visa options where domestic violence and children are involved

Legal Aid NSW is concerned about the lack of visa options for parents of Australian-born children (who have never applied for a partner visa), who have to choose between staying in a violent relationship or potentially being forced to leave Australia without their child.

The family law system and the immigration system in Australia are not well-integrated, which places women and children at great risk. The migration legislation in Australia does not provide a pathway for some temporary visa holders to stabilise their residence in Australia, even though they have children in their care who are Australian citizens or permanent residents. For example, women on student visas, visitor visas or temporary work visas can find themselves in this situation. In some situations, a mother could have fled from an abusive relationship with her child. The family law system may then prevent the mother from taking the child out of Australia (e.g. by the father applying for orders and placing the child on the Family Law Watchlist), even though the mother has no visa options to remain long-term in Australia with her child. Although there is a Contributory Parent visa, children aged under 18 years cannot sponsor their parents, and this visa costs over

\$60,000 in application fees and bonds. Because of a lack of visa options, people on temporary visas, who have a child with an Australian citizen or permanent resident, often stay in abusive relationships for fear of being forced to leave Australia and losing their child.

Nadia's story

Nadia came to Australia on a 4-year working visa (subclass 457) to work in an aged care facility. After a brief courtship, she married an Australian citizen who she met through her ethnic community.

The relationship quickly deteriorated, with the husband making frequent demands for sex acts that Nadia was not comfortable with. When Nadia became pregnant, the abuse escalated further with constant belittlement, monitoring of Nadia's movements and phone activity, and threats to harm her. Nadia stopped work just before the birth, and after that had no access to any income.

When he was in a good mood, the husband would promise to prepare a Partner Visa application so that Nadia could stay in Australia. By the time the child was born, the husband had not prepared the visa paperwork, and often threatened that Nadia would have to return to Romania if she did not please him sexually and stop the baby from crying. He reminded Nadia that the child was an Australian citizen through him, that he would never agree to get a passport for the child, and that Nadia's 457 visa would expire soon.

Nadia became severely depressed and anxious. A colleague assisted her to get some immigration advice. The immigration lawyer told her that she had no visa options to remain permanently in Australia other than through her husband. A family lawyer told her that trying to get court orders to take the child overseas would be a long and complicated process if the child's father opposed it, and the outcome was not guaranteed. Meanwhile, Nadia may have to wait years on a bridging visa with no access to Centrelink benefits or housing assistance.

Nadia stayed in the relationship despite risk of serious injury, as she had no financial alternative, and in the slim hope that the husband would lodge the paperwork for a partner visa, so that she could remain in Australia with her child.

We recommend that the visa system allow parents to remain in Australia during family law proceedings. A low-cost permanent visa should be introduced into the migration system, for people on temporary visas whose Australian citizen or permanent resident children are unable to leave Australia due to a final order under the family law jurisdiction.

Consultation with the Department of Home Affairs

Legal Aid NSW would like to see opportunities for stakeholder engagement with the DoHA. Consultation and the ability to discuss systemic issues with DoHA has decreased over recent years. Previously, Legal Aid NSW attended an onshore protection stakeholder

group, a stakeholder group with the Freedom of Information (FOI) section of the Department, regular Immigration Advice and Application Assistance Scheme telephone link-ups, and members' meetings with the Administrative Appeals Tribunal. Legal Aid NSW is not currently attending or aware of any consultation process for us to attend as stakeholders. It is also unclear currently who to contact in relation to issues we would like to raise with the Department at a systemic level.

In our experience, DoHA has been unresponsive to our request to discuss ways in which the visa system, and the practicalities of visa processing, impact on victims of domestic and family violence. For example, we have long been dismayed by the content and tone of the standard initial letter that DoHA sends to visa applicants, following a notification of family violence, but we have not found an effective way to raise this type of issue.

We recommend that DoHA invite interested stakeholders to regular consultation meetings to discuss issues in processing and how victims of domestic and family violence can be better supported.

(i) The impact of natural disasters and other significant events such as COVID-19, including health requirements such as staying at home, on the prevalence of domestic violence and provision of support services

For the past decade, Legal Aid NSW has provided legal assistance to communities across NSW as part of the NSW Government's response to disasters. Legal Aid NSW lawyers specialise in everyday legal issues that often arise during emergencies, including insurance law advice, housing and tenancy issues, employment law and general financial hardship, which can cause acute hardship if left unresolved.

Legal Aid NSW has a disaster response legal service where lawyers attend Disaster Recovery Centres to provide legal advice to disaster victims on a range of legal matters, including domestic and family violence. Statistics suggest that the impact of natural disasters can compound stress in relationships and family violence can increase during this time. The experience of a natural disaster can exacerbate domestic and family violence by increasing risk factors, such as poor mental health, substance misuse, financial hardship and trauma. Legal assistance during a disaster event, both initially and in the longer-term recovery, is essential to supporting victims of domestic and family violence.

Legal Aid NSW has made submissions to the NSW Independent Bushfire Inquiry,³⁹ the Royal Commission into Natural Disaster Arrangements,⁴⁰ and contributed to the National Legal Aid submission to the Senate *Inquiry into Lessons to be learned in relation to the*

³⁹ Legal Aid NSW, Submission to the NSW Government, *NSW Bushfire Inquiry* (22 May 2020).

⁴⁰ Legal Aid NSW, Submission to the Royal Commission into National Natural Disaster Arrangements, *Royal Commission into National Natural Disaster Arrangements* (30 April 2020).

Australian bushfire season 2019-20,⁴¹ about the importance of legal assistance in the recovery of disaster-affected communities, and the strong need for funded legal services to be part of any government response to disasters such as bushfires. Funded legal services contribute to the preparation and recovery stages of disaster management, and assist to minimise the adverse impact of disasters on people and communities.

The following case studies illustrate how the stress associated with a natural disaster can exacerbate domestic and family violence.

Lara's story

Lara and her ex-husband live together but separately on a property in regional NSW. After her husband suffered an acquired brain injury, his behaviour became erratic and he became violent towards her. He was also a recovering alcoholic. In recent years his behaviour had settled. Lara is his full-time carer and her only income is carers payments. Due to financial hardship, she was no longer able to afford insurance for her property.

The bushfires in January 2020 completely destroyed their residence. The ex-husband's cognitive impairment was triggered and he began to threaten her again, forcing her to leave the property for her safety. During the recovery process, with no insurance available, Lara relied on disaster recovery payments to rebuild her home. However, when she tried to access the payments, she discovered that the ex-husband had signed up for the grants on their behalf, taken the money and spent it all on alcohol and other consumables.

Legal Aid NSW provided the client with information about alternative sources of bushfire recovery grants, and provided a warm referral to a local financial counsellor to provide holistic budgeting and financial hardship support for the client.

Jacqueline's story

Legal Aid NSW advised Jacqueline at a recovery centre on the south coast. She and her ex-husband jointly owned their house, which was significantly damaged in the bushfires. Jacqueline was temporarily housed by DCJ (Housing) in emergency accommodation. She was afraid to return to the house to collect the belongings that survived the fires as her ex-husband had become increasingly agitated and unreasonable. The local council sent her a letter offering her options for some alternate accommodation and she was terrified her ex-husband had received the same letter.

We offered to negotiate a time with the ex-husband to collect her goods, and involved the police. We referred Jacqueline to a family lawyer for advice and assistance with an

⁴¹ National Legal Aid, Submission to the Senate Finance and Public Administration References Committee, *Inquiry into Lessons to be learned in relation to the Australian bushfire season 2019-20* (29 May 2020).

ADVO. As she was at the recovery centre, which is a one-stop shop for recovery welfare agencies, we were able to introduce her to council staff and DCJ (Housing) to work on her housing needs.

In our experience, there has been a significant increase in demand for services for victims of domestic and family violence during the COVID-19 pandemic. Typically, Legal Aid NSW receives around 1,000 telephone calls to the DVU service each year. Since 4 March 2020, Legal Aid NSW's DVU has received over 1,500 telephone calls and since 23 March 2020, the DVU has received around 970 email referrals. This has been a significant increase in demand for Legal Aid NSW's services. We welcome the announcement of additional Commonwealth funding for Legal Aid NSW in response to the increase in demand for services, including domestic and family violence services, during the COVID-19 pandemic.

Research from the Australian Institute of Criminology has found that women are experiencing a higher rate of domestic violence during the COVID-19 pandemic than they were before it began. Of the 15,000 women surveyed:

- two thirds of women who experienced physical or sexual violence by a current or former cohabiting partner in the three months prior to May 2020 said the violence had started or escalated in that period
- one in three said that this was the first time their partner had been violent towards them in this way
- of those who had already experienced physical or sexual violence before the pandemic, more than half said the violence had increased in frequency or severity.⁴²

Data from BOCSAR does not show an increase in domestic and family violence,⁴³ however those statistics do not necessarily capture the nuances of the current environment. The BOCSAR research also acknowledged that the findings cannot rule out an increase in unreported domestic and family violence, as the study is not sensitive to changes in forms of domestic and family violence that do not result in serious physical injury and which are not reported to police or victim services.

In the experience of our solicitors, currently, there is limited capacity for women to make reports to the police because the perpetrator is in lockdown or isolation with them, there are limited opportunities to flee the violence, as well as limited opportunities to engage with services. Often, women are able to plan to flee the violence when the perpetrator is at work or out of the home, however these opportunities have been removed. Lockdown

⁴² 'Imprisonment and Domestic, Family and Sexual Violence', *Australia's National Research Organisation for Women's Safety* (Web Page, 16 July 2020) <<https://www.anrows.org.au/notepad/anrows-notepad-16-july-2020/>>, citing Australian Institute of Criminology, *The Prevalence of Domestic Violence Among Women During the COVID-19 Pandemic* (Report, July 2020).

⁴³ NSW Bureau of Crime Statistics and Research, 'Has Domestic Violence Increased in the Wake of COVID-19 Social Distancing Measures?' (Media Release, 28 May 2020).

forced many victims to remain in an abusive household with limited opportunities to reach out for support as the perpetrator was always there. There are also concerns about perpetrators pressuring victims to retract statements or seek to revoke or vary ADVOs.

During the COVID-19 restrictions, women who are in controlling and/or abusive relationships have fewer opportunities for contact with anyone outside the home, and therefore reduced ability to seek information or assistance with domestic and family violence. This issue is particularly acute for women who are newly arrived to Australia (whether on temporary or permanent visas), as they may have no relatives or friends in Australia, and not have had any chance to establish any contacts or familiarisation with services in Australia, before the stay-at-home instructions were issued.

The impact of COVID-19, including an increase in unemployment rates, financial stresses, isolation and mental health issues, has increased the complexity of client needs. Due to restrictions on movement and the closure of face-to-face services, it is harder for victims to engage with services, which impacts on the ability for services to address complex needs. It also reduces the visibility of domestic and family violence in the community and from services. This in turn has reduced the opportunities for services and community members to monitor safety and risk and identify any concerns and put interventions in place.

Natural disasters and other significant events such as COVID-19 can also cause support services to shut down altogether or become inaccessible to remote locations. This can result in increased challenges for women to access supports such as emergency accommodation.

We have observed that people have been traumatised to various extents by bushfires and COVID-19, such that they find it difficult to retain information and access multiple services. Clients require a wraparound holistic service – a ‘one stop shop’ – where their short and long-term needs can be triaged.

The case studies below illustrate these impacts of the COVID-19 pandemic.

Tina's story

Tina is in Australia on a temporary spouse visa. She moved to Australia from China after she was married to Lee.

There was an incident in the family home where Lee assaulted her, and the police were called.

Tina works in retail and has had reduced work and income due to COVID-19, which means she is financially dependent on Lee. Tina is considering leaving Lee but was concerned about her migration status and also not having resources to financially support herself (this was before the announcement about support for temporary visa holders). Tina speaks limited English and needs the assistance of a Mandarin interpreter.

Lee was working from home, so it was not safe for the DVU lawyer and interpreter to call Tina when she was home.

The DVU lawyer spoke to Tina as she was walking around the streets where she lived. The DVU lawyer helped Tina with advice about getting an ADVO and made a referral for immigration advice. The DVU social worker was able to make a referral to a Mandarin-speaking domestic and family violence caseworker who could provide ongoing assistance to Tina.

Vicki's story

Vicki advised Legal Aid NSW that she recently returned from the US and had to go into self-isolation. Vicki lives with her 17-year-old son who has previously used verbal and psychological abuse against her. Vicki believes that the stress of COVID-19 combined with the fact that she had to socially distance made the son angry and created further abusive behaviour.

The neighbours heard this and called the police. Police attended and cautioned the son, and advised Vicki that if he continues, they may proceed with an AVO or charges.

Legal Aid NSW welcomes the announcement of NSW Government funding to support migrant workers and temporary visa holders in NSW, including domestic and family violence victims, impacted by COVID-19,⁴⁴ and supports the expansion of this funding.

Impact of natural disasters and COVID-19 on Aboriginal and Torres Strait Islander women

COVID-19 in particular has been expected to have a disproportionate impact on Aboriginal and Torres Strait Islander women at risk of, or experiencing, domestic or family violence. This is due to increased vulnerability to violence following the impacts of stress, financial hardship, pre-existing medical conditions, the prevalence of overcrowded housing (which makes physical distancing difficult or impossible to implement), closure or reduced access to health and other support services, reduced community accountability because of self-isolation,⁴⁵ increased burdens on women for caregiving, education of children and

⁴⁴ The Hon. Geoff Lee MP Acting Minister for Sport, Multiculturalism, Seniors and Veterans Minister for Skills and Tertiary Education, 'NSW Government Supporting Multicultural Communities Through Covid-19' (Media Release, 3 June 2020).

⁴⁵ See, for example: Kassi Klower, 'The Ripple Effects of COVID-19 on Indigenous Family and Domestic Violence', *UNSW Newsroom*, (online, 31 March 2020) <<https://newsroom.unsw.edu.au/news/business-law/ripple-effects-covid-19-indigenous-family-and-domestic-violence>> ('*The Ripple Effects*').

household tasks,⁴⁶ and social distancing underpinned by public health orders disproportionately enforced by police on Aboriginal and Torres Strait Islander people.⁴⁷

Concerns are also held for Aboriginal and Torres Strait Islander children who are unable to avoid domestic and family violence in the home through regular means, such as socialising outside of the home,⁴⁸ or accessing youth support services. Legal Aid NSW acknowledges that these barriers may already exist for Aboriginal and Torres Strait Islander women and children at risk of, or experiencing, domestic or family violence, but have been significantly exacerbated by COVID-19 due to social isolation and social distancing, and lockdowns, which have limited the ability for people to have contact with family and access support.

In addition, Change the Record reports that victims of domestic and family violence have been unable to access police protection and support services due to staffing issues, and have limited access to legal services. Aboriginal and Torres Strait Islander parents face restricted access to children in out-of-home care, increasing the likelihood that children will be permanently placed in state care.⁴⁹

Legal Aid NSW has had to suspend face-to-face outreach services across the state due to COVID-19, and is now providing legal advice and assistance services by phone. This creates barriers for Aboriginal and Torres Strait women and children in accessing our services if they do not have secure access to a mobile phone, do not have sufficient phone credit, live in an area without mobile phone reception, or are homeless. Again, while some of these barriers already existed, they have been further exacerbated by COVID-19 due to the closure of services, which has had a particular impact on Aboriginal and Torres Strait Islander women in regional, rural and remote areas.

There may also be reluctance to access legal services over the phone. Legal Aid NSW's recent evaluation of its specialist civil law services found that face-to-face service provision, in a location that the client felt comfortable, were components of critical success factors in best practice service provision for Aboriginal and Torres Strait Islander people. Often, Legal Aid NSW assists clients with multiple, complex legal issues involving traumatic circumstances, and clients are not comfortable sharing such information over the phone. This is more acute when the client is homeless or lives in crisis accommodation due to experiences of domestic and family violence.

For example, simply completing an authority, filling out a form or providing identification becomes a time-consuming and complicated exercise in the absence of support services

⁴⁶ F Markham, D Smith and F Morphy, 'Indigenous Australians and the COVID-19 Crisis: Perspectives on Public Policy', *Australian National University Centre for Aboriginal Economic Policy Research* (online, 2020) <<https://caepr.cass.anu.edu.au/research/publications/indigenous-australians-and-covid-19-crisis-perspectives-public-policy>>.

⁴⁷ Lorana Bartels and Thalia Anthony, 'For First Nations People, Coronavirus has meant Fewer Services, Separated Families and Over-policing: New Report', *The Conversation* (online, 27 May 2020) <<https://theconversation.com/for-first-nations-people-coronavirus-has-meant-fewer-services-separated-families-and-over-policing-new-report-139460>> ('*First Nations People*').

⁴⁸ *The Ripple Effects* (n 45).

⁴⁹ *First Nations People* (n 47).

willing to see our clients face-to-face. This creates delays in accessing payments, such as victims support payments, which support women to make safe and sustainable choices.

In the experience of Legal Aid NSW solicitors and WDVCS workers, there are general barriers to face to face and phone communication due to communication and linguistic differences, which become more challenging over the phone and therefore some communication may get lost. Additionally, with phone communication, our solicitors are unable to pick up non-verbal communication, which can be important when working with Aboriginal and Torres Strait Islander clients.⁵⁰ However, Legal Aid NSW also acknowledges that phone communication during these significant events may be the only option available to access legal assistance and support services.

Legal Aid NSW suggests that the design and implementation of responses to disasters and significant events, including COVID-19, should include targeted consultation with Aboriginal community-controlled services, to ensure that government-led responses take into the account the particular experiences and needs of Aboriginal and Torres Strait Islander people and their children, including the additional considerations for service providers in providing legal assistance and support services over the phone.

(j) The views and experiences of frontline services, advocacy groups and others throughout this unprecedented time

In NSW, WDVCSs have noted that the seriousness of domestic and family violence incidents reports has escalated. Data reflect an increase in serious threat referrals to some WDVCSs.

WDVCSs have reported an increase in the complexity of matters and challenges with addressing needs due to the closure of some services, restriction of movement and transition to remote support (via phone).

Restrictions on movement and the number of people allowed to gather in a location have reduced the ability for victims to access family and friend support networks. Victims reported feeling that their networks are under enough pressure due to the pandemic or feel restricted in their ability to travel.

Laura's story

Laura lives with her daughter and her sister, who is the Person of Interest subject to an AVO. Laura said she had emergency accommodation for the past three nights but has to return home today.

She is hopeful that her sister is going to move in with their mother temporarily, however Laura reported that she does not feel as though she can ask other relatives or friends to take her and her daughter in temporarily in the current COVID-19 climate. Nor does

⁵⁰ See for example, Legal Aid NSW, *Best Practice Standards for Representing Aboriginal Clients* (June 2020).

she feel that she can ask any friends or relatives to come and stay with her to help her feel safe at this time.

(k) An audit of previous parliamentary reviews focussed on domestic and family violence

(l) Any other related matters

Sexual assault victims' participation in the criminal justice system

Legal Aid NSW submits that there need to be improvements to processes to facilitate sexual assault victims' participation in the criminal justice system.

Our clients continue to report that holding perpetrators of sexual violence to account via the criminal justice system contributes to their trauma. In particular, our clients report that they are worn down by the long delay between charge and trial, concerned by subpoenas on their counselling records, and distressed by lengthy cross-examination.

Legal Aid NSW supports consideration of measures to ensure that victims of sexual assault are supported to participate and give evidence in criminal trials.

The Royal Commission into Institutional Responses to Child Sexual Abuse recommended that:

In those states and territories that have a qualified privilege in relation to sexual assault communications, the relevant state or territory government should work with its courts, prosecution and legal aid agencies to implement any necessary procedural or case management reforms to ensure that complainants are effectively able to claim the privilege without risking delaying the trial.⁵¹

We note that this recommendation does not appear to be acted on in NSW, save for reference to the sexual assault communications privilege in the most recent case management practice notes published by the Chief Judge of the District Court.⁵²

Auditor General Report on Coordination and Targeting of Domestic Violence Funding and Actions

The Auditor General Report on Coordination and Targeting of Domestic Violence Funding and Actions identified that “[p]erformance monitoring, evaluation and reporting is not sufficient to provide assurance that governments are on track to achieve the [National Plan to Reduce Violence Against Women and their Children’s] overarching target and

⁵¹ Royal Commission into Institutional Responses to Child Sexual Abuse (Final Report Recommendations, 15 December 2017) 112.

⁵² District Court, *District Court Criminal Practice Note 18: Criminal Trials* (6 March 2020); District Court, *District Court Criminal Practice Note 19: Criminal Trials at Circuit Sittings* (6 March 2020).

outcomes”. It recommended that the Department of Social Services must improve the evidence base and track performance under the National Plan.⁵³

In Legal Aid NSW’s view, the National Plan should include a robust evaluation framework to track performance under both the current and the next National Plan. This includes reviewing and developing program outcomes and identifying measures of success for domestic and family violence services and programs funded under the current and next National Plan that are meaningful and supported by robust data collection mechanisms. We note that it is necessary to upgrade both databases used to document and record Safer Pathway service delivery – the Central Referral Point and the Women’s Domestic Violence Court Advocacy Program – to improve the monitoring and reporting capacity of Safer Pathway. Funding is required to support these necessary enhancements.

We support the commitment to strengthening the evaluation capacity of domestic and family violence programs as a vital step to informing the evaluation framework for the National Plan. These improvements will increase government transparency and accountability for implementing the National Plan’s strategies, activities and funding decisions. Without these improvements, it will be difficult to measure the effectiveness of programs funded under the National Plan.

⁵³ Australian National Audit Office, *Auditor-General Report No 45 2018-19* (Report, 2019) 46.