SUBMISSION
to
The Joint Select Committee on Australia's Family Law System

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Five recommendations for reform

Recommendation 1: Early judicial determination of family violence

The Australian Government, in consultation with the family law Courts, promote the early determination of family violence, through a family violence informed case management process and the testing of evidence of family violence early.

The Australian Government adequately fund the capacity of courts exercising family law jurisdiction to conduct early judicial fact finding hearings.

The Australian Government should explore and fund options to ensure regular and consistent education and training on family violence for all professionals in the system, including for family law judicial officers.

Recommendation 2: Early judicial scrutiny of consent orders

The Australian Government, in consultation with the family law courts, consider how the judicial scrutiny of consent orders can be improved through the early identification of family violence and decision making. One option to consider is Registrars in the family courts be responsible for scrutinising consent applications also conduct risk assessments and family violence investigations as part of the process.

Recommendation 3: Oppose the use of presumptions in the family law system

The Australian Parliament should introduce and support legislation that would remove the presumption of equal shared parental responsibility and the language of equal shared time from Part VII of the Family Law Act.

Any proposals to introduce legislative presumptions into the Family Law Act, to determine property and financial cases should be opposed.

Recommendation 4: Implement WLSV's Small Claims, Large Battles report recommendations

The Australian Government should continue to support and work towards the implementation of recommendations from WLSV's Small, Claims, Large Battles report:

- Streamlining court processes for small claims (recommendations 1-3)
- Improving financial disclosure in property matters (recommendation 4)
- Simplifying the superannuation splitting system (recommendations 5-8)
- Dealing with joint debts in the court system more effectively (recommendation 9)
- Responding to family violence in property matters (recommendations 10-12)

Recommendation 5: Expand existing models of Legally Assisted Family Dispute Resolution (LAFDR) in family violence matters

- The Australian Government should expand existing models of Legally Assisted Family Dispute Resolution (LAFDR) in family violence matters
- The Australian Government resource Legal Aid Commissions to broaden LAFDR availability for priority clients. This would enable to access existing models of LAFDR, with better outcomes for the most vulnerable.
- A nationally consistent risk assessment framework should apply to all LAFDR models to ensure that safety risks are effectively identified and managed throughout the process.

Executive summary

WLSV's response to the terms of reference and the five recommendations for reform, outlined in this submission, are based on the lived experiences of the women we represent and also the experience of our lawyers who have been and are working on a daily basis to protect the safety of women and their children in the justice system. We have attempted to bring the some of the voices of the women we represent, into the submission, through the de-identified case studies of Mae, Alice, Tara, Ani and Nyala. Their stories are included at the end of this submission. We pay our respects to these women and to their courage in sharing their traumatic experiences with the Committee in this way, in the hope that others in similar circumstances may avoid the systems abuse and systems failure they have endured, sometimes for many years.

Over the past decade WLSV has dedicated significant resources to participating in various inquiries and reviews into the family law system, as well as generating its own research to inform advocacy. In 2018 WLSV publicly launched the Small, Claims Large Battles report which highlights the barriers that financially disadvantaged women with small property claims face in accessing their entitlements through the family law system.

After the long awaited ALRC review into the family law system's final report was handed down in March 2019, WLSV commenced the task of reviewing the report and auditing the recommendations and also recommendations from previous reports and inquiries into the family law system, including the SPLA report[3] released in 2017. Our response to the ALRC recommendations was shared with the Attorney General's Department and where relevant has been highlighted in this submission. WLSV's general response was that the ALRC, failed to address the problems relating to the poor family violence responses across the system, and did not take the impact and prevalence of family violence seriously enough. The final report seem to brush over the fact that over 70% of matters the court is dealing with involve allegations of family violence and that dealing with family violence allegations is the "core business" of the family courts.

Throughout the ALRC review and since the ALRC and SPLA reports were handed down, WLSV has been advocating for the early judicial determination of family violence in the family law courts. The SPLA Committee recommended in its final report, that legislation be introduced to give effect to this proposal in 2017. WLSV strongly supports this recommendation and is committed to campaigning for this reform to be introduced in 2020. Family violence allegations and all the evidence of family violence should and can be tested early, after a matter is filed in the courts. The Committee will note that there are several submissions to this Committee that also support the early judicial determination of family violence. We have provided detailed submissions on this proposal in response to term of reference (a).

WLSV has been working closely with Women's Legal Services Australia (WLSA) to review WLSA's revised safety first in family law plan[4]. The revised plan was launched publicly in October last year, with the support of former Australian of the Year and family violence campaigner Rosie Batty. The plan was updated to take into account the SPLA and ALRC report recommendations and also to acknowledge that some of the steps outlined in the plan had been successfully implemented by the Australian Government. WLSV supports the revised plan.

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[3] Parliamentary inquiry into a better family law system to support and protect those affected by family violence, Final Report, Dec 2017

[4] Available online: http://www.wlsa.org.au/campaigns/safety_first_in_family_law

WLSV commends the Australian Government for responding to *step 1* of WLSA's safety first in family law plan and announcing reforms at the end of last year, as part of the MYEFO, that go some way to working towards safer and fairer outcomes in the family law system. These reforms include a funding commitment of $13.5million towards running pilots across four court registries to trial family violence risk assessments, case management and specialist family violence lists over the next two years. They add to the reforms announced in 2018 in response to WLSV's Small Claims, Large battle campaign[5]. The announcements were made as part of the Women's Economic Security Statement in November 2018[6] which committed nearly $10 million of funding for Small Claims pilots, funding to expand legally assisted dispute resolution for small property matters and the creation of a superannuation information sharing scheme between the ATO and the family law courts.

When this inquiry was announced we felt deeply concerned by statements in the media that suggested that women lie about family violence so that men don't get access to their children. We have come a long way in understanding the dynamics of family violence. To change the national narrative in this way is not only a backwards step it is also extremely dangerous for women and children experiencing family violence in their homes.

Immediately after the Australian Senate approved the inquiry, WLSV called for six essential safeguards to be implemented by the Committee, which assist to protect the safety of family violence victims, who may wish to participate in the inquiry. We were encouraged by media reports that the Law Council of Australia was also calling for the first safeguard to be adopted – family violence training for all Committee members. We urge the Committee to seriously consider undertaking family violence training before the public hearings commence. Family violence training can provide Committee members with the understanding needed to ensure that the inquiry does no harm. It will also provide Committee members with the necessary skills needed to interpret the information before it in a trauma informed and family violence aware way that respects those experiencing family violence. Undertaking the training will also send a clear message to the Australian public that the Australian Parliament is taking family violence seriously.

Reform of the family law system and improving the family violence response of the system must be made a priority for the Federal Government in 2020. Inaction will only lead to more women and children falling through the cracks and having to manage all the safety risks themselves, without system oversight.

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[5] Final report available online at www.womenslegal.org.au

[6] Available online at: https://www.ag.gov.au/FamiliesAndMarriage/Families/Pages/supporting-women-to-recover-financially-after-separation.aspx

Response to terms of reference

a. interaction and information sharing between the family law system and state and territory child protection systems, and family and domestic violence jurisdictions including:

> ***i. the process, and evidential and legal standards and onuses of proof, in relation to the granting of domestic violence orders and apprehended violence orders, and***
>
> ***ii. the visibility of, and consideration given to, domestic violence orders and apprehended violence orders in family law proceedings;***

WLSV acknowledges that the interaction and information sharing between the family law system and state and territory child protection systems and family and domestic violence jurisdictions needs to improve to better protect the safety of women and children experiencing family violence. The intersection between family violence and relationship breakdown often means that victims of family violence are faced with a confusing and complex legal framework which they are required to navigate without legal representation. Victims whose legal problems arise in the context of family violence and relationship breakdown regularly deal with multiple pieces of legislation and several different jurisdictions. WLSV supports the following recommendation:

> *The Australian Government, and state and territory governments develop an appropriate framework that crosses over the family law system and other federal, state and territory systems, including family support services and the family violence and child protection systems. The framework should be seamless from the point of view of those who engage with it and prioritises the safety of women and children. The framework should be guided by the steps outlined in WLSA's Safety First in Family law plan.*[7]

WLSV supports improved information sharing between the federal family law system and the state and territory child protection and family violence systems. Information sharing must, however, be underpinned by principles of safety. WLSV acknowledges that the Council of Attorneys-General, is working with agencies of the Australian Government and all jurisdictions to improve information sharing between the family law, child protection and domestic violence systems, including by co-locating state and territory child protection and other officials in family court registries.

WLSV commends this work and supports the development and implementation of a safe national information-sharing regime in consultation with specialist family violence support and legal services. The scheme should include necessary safeguards to ensure the safety of family violence victims, including children.

> ***i. the process, and evidential and legal standards and onuses of proof, in relation to the granting of domestic violence orders and apprehended violence orders,***

[7] WLSA's Safety First in Family Law Plan step 5.

WLSV supports the process, evidential and legal standards and onuses of proof in Victoria, in relation to the granting of family violence intervention orders (FVIO's), which necessarily enable the courts and police to act quickly to protect the safety of women and children.

Both a victim of family violence and the Victorian police can apply to the Magistrates court for a FVIO. It is worth noting that the majority of FVIO applications in Victoria are made by the Victorian police. The 2018-2019 annual report of the Magistrate's court has revealed that during the 2018-2019 financial year, the Magistrate's Court of Victoria dealt with 40,952 FVIO applications. 73.8% of these applications were made by the Victorian Police.

WLSV lawyers have also observed in their duty lawyer work, that the bulk of FVIO matters they are involved in, are finalised on a consent basis.

ii The visibility of, and consideration given to, domestic violence orders and apprehended violence orders in family law proceedings;

Concerns have been expressed in the media that women fabricate allegations of family violence perpetrated against them, in order to achieve an outcome through the family law system, which effectively excludes men from the family or restricts the time fathers spend with their children. This is far from the reality experienced by our clients. The Committee should take the opportunity, when considering these statements, to review how the family courts currently determine family violence in family law proceedings.

The presence of FVIO's can be taken into account by judges considering parenting matters but that the mere presence of an order will not necessarily determine the outcome. Judges exercise their discretion under the Family Law Act and take into account many forms of evidence to work out what is in the best interests of a child.

Subsection 69ZX(3) of the Family Law Act provides:

(3) The court may, in child-related proceedings:

(a) receive into evidence the transcript of evidence in any other proceedings before:

(i) the court; or

(ii) another court; or

(iii) a tribunal;

and draw any conclusions of fact from that transcript that it thinks proper; and

(b) adopt any recommendation, finding, decision or judgment of any court, person or body of a kind mentioned in any of subparagraphs (a)(i) to (iii).

As submitted above, most FVIO matters are resolved by consent in which case the Magistrates' Court proceedings do not include examination of the evidence or findings of fact. The influence of a FVIO in these circumstances in decision making in family law matters is often of minimal.

The existence of a FVIO does not bind the court in exercising its discretion on what is in the best interests of a child. The court weighs up all the evidence before it to balance the best interests of the child to spend time with another parent and the risk this may pose to a child if family violence allegations are present. The court may act cautiously by ordering supervised time at a contact centre until the matter can be heard properly. In our experience, little weight is given to the existence of family violence orders.

It is also worth noting at this stage that despite the high number of court applications which include allegations of family violence where a FVIO have been issued (up to 70%), the family law system has continued to prioritise the right to contact over the right to safety. One evaluation has demonstrated that perpetrators of family violence were achieving significant and substantial unsupervised time with their children. Shared parental responsibility was still the result in up to 83% of cases (and 40% of those cases that went before a judge).[8]

Testing the evidence of family violence

An early determination of family violence will assist the court in determining what is in the child's best interest, particularly to avoid the risk of any harm to the child. We refer the Committee to Nyala's case. In Nyala's case, despite the existence of a final FVIO being granted in the Magistrate's court to protect Nyala and her child from the violent actions of Steve, the family court ordered that the child's time with the father be supervised by the paternal grandmother and/or maternal uncle, once a fortnight. It was not until the final hearing, where family violence allegations were properly tested that the court ordered that the violence perpetrator should spend no time with the child to protect the child from any harm.

An early determination of the family violence allegations which would involve testing the evidence, should ensure the burden of managing safety and risk concerns is not placed entirely on the family violence victim.

What happens now?

Courts make parenting orders in the face of allegations of family violence in a range of circumstances:

- on an application to the court when parenting arrangements are in dispute and the court determines the orders in the absence of agreement between the parties
- on an application to the court when parenting arrangements are in dispute and the parties propose interim orders by consent
- on an application to the court when parenting arrangements are in dispute and the parties propose final orders by consent
- on an Application for Consent Orders when the parties have agreed to a parenting arrangement and the parties seek to have the agreed arrangements formalised.

[8] Rae Kaspiew et al, 'Evaluation of the 2012 Family Violence Amendments: Synthesis Report' (Australian Institute of Family Studies, 2015)

Where arrangements are in dispute

When agreement cannot be reached over parenting arrangements, then an application needs to be lodged with the court for parenting orders.

Despite the number of applications before the courts alleging family violence, judges are only exercising their power to test the evidence and determine family violence allegations early on in a minority of cases. In the early stages of a matter, generally procedural issues are dealt with and interim orders are made, often by consent, pending the hearing of evidence. The evidence of family violence, which is central to a case, is not tested and a finding of on the facts is not made until the final hearing. Given the current delays in the family law courts, the final hearing of evidence may take place between eighteen months and three years, in some cases, from the date of the initial application to court. Given the long wait for a final hearing and judicial decision, family violence is often hidden from view during this time.

This situation is placing victims of violence and their children at considerable risk as they feel pressured to agree to interim time arrangements without a proper finding been made on the allegation of violence or the questions of risk. In practice this means that women are bearing the burden of managing their own safety and that of their children, often for years without the proper protection of the legal system.

Most cases resolve. Final consent orders are agreed to sometimes as a sensible resolution of problems, sometimes due to the cost and emotional burden of protracted proceedings and sometimes as a consequence of the coercive nature of family violence.

WLSV lawyers have represented clients on many occasions seeking to change a parenting order reached by consent, often when the consent orders were made following an initially contested application. Clients who are impacted by family violence often felt trapped into the agreeing to orders with a violent perpetrator. This is a significant safety issue for our clients and their children, as they face the pressure at an early stage to enter into interim arrangements by agreement, from the family law system itself, in combination with an abusive parent.

We note that the SPLA report supported an early judicial determination of family violence modeland recommended that:

> *"the Australian Government introduces to the Parliament amendments to the Family Law Act 1975 (Cth) to require a relevant court to determine family violence allegations at the earliest practicable opportunity after filing proceedings, such as by way of an urgent preliminary hearing and, where appropriate, refer to findings made, and evidence presented, in other courts.*[9]

The ALRC review also considered these issues. It is worth noting that key stakeholders in Victoria, including Victoria Legal Aid are campaigning with WLSV to promote these necessary reforms. We refer the Committee to other submissions to this inquiry that have been submitted to date, including VLA, Our Watch and Uniting, that are calling for the implementation of reforms that would see courts exercise their power to determination allegations of family violence early.

[9] Recommendation 7.

WLSV acknowledges that crucial to successful implementation of this reform, all practitioners working in the system, including Judges, need to understand the dynamics of family violence and the impact that trauma can have on victims.

WLSV supports the SPLA recommendation and further recommends:

Recommendation: early judicial determination of family violence

The Australian Government, in consultation with the family law Courts, promote the early determination of family violence, through a family violence informed case management process and the testing of evidence of family violence early.

The Australian Government adequately fund the capacity of courts exercising family law jurisdiction to conduct early judicial fact finding hearings.

The Australian Government should explore and fund options to ensure regular and consistent education and training on family violence for all professionals in the system, including for family law judicial officers.

Consent applications

Where agreement is reached outside of any court proceedings, parents can make a consent application to the court to formalise that agreement.

The visibility of, and consideration given to the facts of family violence in consent applications is generally very low. One of the main problems for the court in uncovering the facts of family violence in consent applications is the dearth of evidence available to the courts to effectively scrutinise consent applications for parenting orders.

Low visibility of family violence in consent applications means that family violence victims are being faced with the intimidating task of managing safety and risk when negotiating interim and final consent arrangements on their own with their abusive ex-partners. An examination of the Family Courts' application for consent orders kit[10] demonstrates that the responsibility for disclosing family violence lies with the victim and does not take into account the dynamics of non-disclosure, particularly in cases where a family violence victim is unrepresented. The one completed form needs to signed by both parties.

The form assumes a high level of literacy. It requests information relating to family violence and child abuse in a "tick a box" form. It places a heavy emphasis on family violence and child protection court proceedings (including orders or proceedings to address family violence safety risks) being in train already and assumes that non-disclosure is uncommon. Family violence victims also often find it difficult to disclose family violence to the courts – for a range of reasons. The joint nature of this document makes it even more unlikely that family violence beyond that evidenced by court orders will be identified. This demonstrates the problem for

[10] http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/forms-and-fees/court-forms/diy-kits/kit-diy-application-consent-orders

judicial scrutiny that leaves the responsibility for managing risk and safety up to the family violence victim.

We urge the Committee to examine how evidence of family violence and the risk it poses to family violence victims, could be considered, after an application is received by the court for orders by consent. For instance could a small hearing be held to determine the facts of family violence which would involve the examination of the parties?

An examination of this solution would also require consideration of how Registrars in the courts or Magistrates exercising federal jurisdiction in the state courts (particularly in regional areas) could conduct such a hearing and/or carry out an assessment to identify any risks. The Committee should also consider how Senior Registrars could be made responsible for scrutinising consent applications and conduct risk assessments and family violence investigations to satisfy the court that the orders being approved are safe.

> **Recommendation: Early judicial scrutiny of consent orders**
>
> The Australian Government, in consultation with the family law courts, consider how the judicial scrutiny of consent orders can be improved through the early identification of family violence and decision making. One option to consider is Registrars in the family courts be responsible for scrutinising consent applications also conduct risk assessments and family violence investigations as part of the process.

b. the appropriateness of family court powers to ensure parties in family law proceedings provide truthful and complete evidence, and the ability of the court to make orders for non-compliance and the efficacy of the enforcement of such orders;

In responding to this term of reference it is necessary to break it down into the following parts:

The appropriateness of family court powers to ensure parties in family law proceedings provide truthful evidence

WLSV's view is that the family court has adequate powers to ensure parties in family law proceedings provide truthful evidence. If parties do not provide truthful evidence the court can refer them for perjury prosecution.

More commonly, a loss of credibility on the part of a witness or party will greatly influence the court's decision. The courts can and do recognise the difference between having a distorted perspective and deliberately lying.

The appropriateness of family court powers to ensure parties in family law proceedings provide complete evidence

WLSV submits that the power of the court to determine allegations of family violence early under the Family Law Act needs to be improved. Please refer to more detailed submissions above.

The ability of the court to make orders for non-compliance and the efficacy of the enforcement of such orders

WLSV acknowledges that there are problems with the ability of the court to make orders for non-compliance and that it is difficult for the court to enforce orders, particularly when uncooperative former partners to comply with mandatory financial disclosure in property matters.

There is an obligation on parties to family law proceedings to make full and frank disclosure of their financial position. Failure to comply with this obligation can lead the court to apply penalties or exercise its discretion adversely to the non-disclosing party when deciding property settlements. Non-compliance of mandatory financial disclosure by perpetrators of family violence was highlighted as a major problem in *WLSV's Small Claims, Large Battles final report,* which was launched in 2018. The report found that over two-thirds of clients who received legal assistance through *WLSV's Small Claims, Large Battles* project from 2017-2018 experienced delay caused by difficulties obtaining full financial disclosure from their former partner. Many clients were forced to initiate court proceedings where they otherwise might have negotiated a property settlement.

The report findings also demonstrated that there were few effective disincentives for perpetrators refusing to comply with mandatory financial disclosure. Alternative information-finding processes, such as issuing subpoenas, were too costly and did not guarantee a return of the required information. The report recommended strengthening mandatory disclosure, through more intensive case management, greater use of registrar powers, or by permitting courts to obtain information about parties' assets from sources such as the Australian Taxation Office (ATO).

WLSV appreciates that one solution may be the imposition of higher penalties but in our experience this does not lead to improved compliance and only serves to punish the victim as the property pool decreases. We refer the Committee to the experiences of Tara and Alice who both had to deal with former partners who would not comply with the mandatory financial disclosure provisions.

WLSV also acknowledges that the Australian Government and the family law courts have responded positively to WLSV's Small Claims, Large Battles recommendations. Please refer to the reforms detailed above. However, despite these positive reform initiatives, we still have a long way to go. Recommendation aimed at strengthening the financial disclosure still need to be addressed. WLSV is committed to strengthening mandatory financial disclosure that will enable family violence victims and decision makers to access the necessary financial information needed to resolve small claims matters efficiently and fairly.

Recommendation: Strengthening financial disclosure compliance in property matters

The Australian Government, in consultation with the Federal Circuit Court and Family Court of Australia, consider how best to strengthen mandatory financial disclosure that will enable family violence victims and decision makers to access the necessary financial information needed to resolve small claims matters efficiently and fairly, including consideration of:

- Broadening the role of registrars to increase interim case oversight to check compliance with disclosure and encourage greater use of registrar powers to make orders for disclosure;
- Encouraging banks and government agencies, such as land titles offices, to reduce fees associated with processing family law subpoenas or title searches consistent with existing fee reduction regimes in the family law courts;

- Providing a mechanism for family law courts to be provided with information by the Australian Taxation Office for the purposes of determining if full financial disclosure is being made;
- Amending the Family Law Act 1975 (Cth) to enable courts to order forfeiture of assets by one party and redistribution to the other for failure to comply with financial disclosure obligations;
- Amending the Family Law Act 1975 (Cth) to encourage greater exercise of courts' discretion to make adverse adjustments to property divisions for parties who do not make full and frank disclosure.

c. beyond the proposed merger of the Family Court and the Federal Circuit Court any other reform that may be needed to the family law and the current structure of the Family Court and the Federal Circuit Court;

WLSV supports holistic reform of the Family Court and the Federal Circuit Court that would prioritise the safety of family violence victims. Family violence needs to be recognised as the core business of the family law courts.

WLSV supports the retention of a stand-alone, superior family court with family law and family violence specialisation. A faster, simpler and cheaper system is a desirable outcome to ensure access to justice. WLSV supports the Law Council's efforts to oppose the merger. In our view the merger, as proposed, will involve a move away from family law specialisation within the court. We refer to the open letter to the Attorney-General in relation to the proposed merger for comment on structural issues which WLSV signed on to.[11]

Any proposed structural changes to the courts and the family law system take into account WLSA's Safety First in Family Law plan. The plan outlines five steps that need to be implemented now to make the family law system safer for women and children experiencing family violence:

- Strengthen family violence response in the family law system
- Provide effective legal help for the most disadvantaged
- Ensure family law professionals have real understanding of family violence
- Increase access to safe dispute resolution models
- Overcome the gaps between the family law, family violence and child protection systems

WLSV is calling for immediate reforms that can be introduced now. WLSV has formed the strong view that the early judicial determination of family violence in the family law courts should be supported by the Australian Government and implemented this year. We discuss the proposal above in more detail. The proposal has also been endorsed by WLSA members in step 1 of the five step plan.

WLSV and WLSA have been advocating for the past five years that the courts should conduct a comprehensive risk assessment, both on application of a matter and on an ongoing basis, to inform the court of safety risks. *Ani's* story demonstrates how applying an ongoing risk assessment framework to ensure that all arrangements, including parenting plans, are in the best interests of children in terms of their safety. WLSV acknowledges that in December 2019

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[11] Available online at http://www.wlsa.org.au/submissions/open_letter_-_concerns_about_proposed_family_court_merger

the Australian Government announced as part of the MYEFO statement that provide $13.5 million would be provided to the Federal Court of Australia over three years from 2019-2 to pilot a screening and triage program for matters being considered by family law courts, with three interconnected processes: screening parenting matters for family safety risks at the point of filing; triaging matters to an appropriate pathway based on the identified level of risk; and maintaining a specialist list to hear matters assessed as involving a high risk of family violence.

WLSV acknowledges and commends the Australian Government for investing in these pilots which will improve the family violence response in the courts. The pilots are due to commence in July 2020. A case management process, available upon application to the court, with simplified procedural and evidentiary requirements will work to improve access to justice for those most vulnerable and lead to faster and cost effective resolution.

The proposed merger could lead to the loss of specialist judges by diluting or even losing the specialist nature of the Family Court. This could in turn lead to further trauma for survivors of family violence, poorer decisions and ultimately greater costs. Instead any reform should have at its core a joint professional development program for court staff and judicial officers who preside over matters involving family violence to strengthen understanding of family law and family violence and the impact of trauma. Training would not only assist in early identification of family violence but would lead to a process that minimise further trauma and ultimately more accurate decision making. It is paramount to not only preserve specialist judges but to continue to invest in training.

The proposed merger also overlooks the important role that legally assisted family dispute resolution (LAFDR) plays outside the court system. It is already a requirement for parties to have attempted mediation in parenting matters before starting court proceedings. However, the common belief is that family dispute resolution is not appropriate in cases where there is family violence and litigants are self-represented. WLSV's experience in providing legal assistance in family dispute resolution is that trauma-informed mediators and lawyers can assist in addressing any potential power imbalance between parties and ultimately assist in reaching a resolution without the need to go to Court.

WLSV's *Small Claims, Large Battles* report and recommendation directly address some of the changes the proposed merger wishes to address, namely the sometimes lengthy, costly and complex nature of the current system. These recommendations are further outlined below.

d. the financial costs to families of family law proceedings, and options to reduce the financial impact, with particular focus on those instances where legal fees incurred by parties are disproportionate to the total property pool in dispute or are disproportionate to the objective level of complexity of parenting issues, and with consideration being given amongst other things to banning 'disappointment fees'

and

iii. capping total fees by reference to the total pool of assets in dispute, or any other regulatory option to prevent disproportionate legal fees being charged in family law matters, and

iv. any mechanisms to improve the timely, efficient and effective resolution of property disputes in family law proceedings;

i. capping total fees by reference to the total pool of assets in dispute, or any other regulatory option to prevent disproportionate legal fees being charged in family law matters

For women experiencing family violence, access to legal services is a critical aspect of their survival and recovery. Family violence victims are 10 times more likely than others to have legal problems and a massive 16 times more likely than others to have family law problems. Private legal representation in family law is expensive and free legal assistance in family law, for the most disadvantaged, is difficult to access.[12]

When legal problems are not addressed they can leave victims of violence at immediate risk of injury or death. Over the longer term, unaddressed legal problems can lead to stress-related illness, physical ill health, relationship breakdown, loss of income or financial strain, and housing insecurity. This leads to significant downstream costs to other publicly funded services such as health, housing and financial support

Women experiencing family violence and who are not able to access free legal help early often negotiate parenting and property arrangements that are not in their best interests or the best interests of their child(ren). WLSV has represented many women who have negotiated in the "shadow of the law" without access to legal advice and have applied "urban myths" to resolve disputes with their former partners. One area of law that is problematic, without proper legal advice and representation, is how the presumption of equal shared parental responsibility is applied. Our own experience and also established research has demonstrated that references in the *Family Law Act* to "equal time" and "equal shared parental responsibility" has led to incorrect interpretations in the community of what "equal" actually means. The urban myth is that parents have an automatic entitlement to spend equal with their children, despite family violence. This often corresponds to 50-50 time arrangements.

The feedback received through the Small Claims, Large project also provided us with useful insights on the impact that the system itself has on the cost of accessing the system. Clients often reported that were unable to get the legal help they needed because lawyers would often advise that it wasn't worth pursuing their small claims because the legal costs and entitlements were disproportionate. Landers and Rogers, who were providing pro bono legal support to our clients costed one file. For this client, legal costs amounted to 126% of the entitlement won. The entitlement amounted to approximately $40k of superannuation. The delays caused by the client's uncooperative former part and the complex processes that needed to be followed, led to extra time being charged by the lawyer in this case. If it wasn't for the pro bono support our client received she would not have been able to pursue her claim.

WLSV recommends that the Australian Government boost funding to community legal centres, including specialist women's legal services, national family violence prevention legal services, Aboriginal and Torres Strait Islander legal services and legal aid commissions to increase access to legal assistance for the most disadvantaged members of the community in the family law system. The Australian Government should also create a nationally consistent specialist legal aid funding pathway for family law property and parenting cases involving family violence.

ii) any mechanisms to improve the timely, efficient and effective resolution of property disputes in family law proceedings

[12] WLSV's annual impact report 2018-2019

We refer again to WLSV's Small Claims, Large Battles report which includes 15 recommendations for reform which will improve the timely, efficient and effective resolution of property disputes in family law proceedings. WLSV's recommends the Committee support the 15 recommendations including:

- Streamlining court processes (recommendations 1-3)
- Improving financial disclosure (recommendation 4)
- Superannuation (recommendations 5-8)
- Dealing with joint debts (recommendation 9)
- Responding to family violence (recommendations 10-12)
- Role of state and territory courts (recommendation 13)
- Transfer of property and enforcing orders (recommendation 14 and *15)*

These reforms are crucial for ensuring that the system is fair for women seeking fair financial outcomes after relationship breakdown. AIFS research has demonstrated that family violence has had a negative impact on property settlement outcomes. In one study, women who reported experiencing severe abuse were approximately three times more likely to receive less than 40% of the property pool.

WLSV commends the Australian Government for committing to implement key recommendations from the report. This commitment was announced in the Women's Economic Security Statement (WESS) in November 2018[13]. The Australian Government announced[14], the funding of three key recommendations from WLSV's Small Claims, Large Battles project:

- $5.9 million in new funding to federal family courts to conduct a two year trial of simpler and faster court processes for resolving family law property cases with an asset pool of up to $500,000 (excluding debt).
- $3.3 million in new funding for the Australian Taxation Office to develop an electronic information-sharing system to give the family law court improved visibility of parties' superannuation assets when making property orders.
- $10.3 million to Legal Aid Commissions for a two year trial of lawyer-assisted mediation for property matters with asset pools of up to $500,000 (excluding debt), in each state and territory.

Subject to the outcomes of the lawyer-assisted family law property mediation trial, ongoing funding should be provided to allow more vulnerable individuals to receive legal assistance to access a small property settlement post separation.

Subject to the outcomes of the small claims property pilots in the Federal Circuit Court of Australia (FCC), over the next 2 years, the FCC should be provided with more resources to operate small property court services at all FCC locations across Australia, including at regional circuit court locations

Simplifying superannuation splitting in the family law system

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[13] https://www.ag.gov.au/FamiliesAndMarriage/Families/Pages/supporting-women-to-recover-financially-after-separation.aspx
[14] https://www.ag.gov.au/FamiliesAndMarriage/Families/Pages/supporting-women-to-recover-financially-after-separation.aspx

WLSV's Small Claims, Large battles report highlighted the barriers that women are facing accessing small entitlements to superannuation after relationship breakdown through the family law system. The two main barriers are financial disclosure and the complexity of the system itself. The first barrier was addressed in the WESS announcement outlined above. The ATO is currently designing the information sharing system with the courts.

Over the past year WLSV has been working closely with key stakeholders in the superannuation industry including Women in Super and HESTA, to address the second barrier – the complexity of the system. Progress is being made. Key to these reforms are the implementation of recommendations 5-8 of the Small Claims, Large Battles report, to simplify the superannuation splitting in Australia. In September last year, an industry roundtable was held to discuss the reforms and how the superannuation industry could develop and endorse a simplified template order. WLSV is continuing to lead the industry towards reform, in partnership with Women in Super and HESTA, this year. Staff from the Attorney General's Department (Family Law division) are assisting WLSV to progress these reforms. The superannuation industry has to date agreed in-principle to a standardised superannuation splitting order template and procedural fairness letter. We invite the Committee to seek an update from WLSV prior to the final report of the Committee being handed down.

e. the effectiveness of the delivery of family law support services and family dispute resolution processes;

Legally-assisted family dispute resolution processes should play a greater role in the resolution of disputes involving family violence or abuse for both property and parenting matters. We strongly support the expansion of a legally assisted family dispute resolution (LAFDR) model as a form of alternative dispute resolution in the family law system.

WLSV has been providing legal representation in mediation services since 2009 and has developed a sophisticated understanding of the benefits of legally assisted dispute resolution through this experience. WLSV provides legal representation through a number of services including Victoria Legal Aid's Family Dispute Resolution Service (VLA FDR service) as well as through a partnership with the Melbourne Family Relationship Centre and the FMC Mediation Centre.

There is a common belief within the family law sector that FDR is inappropriate in cases where there is family violence and litigants are self-represented. However, mediation through FDR is not solely the domain of self-represented litigants. The experience of WLSV in providing Legally Assisted FDR (LAFDR) is that with the support of trauma-informed mediators and lawyers, potential power imbalances between parties can be addressed. Family violence cases can be safely and effectively be supported in the mediation process.

Based on our experience, we can identify advantages of a LAFDR model as follows:

- it is cost effective and can often be the only avenue available to parties who do not want to or cannot access court processes
- the confidentiality of the process and the supportive assistance of a legal adviser has enabled parties to engage in a meaningful way in negotiating and reaching a resolution;
- legal assistance can easily and quickly dispel the myths of equal shared time;
- it allows parties to disclose allegations of family violence and for such allegations to be recognised and managed by legal representatives and skilled FDR practitioners because safety concerns can be discussed freely;

- it allows dialogue to open up because parties feel safer, with proper support, in admitting to past behaviour and agreeing to change behaviour.
- Parties can raise or take into account vulnerabilities such as mental health issues and drug and alcohol issues;
- LAFDR can be done safely by shuttle conference either over the phone or in safe rooms and therefore is able to provide access to vulnerable clients in regional areas who wouldn't otherwise have access to legal representation and support;
- it can be child inclusive and responsive to the needs of families.

A VLA report published in 2012 highlighted the value of lawyer-assisted family dispute resolution in the VLA's Roundtable Dispute Management service and supports our experience of LAFDR. The report titled, "*Thinking Outside the Square: the role of lawyers in Roundtable Dispute Managemen*t"[15] found clients valued the ongoing legal advice and reality checking provided by lawyers. The report also found that clients felt their lawyers supported them through by explaining the process and options and advocating important points when needed. This was particularly helpful for clients who experience additional complex factors such as family violence.

The AIFS evaluation of the CFDR pilots, in 2012 also provides useful insights into how a multi-disciplinary approach to the LAFDR model could be developed.

Relevant to any discussion around LAFDR is the access to legal representation for family violence victims in the family law system and an increase in government funding for LAFDR models. There is a growing number of family violence victims who are falling through the ever growing cracks of the legal aid system. Women find themselves unable to access legal aid due to the narrowing of the legal aid family law guidelines and who are without the financial means to pay the fees of private family practitioners.

We note that WLSV's Small Claims, Large Battles report includes recommendations that the Australian Government fund an expansion of existing models of legally assisted Family Dispute Resolution, to give greater access to vulnerable parties seeking property settlements.

Recommendation: Expand existing models of Legally Assisted Family Dispute Resolution (LAFDR) in family violence matters

- The Australian Government should expand existing models of Legally Assisted Family Dispute Resolution (LAFDR) in family violence matters
- The Australian Government resource Legal Aid Commissions to broaden availability for priority clients. This would enable them to access existing models of legally assisted family dispute resolution, with better outcomes for the most vulnerable.
- A nationally consistent risk assessment framework should apply to all LAFDR models to ensure that safety risks are effectively identified and managed throughout the process.

WLSV acknowledges that the Australian Government has already committed $10.3 million to Legal Aid Commissions for a two year trial of lawyer-assisted mediation for property matters with asset pools of up to $500,000 (excluding debt), in each state and territory. Subject to the

[15] Allie Bailey, *Thinking Outside the Square: the role of lawyers in Roundtable Dispute Management, VLA,2012*

outcomes of the lawyer-assisted family law property mediation trial, ongoing funding should be provided to allow more vulnerable individuals to receive legal assistance to access a small property settlement post separation.

f. the impacts of family law proceedings on the health, safety and wellbeing of children and families involved in those proceedings;

One of the main impacts of family law proceedings is the risks to safety and financial security for family violence victims. WLSV's social workers, who support the women, have this to say:

> *In addition to the financial burden of attending appointments and court dates, the court process itself presents a number of emotional and physical safety risks for women and children that they have to manage themselves in the background. Where there has been family violence, women and children are frequently re-traumatised by being forced to confront perpetrators whether via the court room, through contact with their lawyers or having to respond to affidavits. These affidavits are sometimes lengthy and confronting describing in detail the negative impact that the family violence has had on their mental wellbeing and capacity to parent effectively. Having to recall experiences of violence and abuse in detail re-traumatises women, they often become distressed, anxious and depressed. This leads to the recovery process being delayed because of a lack of control and external agency caused by the family violence. These feelings are exacerbated by a process that reinforces the continuing sense of powerlessness and hopelessness. Our clients often experience depression and exhaustion as they travel through the process, especially where their perpetrators abuse processes to bring the women we represent back to court more often than necessary.*
>
> *Safety risks in the family courts are not being managed by court staff when women enter the system. We conduct an internal risk assessment to identify and manage the safety risks but the court doesn't.*
>
> *The majority of women we counsel, express at one time or another that they are simply too exhausted to continue with a court process. They often report that they feel misunderstood by legal professionals and court staff who display a lack of understanding of the safety and financial risks. Having interactions with people in positions of power, including judicial staff, who victim blame and perpetuate myths about family violence further disempowers our clients.*
>
> *We supported Mae through her matters. Towards the end we formed the conclusion that Mae's mental health was seriously at risk. She was being continually triggered by being forced to navigate the family violence and family law systems and started talking in a way that suggested she was at risk of suicide. On top of the trauma and uncertainty of her situation, Mae was emotionally exhausted by having to re-tell her story and re-litigate the question of risk and safety in the many forums over many years.*
>
> *The physical and psychological costs of violence can be significant and have long term impacts on women and their children, not just the short term.*
>
> *Occasionally, due to emotional and physical exhaustion, women have walked away from the process with no property settlement, even when walking away has meant that their financial security has been compromised.*

g. any issues arising for grandparent carers in family law matters and family law court proceedings;

Current legislation allows for parenting orders to be made supporting the needs and reflecting the reality of grandparent carers of children. The legislation gives standing to grandparents to issue proceedings and this is sometimes mistaken as giving non-carer grandparents an entitlement to orders with respect to children in the care of their parents. This can have the negative consequence of disputes between grandparents and parents escalating to court proceedings seeking orders for time with the child, disrupting the parent child relationship.

There can be issues for grandparent primary carers who are responsible for children as a result of child protection proceedings. In Victoria, these carers are generally not parties to the child protection proceedings and their status with respect to the children can lack clarity. The absence of an order for parental responsibility, for example, can impair enrolment in school or authorising medical treatment. A better transition to the family law system for long term grandparent primary carers would be beneficial.

h. any further avenues to improve the performance and monitoring of professionals involved in family law proceedings and the resolution of disputes, including agencies, family law practitioners, family law experts and report writers, the staff and judicial officers of the courts, and family dispute resolution practitioners;

In order for the family law system to prioritise the safety of families impacted by family violence, all family law professionals must have a strong understanding of family law and the complexities of family violence. The current standard of service delivery varies considerably by profession as well as within profession. There is a need for improved and ongoing training and development of family law professionals in family violence and trauma-informed practice. There is also a need for this training to reach beyond family law professionals to those in the legal sector who may work with people affected by family violence such as those that work in criminal law, migration law, tenancy, debt etc.

There is a strong need for change in the culture of practice in the way in which legal practitioners respond to family violence. There is a need to train legal practitioners on how to work collaboratively with other professionals involved in family law proceedings. A collaborative practice keeps safety from family violence at the forefront of the practice regardless of whether the legal practitioner is representing the victim-survivor or perpetrator.

- it is essential that family law practitioners engage in ongoing, comprehensive and mandatory family violence training which includes training about the nature and dynamics of family violence on children and trauma - informed practice (including impact of intergenerational trauma on Aboriginal and Torres Strait Islander people and the impact of trauma on children’s attachment and development).
- family law practitioners also need to engage in cultural competency training, especially in relation to LGBTQIA+, Aboriginal and Torres Strait Islander people, cultural and linguistically diverse communities and people living with disabilities.
- many generalist solicitors undertake family law work, particularly in rural and regional areas’. Therefore training in family violence should become mandatory in earlier stages of a legal practitioners career by incorporating into the Family Law unit at University and add family violence as a competency standard for entry-level family lawyers.

- WLSV's Safer Families does this for CLC family law specialist and generalist lawyers. It has also been delivered to private practitioners and beyond.
- WLSV's Safe and Protected was delivered to CPLO's, DHHS staff etc. with success however lack of funding prevented further roll-out.

Family consultants are not required to undertake formal training, accreditation or evaluation. Training should be mandatory otherwise there is a risk that family reports, which are so heavily relied upon, will make recommendations that are likely to cause increased risk of harm to victim-survivors and children. Currently the appropriate avenue for complaints about family reports is within cross-examination or directed to a Regional Dispute Resolution Coordinator or senior family consultant. WLSV recommends the establishment of an oversight mechanism and complaints process.

Judicial officers, especially those appointed to the Federal Circuit Court need ongoing and mandatory training on family violence, particularly in how it can impact children. Judges appointed to the Federal Circuit Court do not need to be deemed suitable to preside over family law matters because the court exercises jurisdiction in federal law matters, however a large portion of family law matters are heard in the court. Decision making that does not take into account the dynamics of family violence and trauma can result in children being further exposed to family violence.[16]

The use of training to develop family violence competency for judicial officers is limited by the principle of judicial independence, as judicial officers cannot be compelled to attend or participate in training following appointment to the bench. Therefore it is critical that judges with family violence expertise are appointed to the federal family courts.

Funding needs to be given to experienced trainers who have expertise in training design and delivery, family violence and legal practice experience to develop and manage family violence training. There needs to be a cycle of continuous improvement and continuing professional development. Training needs of practitioners also need to be constantly reviewed as knowledge and skills requirements change and advance.

Specific evaluations for all trainings, together with trainer debriefs and impact evaluations should be done to enable tracking of the immediate impact of the program and the potential strengths and weaknesses of the ongoing approach.

WLSV recommends:

- The Australian Government fund options to ensure regular and consistent training on family violence, cultural competency, LGBTQ awareness and disability awareness for all professionals in the system, including for family law judicial officers, lawyers and interpreters.
- This training be developed so that it is comprehensive, ongoing and tailored. It also must address unconscious bias and the unique needs and experiences of diverse communities
- The Australian Government establish a national accreditation and monitoring scheme for all for professionals who prepare family reports and for children's contact services. The scheme include mandatory training on family violence, working with victims-

[16] SPLA report

survivors of trauma, cultural competency, LGBTQ awareness and disability awareness

- The Australian Government should introduce legislation to provide for the guarantee that all judicial appointments will have adequate family violence and family law expertise[17]

i. any improvements to the interaction between the family law system and the child support system

WLSV supports the current legislative separation between the family law system and the child support system. The clear distinction between financial responsibility for children and parental involvement with children needs to be maintained. The enforcement of payment through administrative rather than court processes reduces the burden on parents caring for children.

Many of our clients continue to care for children without adequate financial support from their children's fathers for a range of reasons. Some who are victims of family violence are too afraid to seek child support. Victims of family violence are exempt from the reduction in Family Tax Benefit which may apply when a parent does not seek child support. This is designed to reduce risk of family violence as a consequence of seeking child support from the perpetrator parent. An unintended consequence of this exemption is that some victim/survivors receive the impression and report that they are not entitled to child support because of family violence. In this situation the perpetrator does not contribute child support. His only contribution to the child's economic needs may be limited to immediate costs while the child is in his care.

Other clients do not receive adequate or any child support where liable parent receives income outside the PAYE income tax system. Assessment for child support purposes of this income, the formulation of which is often designed to minimise income tax liability, can be delayed, problematic or inaccurate. Disguising income to reduce payment of child support or simple refusal to pay can be a continuation of family violence in the form of economic abuse. Consideration should be given to improving the effectiveness of the child support system where parents are self employed, receive income other than as PAYE tax payers or are part of the "gig economy".

j. the potential usage of pre-nuptial agreements and their enforceability to minimise future property disputes; and

WLSV has no submissions to make on this term of reference.

k. any related matters

The case against presumptions

It is WLSV's strong view that presumptions in family law can lead to unsafe and unfair outcomes. WLSV supports the discretionary nature of decision making in family law which places a greater emphasis on what is in the best interests of a child or children in parenting matters and fair financial outcomes in property matters. Decisions about children and property

[17] WLSA's Safety First in Family law Plan Step 3

should be made on a case-by case basis in the best interest of the child and placing a greater focus on safety and risks to children, and not on parental rights.

The majority of matters involving the application of family law after relationship breakdown are negotiated in the "shadow of the law" without any real court involvement. It has been well established by academic research that the presumption of equal shared parental responsibility has been misinterpreted in the community as meaning 50-50 equal time, even where family violence is present.

WLSV notes that the ALRC recommended that the following presumptions be introduced into the Family Law Act:

- Presumption of equality of contributions during the relationship
- Presumption of superannuation assets to be split evenly between the parties.

WLSV does not support these presumptions being introduced into the Family Law Act and urges the Committee to reject presumptions in family law. Further WLSV strongly supports the removal of the presumption of equal shared parental responsibility.

The presumption of equal shared parental responsibility

The references in the *Family Law Act* to "equal time" and "equal shared parental responsibility" inappropriately privilege the expectations of parents and some community members over the best interests of children, and their safety. As noted above, it can also place undue pressure on victims of family violence to allow children to spend time with an abusive parent. The story highlighted below demonstrates how this plays out in agreement making, particular for interim orders made by consent.

Equal time does not apply in cases where family violence is established in a proceeding. However, because it is often difficult to "prove" violence/abuse to the satisfaction of the Court, the presumption and consideration of equal time is sometimes still applied when the child has been abused or exposed to family violence. This can result in courts making orders/agreements that include shared parenting provisions which unnecessarily put women and their children at risk of further harm from a perpetrator they are trying to escape. The following is an interview I shared with the ALRC in 2018[18]:

> *"When representing a young 19 year old single mother in a LAFDR process, I discovered, before the LAFDR took place, that she had agreed to an arrangement with the father of the child, that up until the child turned 1 she would be the primary carer of the infant and upon the child turning 1 the arrangement would be that the child would spend one week on and one week off with the father. When I quizzed her about this arrangement she simply said they both agreed to this because they believed that "the law says that it has to be equal time for both parents". The reason for the LAFDR process was that the infant's father was seeking to formalise the arrangement in either a parenting plan or via consent orders. Fortunately with the assistance of the lawyers, the arrangement reverted back to something more appropriate for the needs of the infant child, which included short periods of time with the secondary attachment figure (in this case the father) and the ongoing primary care giving with the primary attachment figure (in this case the mother).*

[18] WLSV submission to ALRC issues paper. Available online at www.womenslegal.org.au

WLSV strongly supports changes to the provisions in Part VII of the *Family Law Act* which would see the removal of the presumption of equal shared parental responsibility and the language of equal shared time. WLSV notes that both the SPLA Committee and the ALRC recommended removing the presumption of equal shared parental responsibility.

Recommendation: Oppose the use of presumptions in the family law system

The Australian Parliament should introduce and support legislation that would remove the presumption of equal shared parental responsibility and the language of equal shared time from Part VII of the Family Law Act.

Any proposals to introduce legislative presumptions into the Family Law Act, to determine property and financial cases should be opposed.

De-identified case studies

We pay our respects to the women whose de-identified stories appear in these pages, and to their courage in sharing their traumatic experiences in the hope that others in similar circumstances may avoid the systems abuse they have endured, sometimes for many years.

Mae's story

An example of

- **post separation violence**
- **systems abuse by the perpetrator of family violence**
- **cross jurisdictional traps and gaps**
- **the need to identify family violence early in proceedings**
- **how IVO processes can be abused by perpetrators to continue the control and abuse through the legal system**

Mae speaks English as a second language and is the mother of two children of primary school age. Her ex-partner, Tin, perpetrated family violence against her over an extended period, and continued to do so years after she separated from him.

Soon after Mae managed to leave the relationship, Tin initiated family law proceedings in the Federal Circuit Court (FCC) seeking parenting orders for the children. He repeatedly obstructed proceedings by causing adjournments and delays by failing to engage in good faith with court-ordered processes.

Parallel proceedings took place in the Magistrates Court in relation to police-initiated intervention orders (IVO) against Tin for the safety of Mae and the children. The family law proceedings were adjourned by the FCC, to await the outcome of proceedings in the intervention order contest and so as to avoid the risk of Tin's self-incrimination.

The contest hearing for the IVO proceedings were adjourned multiple times. Initially, the Magistrate preferred the IVO hearing take place after family law proceedings had finalised. A subsequent scheduled contest hearing was adjourned because no interpreter was available.

Despite there being an IVO in place to protect Mae and her children, Tin continued to breach the IVO and was convicted numerous times. Tin breached the IVO by physically assaulting Mae and continuing to contact her.

In response to being charged for a breach of the interim IVO against him, Tin contested the IVO and claimed it was actually Mae who was violent towards him. He applied for and obtained an interim IVO against Mae. WLSV assisted Mae to challenge the interim IVO and, ultimately, were successful in having the application dismissed. In the meantime, Mae had to defend criminal charges for breaching the interim order in circumstances in which she was manipulated by Tin. Tin claimed he was seriously ill and begged Mae to bring the children to see him one last time. Mae felt that she had to meet his demands and feared the consequences if she didn't.

Over a course of two years Mae had to deal with many applications made by her violent former partner, as well as court adjournments and delays as a result of his failure to cooperate with court processes. There was no recognition of or warning from the courts against Tin's systems abuse.

During that time, the children's time with Tin was supervised at a contact centre. The contact centre expressed concerns on a regular basis about Tin's behaviour with the children during supervised contact.

Throughout, Mae was responsible for her two children while maintaining employment to financially support them. Tin maintained steady employment in the past, but in the course of proceedings did not worked and did not paid child support. Tin was represented by several lawyers at different times and on occasions represented himself.

The final orders made by the FCC provided that Mae have sole parental responsibility for the children and continued to require supervision of the limited time the father was to spend with them due to ongoing safety concerns.

Alice's story

An example of

- **systems abuse by the perpetrator of family violence**
- **post separation economic abuse**
- **ineffective enforcement processes**

Alice, a victim of years of family violence during her marriage to Peter, presented to the Family Advocacy and Support Service (FASS) duty lawyer. The court had made final orders in relation to the parties' property a year previously. One of those orders was that Peter must pay a debt to a bank that was in Alice's name. Peter did not comply with that order.

When we met Alice she had returned to court 11 times in an attempt to enforce this order. The court made costs orders on three occasions against Peter but still he did not pay the debt as ordered.

By the time Alice came back to court for the 11th time she had received assistance from a Financial Counsellor who had succeeded in getting the bank to waive the debt entirely. As there was no longer any debt to be paid by Peter, the only outstanding matter was the existing costs orders made against him. Any enforcement proceedings were likely to prove fruitless.

Ultimately there was no penalty suffered by Peter for failing to comply with a court order. Alice's credit rating remains affected.

Tara's story

An example of

- **systems abuse by the perpetrator of family violence**
- **post separation economic abuse**
- **Ineffective enforcement processes**

Tara's partner Gareth was physically and emotionally abusive towards her and their three children throughout their relationship. He was financially controlling of Tara and secretive about his income and their finances. Tara did not have her own bank account or independent access to joint funds. Within months of their relationship ending Tara became aware that Gareth withdrew around $63,000 of savings from his account.

Represented by WLSV, Tara sought and obtained an injunction to prevent Gareth from making further withdrawals. She also obtained procedural court orders for Gareth to make full and frank financial disclosure and account for the money he withdrew.

For eight months Gareth, who had legal representation, failed to provide the financial documentation ordered. No negotiations or agreement could occur at the court ordered conciliation conference because Gareth's financial situation was not known. There was no legal aid available for her property matter and she could not meet the cost of a barrister to argue for her full entitlement in a final hearing.

To ensure she received some financial settlement, Tara was made an urgent application for property orders for her to receive 100% of the balance of Gareth's known savings. Tara, who had care of their three children, received the meagre balance of the account which was known to her, being around $28,000.

Ani's story

An example of

- **failure of family law practitioners to appreciate nature and impact of family violence**
- **continued coercive control post separation and post court orders**
- **the danger of the 50:50 equal time myth**

Ani, mother to two children, six years and under, presented to the FASS duty lawyer service to seek advice in relation to reversing an agreement that she had entered into under the coercion of her abusive ex-partner, Rafi. English is not Ani's first language and she requires things to be explained to her with care.

Parenting orders, were made by consent on a final basis at the first hearing date of family law proceedings. The orders provided that the children were to live with Ani and on alternate weekends travel from metropolitan Melbourne to northern Victoria to spend time with Rafi. The parties' lawyers' submissions, and therefore the orders made by the judge, did not take into account the impact this travel would have when the children were of school age. Significantly, no attention was paid to the risk posed to Ani by changeovers taking place at a halfway point despite the long history of Rafi's violence toward her. The issue of Rafi's violence was not examined.

Despite the orders being made, and out of sight of their lawyers, after the hearing Ani agreed to a different arrangement. Rafi insisted he should have the children with him half the time and proposed a parenting plan for the children to live with him for two weeks each month. Ani remained fearful of Rafi felt compelled to agree. This resulted in the elder child attended two different kindergartens for two years. As that child was about to start school, it was clear that agreement was unworkable. The final orders that had been made would not work either for a child who needed to be able to cope with starting school.

The matter became the subject of fresh court proceedings.

Nyala’s story

Nyala’s story

An example of:

- **Risk to mother and children when family violence not determined early in family law proceedings**
- **Example of how an FVIO was taken into account in family law proceedings**

Shortly after Nyala met her former partner Farouk she fell pregnant. The relationship quickly deteriorated due to the physical abuse that Farouk perpetrated against Nyala over several years. On one occasion Farouk tried to strangle and choke her. Nyala called the police who intervened to protect her. Prior to this incident Farouk had grabbed and twisted Nyala’s arm causing injury and had on multiple occasions threatened to kill Nyala after physically assaulting her. Nyala reported the family violence to her family doctor who treated her. Fearing for her safety and the safety of her young 2 year old child, Nyala decided to escape by moving to another state in Australia. At this stage an interim intervention order was in place in the state she moved to which protected herself and her child.

Farouk applied to the family courts to recover the child from the new state to force Nyala to move closer to where he was living. Nyala resisted this application as she feared for her safety and the safety of her child. Farouk discovered the state that Nyala was living in and moved to be closer to her. Nyala, fearing for her safety, felt that she had no other option but to consent to the family law proceedings being transferred to the new state she was living in.

Despite initiating the proceedings, Farouk did not genuinely engage in the proceedings and court processes. This caused Nyala significant stress not knowing whether she could safely protect herself and her child from having contact with Farouk. On many occasions proceedings had to be delayed by more than 6 months because Farouk didn’t turn up and wouldn’t comply with the court orders.

When the substantive family law matter finally came before a judge, a year after the application was made, an independent children’s lawyer was appointed and the court issued an interim order which stated that Farouk could spend supervised time, 4 hours a week, with the child at a contact centre. Changeover was to take place at the contract centre and time supervised by professional supervisor. The court also ordered Farouk to attend a psychiatrist for psychiatric assessment so that the court could work out any mental health risks that may pose a risk to the child.

Farouk attended the psychiatric appointment with Dr M. Dr M handed down her report, 18 months after the original application was filed by Farouk, and identified that Farouk had serious mental health issues that needed to be dealt with over time. Dr M also concluded that Farouk needed professional assistance to deal with his “anger issues”.

A court hearing took place several months after the report was issued and the court made further orders requiring the father to engage with a nominated mental health professional. The child’s time with Farouk was by this stage to be supervised by the maternal grandmother, subject to the maternal grandmother providing the ICL with a written undertaking. Prior to the child’s supervised time with Farouk commencing, Farouk was required to provide the court with 3 favorable observational reports to the ICL. The court was trying to satisfy itself that this arrangement was in the best interests of the child.

Nyala, in the meantime, still fearing for her safety and the safety of her child, was determined to pursue the protection of a final family violence intervention order. When the local Magistrate’s court heard the evidence to determine the final orders, Farouk failed to turn up. The court heard the evidence and issued the final intervention order to protect Nyala and the child. Later WLSV’s lawyer would discover, after she subpoenaed police materials, that the father had an indefinite IVO against him to protect a partner from a former relationship and was also defending criminal charges of assault in another state.

Despite the final FVIO being granted in the Magistrate’s court, several months later, after the family law matter had returned to the family court, the court ordered that the child’s time with the father be supervised by the paternal grandmother and/or maternal uncle once a fortnight. Further orders were made 1. requiring the father to re-engage with his mental health professional 2. Restraining him from drinking when spending time with child 3. Both parties to attend a family consultant.

Six months later the parties met with the family consultant. By this time years had passed. Farouk admitted to using ice, cocaine and pills after he became unemployed, and also began dealing in drugs. Despite these revelations the family consultant recommended in the report to the court, that the child should have unsupervised time with the father commencing as soon as possible, with the first two occasions being from Saturday to Sunday, and thereafter, Friday afternoon to Sunday afternoon.

When the matter next before the court, Farouk appeared in person representing himself. The court ordered Farouk to submit to random urine drug screens and re-engagement with his mental health professional addressing: anger management, alcohol and drug and their impact on his anger management. Farouk was also ordered to file materials by the due date, otherwise the matter may proceed on an undefended basis. After this hearing Farouk refused to engage with a mental health professional, refuse to provide supervise drug screens as requested by ICL. He stated clearly that he would not submit to any such scrutiny. He failed to submit any documents to the court.

Fearing for her safety and the safety of her child, Nyal made the decision to cease all contact with Farouk. Farouk’s violence escalated not only towards Nyal but also towards the ICL and WLSV’s lawyer, This violence included threats to kill. Nyala’s address has been and is currently unknown to Farouk.

At the final hearing, the father did not attend court. He had not complied with any of the court orders to attend on the mental health professional, undergo drug screens or file court

documents. The court decided to determine the dispute on an undefended basis. Both Nyala and the ICL agreed to the court orders which stated that the child's time with Farouk was reserved until he could prove he was positively complying with all court orders.

At the time of writing Farouk is waiting for the criminal charges laid against him by the police, for the acts of violence perpetrated against Nyala, to be heard in court.