

# Safety First in family law

Five steps  
to creating a family law  
system that keeps women  
and children safe.

## Step 1 Develop a specialist pathway for domestic violence cases in family courts

### What happens now?

- Parents with complex issues of domestic violence, mental illness and substance misuse are most likely to use family courts.
- There are no specialist domestic violence services based in family courts for risk assessment, safety planning or to support families in crisis.
- The family courts do not have case management processes specifically for domestic violence cases (other than serious child abuse).
- There are wide-spread misunderstandings in the community that parents have “equal rights” to children even where there is violence and abuse.

### What's the solution?

- 1a. Place domestic violence specialists in family court registries to undertake risk assessment at the very earliest stages of a case and provide recommendations on interim care arrangements for children.
- 1b. Create a process in family courts to manage domestic violence cases with an emphasis on early decision making, triaging and case-management.
- 1c. Engage court-based support services to assist families in crisis. These services could include specialist services for women from high risk groups as well as housing, domestic violence and child & youth focussed workers.
- 1d. Remove the language of “equal shared time” and “equal shared parental responsibility” in the Family Law Act 1975 to shift culture and practice towards a greater focus on safety and risk to children.

## Step 2 Reduce trauma and support those who are most at risk of future violence and death

### What happens now?

- Aboriginal and Torres Strait Islander and Culturally and Linguistically Diverse families are under-represented in the family law system despite high levels of family violence and an increased likelihood of relationship breakdown for newly arrived families.
- There are entrenched barriers in the family law system that make it particularly difficult for women with disabilities, women from regional and rural communities and women in prison to access the family law system.
- The entrenched barriers include the lack of protection from direct cross-examination, the complexity of the court process and the lack of child protection support for “protective carers”.

### What's the solution?

- 2a. Implement the recommendations from the Family Law Council's 2012 reports on improving family law system for clients from Aboriginal and Torres Strait Islander and Culturally and Linguistically Diverse Backgrounds.
- 2b. Undertake a comprehensive audit of the barriers in the family law system for women in other high risk groups such as women with disabilities, women from regional and rural communities and women in prison.
- 2c. Introduce legislative protections to stop a victim being directly cross-examined by their abuser by amending the Family Law Act 1975.
- 2d. Strengthen the support of child protection in family law cases for “protective carers”, such as mothers leaving violent relationships, in family law proceedings.



### Step 3

Intervene early and provide effective legal help for the most disadvantaged

#### What happens now?

- Domestic violence cases are often screened out of non-legally assisted mediation due to safety concerns therefore they have little opportunity for early resolution.
- Private legal representation in family law is prohibitively expensive and free legal assistance in family law is difficult to access- over 30% of people are unrepresented leading to lengthy court delays and poor outcomes for children.

#### What's the solution?

- 3a.** Roll out a mediation model with specialist domestic violence lawyers and social workers based on the highly effective 2012 Co-ordinated Family Dispute Resolution pilot.
- 3b.** Expand family law legal services by funding Community Legal Centres, including specialist women's legal services; Aboriginal Family Violence Prevention Legal Services, Aboriginal and Torres Strait Islander Legal Services and Legal Aid Commissions to assist the most disadvantaged, high risk families in the family court system.
- 3c.** Create a specialist legal aid funding pathway for domestic violence family law cases.

### Step 4

Support women and children to financially recover from domestic violence

#### What happens now?

- Women are more likely to experience financial difficulties after they separate, with a study finding 60% of women suffering some form of financial hardship within twelve months of their divorce.
- Victims of domestic violence are three times more likely to receive a minority share in the assets of the relationship.
- Resolving property disputes in family law is a costly and complex process out of reach for many disadvantaged Australians.

#### What's the solution?

- 4a.** Promote early resolution of small property disputes under \$100,000 through a legally-assisted, alternative dispute process or streamlined case management process at court.
- 4b.** Amend the Family Law Act to require courts to consider family violence when determining a property division in accordance with the Family Law Council's 2001 advice to the Attorney General.
- 4c.** Simplify court processes and forms in the family courts, particularly the application requirements and form of evidence currently required by the court to determine a small property division.

### Step 5

Strengthen the understanding of all family law professionals on domestic violence and trauma

#### What happens now?

- Professionals in the family law system are not required to be trained in domestic violence, working with victims of trauma or cultural competency.
- Family report writers are not subject to accreditation or monitoring.

#### What's the solution?

- 5a.** Family report writers - establish a national accreditation and monitoring scheme with mandatory training on domestic violence, cultural competency and working with victims of trauma for all practitioners who prepare family reports.
- 5b.** Judicial officers - the Judicial College of Australia develop and deliver a comprehensive professional development package for all family law judicial officers on domestic violence, cultural competency and working with victims of trauma.
- 5c.** Legal professionals, including ICLs - the Australian Institute of Family Studies develop a comprehensive domestic violence training program for family law legal professionals and work with state and territory law institutes and bar associations to roll out the training.



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