

Women's Legal Service Victoria

**Response to the draft  
National Plan to End Violence  
Against Women and Children  
2022-2032**

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## Acknowledgement of Country

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Women's Legal Service Victoria acknowledges and pays respect to the traditional custodians of the land on which we work, the Wurundjeri People of the Kulin Nation, and all Aboriginal and Torres Strait Islander people across Australia. We pay respect to Elders past, present and emerging.

We honour Aboriginal and Torres Strait Islander peoples' ongoing connection to sea, waterways and Country.

We also recognise the strength and resilience of Aboriginal and Torres Strait Islander people, especially those who have been affected by domestic and family violence.

## About Women's Legal Service Victoria

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Women's Legal Service Victoria is a not-for-profit specialist organisation that has been providing free specialist legal services to women since 1982. We work with and for women to address legal issues arising from family violence and relationship breakdown.

Women's Legal exists to help build a gender equitable country. Our unique contribution to this vision – as lawyers, advocates and educators – is to work alongside women experiencing disadvantage to promote their rights to live free from violence and make informed choices about their relationships.

Women's Legal specialises in family violence, family law, migration law, child protection law and victims of crime assistance – recognising the intersection between the jurisdictions. We focus on women's safety, recovery from violence and economic security. We do this by:

- Providing legal advice and representation to women, with a wraparound model of service delivery where women are also supported by social workers and financial counsellors, depending on their needs
- Advocating for law and policy that respects and promotes the rights of women
- Building the capacity of other professionals and communities to identify and respond appropriately to legal need

Women's Legal puts women – individually and collectively – at the centre of everything we do. As specialists in family violence, we work across the spectrum from tertiary response to primary prevention of gendered violence. We work with women to achieve optimal legal and wellbeing outcomes, and we integrate what we learn in our policy reform advocacy, to put forward well-informed systemic and structural solutions that will improve responses to the safety and wellbeing needs of women and children and work towards the elimination of violence.

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## 1. Strengthening the National Plan

### Achieving gender equality and freedom from violence

The *National Plan to End Violence Against Women and Children 2022-2032* is an historic opportunity for the Australian Government to commit to take action to substantially reduce gender-based violence.

The draft Plan, however, falls short of articulating an evidence-based and expert informed plan and strategy for how to achieve its stated vision - a country where women and children live free from violence.

To work towards the elimination of violence against women and children, we must transform the social, political and economic factors that cause it.

Experts have advocated throughout consultation processes for substantive policy action to rectify structural barriers to safety and equality. This expertise is not reflected in the draft Plan.

The draft Plan underutilises the legislative and policy mechanisms available to the Federal Government that would improve the safety of women and children and work towards the elimination of gendered violence. The Plan shifts focus to individuals' attitudes and to policy areas that are largely outside the responsibility of the Commonwealth. While collaboration with and between states and territories and the eradication of violence-supportive attitudes are important elements of a national plan to end violence against women and children, key areas of Federal Government responsibility are inadequately reflected in the Plan.

Our detailed response provides feedback and recommendations on specific aspects of the draft National Plan. We emphasise the following actions as urgent priorities for the National Plan to End Violence Against Women and Children:

- Address the socio-economic structural drivers of gendered violence and material barriers to women and children's safety
- Apply an evidence-informed safety lens with consistency across all areas of law and policy that are the jurisdiction of the Commonwealth, and commit to eliminate all barriers to safety
- Recognise Commonwealth family law as a family violence jurisdiction and prioritise safety by
  - Ensuring the early judicial determination of the issue of family violence
  - Removing the legislative presumption of equal shared parental responsibility

## 2. Addressing the drivers and forms of gender-based violence

Consultation survey: *“The draft National Plan includes a clear explanation of the prevalence, drivers, and different forms of gender-based violence in Australia”.*

### Policy commitments within the jurisdiction of the Commonwealth

The preamble to the Foundation Principles and National Pillars in the draft Plan outlines evidence on the scale, forms and drivers of gendered violence in Australia, and discusses mechanisms available to the Commonwealth to achieve safety and gender equality outcomes. However, the draft Plan itself focuses mainly on policy areas that are outside the jurisdiction of the Commonwealth.

The draft Plan makes scant reference to the legislative and policy mechanisms available to the Commonwealth that would, if leveraged, make a substantial difference to the safety and wellbeing of women and children. To ensure all opportunities to end violence against women and children are maximised, and the evidence and expert input to the Women’s Safety Summit and the nation-wide consultations is reflected, key omissions that should be addressed in the forthcoming National Plan include:

- Clarity on the roles and responsibilities of all stakeholders to the National Plan
- Address the structural and systemic drivers of violence against women
- Improve women’s economic security
- Eliminate barriers to help-seeking and recovery, including for women on temporary visas
- Strengthen response systems nationally, and cross-jurisdictional risk management
- Continued family law reform
- Increased funding for legal assistance, to rectify inequities in accessing justice
- A governance structure for reform implementation that demonstrates public accountability
- A separate, dedicated National Plan for Aboriginal and Torres Strait Islander women and children
- Build evidence on the efficacy of perpetrator interventions to inform future approaches
- Long-term investment in primary prevention of gendered violence

### Drivers of violence against women

The draft Plan obscures the well-established drivers of violence against women and instead lists contributing factors, such as alcohol and other drug use, as causal. The evidence is clear that the key cause of violence against women is gender inequality<sup>1</sup>. The causes of violence in the draft Plan have been confused with factors that can contribute to the use of violence. The repositioning of contributing factors as causes of gendered violence in the draft plan is a withdrawal from best practice models and frameworks. If uncorrected, this would embed in the National Plan an outdated understanding of gendered violence and skew the direction of action to prevent it.

<sup>1</sup> Our Watch (2021). *Change the story: A shared framework for the primary prevention of violence against women in Australia* (2nd ed.). Melbourne, Australia.

## Economic gender inequality is a driver of violence and barrier to safety

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Family violence can have life-long impacts on women's economic wellbeing. Women over 55 are the fastest growing cohort experiencing homelessness. At retirement, women's superannuation payouts are, on average, 57 per cent of those of men. Key contributors to the gender pay gap are women's disproportionate responsibility for unpaid caring work, the prevalence of workplace sexual harassment, and the over-representation of women in lower paid and insecure professions.

Economic inequality is both a key driver of gendered violence and a barrier to women's safety. Given the magnitude of its significance to achieving safety and gender equitable outcomes, economic equality and financial security must be prioritised in the National Plan.

The Commonwealth must commit to take substantive policy and legislative action, and embed strategies across all of the National Pillars. Priority actions include:

1. Meet the needs of financially disadvantaged women
  - Income support that enables women and children to escape and recover from violence
  - Safe and secure housing to enable women and children to escape and recover from violence
  - Enable women on Temporary Visas to escape and recover from violence by providing access to income support
2. Equitable and safe workforce participation
  - Paid parental leave that is accessible to both parents based on a shareable amount
  - Implement all recommendations of the Australian Human Rights Commission's Respect@Work report and eradicate workplace sexual harassment
3. Remedy the lived impact of women's disproportionate share of unpaid work
  - High-quality, affordable early childhood education and care
  - Reform the superannuation system to better reflect women's full contributions (both paid and unpaid) and repair the significant gender gap in retirement incomes

## COVID has exacerbated gender inequality and violence against women

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Covid has exacerbated pre-existing structural gender inequality and the prevalence of family violence, and these impacts are expected to worsen. While Covid is discussed in the preliminary section of the draft Plan, strategies to mitigate the gendered impacts of the pandemic are not reflected across the National Pillars

A 2021 study found substantial increases in the severity and frequency of intimate partner violence since the start of the pandemic<sup>2</sup>. Evidence indicates the worst impacts of the pandemic on women's safety is yet to come, as the prevalence of family violence is known to increase in the wake of natural disasters<sup>3</sup>. The impacts of Covid on women and children's safety must be explicitly recognised across all Pillars of the National Plan.

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<sup>2</sup> ANROWS (2021), Intimate partner violence during the COVID-19 pandemic: A survey of women in Australia.

<sup>3</sup> Parkinson, D. (2013), The hidden disaster: domestic violence in the aftermath of natural disaster, Australasian Journal of Emergency Management, Volume 28 Issue 2.

Additionally, women have borne the brunt of the socio-economic impacts of the pandemic. Investment in building social infrastructure, in improved earnings in women-dominated industries, and in universal, gender responsive social protection systems is critical to mitigate the risk of worsening gender inequality in Covid recovery<sup>4</sup>. If worsening gender inequality is to be prevented, policy measures and investment to improve women's economic equality must be a priority of the National Plan under the Prevention National Pillar.

## Preventing and responding to sexual violence

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There is demand nation-wide that the Commonwealth Government take policy and legislative action to respond to the needs of victim-survivors of sexual violence and hold perpetrators to account. In the current political climate, actions to address sexual violence are not integrated throughout the draft Plan, and are arguably downplayed.

The preamble suggests the Plan will reflect the intersections and points of difference between family violence and sexual violence. This is not reflected in the draft Plan. The only part of the draft Plan that discusses sexual violence that is perpetrated in the context of family violence is under the Recovery Pillar, and is limited to recognising that sexual assault and family violence "can co-occur". This downplays the prevalence and lived impacts of sexual assault in the family violence context, and does not acknowledge the complex barriers to reporting and help-seeking that victim-survivors face.

It is crucial that the National Plan prioritise and dedicate resources to reforms that will address the structural, systemic and cultural barriers to disclosure, help-seeking and justice system recourse for women who experience sexual assault in the context of family violence.

The preamble states that recommendations from the *Respect@Work: Sexual Harassment National Inquiry Report* will be implemented in parallel with the *National Plan to End Violence Against Women and Children*. Omitting sexual harassment from the National Plan would be a missed opportunity.

Sexual harassment is a form of gendered violence that is perpetrated in the workplace, and must be prioritised in the National Plan, to align with and augment reforms associated with Respect@Work. Action on sexual harassment must be integrated across the National Pillars, to maximise opportunities to strengthen response services, achieve system integration, and work towards the elimination of sexual harassment altogether.

While we draw attention to sexual harassment and sexual violence perpetrated in the context of family violence, as areas for action that relate to the work and expertise of Women's Legal, we advocate the prioritisation of sexual violence in the forthcoming National Plan and commitment to action across all of the Pillars.

## Applying an evidence-based safety lens

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The draft Plan discusses the need to build consistent definitions of domestic, family and sexual violence, as part of achieving best-practice responses to gendered violence nationally.

The need for cross-jurisdictional collaboration to rectify inconsistencies between states and territories in the application of an evidence-based safety lens is widely accepted. However, it must not serve to

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<sup>4</sup> UN Women (2021), *Beyond COVID-19: A feminist plan for sustainability and social justice*.

obscure the need to rectify inconsistencies in the application of this approach across policy and legislation that is within the jurisdiction of the Commonwealth.

By way of example, women on temporary visas are at heightened risk of family violence and face barriers to safety that are specific to their visa status. Many are unable to access services that routinely screen for family violence, they are ineligible for Medicare and most social security income supports, and they face barriers to help-seeking due to fear of visa cancellation or refusal. For most migration visa categories, when escaping family violence, women and children who are dependents on a perpetrator's visa must find an alternative visa pathway to remain in Australia. This response to the safety needs of family violence victim-survivors is inconsistent with the approach of both the legislation and best practice guides for family law and family law courts.

We draw attention to the need to resolve inconsistencies in the application of an evidence-based safety lens across policy areas within the jurisdiction of the Commonwealth. Leaving inconsistencies in place may be interpreted as a commitment to resolving barriers to safety in selected areas of Commonwealth responsibilities, but not others.

## Coercive control is the underlying dynamic of family violence

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There is urgent need for improvements nation-wide to move away from incident-based responses to family violence and recognise and respond to coercive control as its underlying dynamic. Coercive control is a defining feature of family violence, and it is the experience of coercive and controlling behaviour that victims commonly describe as the worst type of abuse they experience. Coercive control is a known predictor of escalating violence, including domestic homicide.

The draft National Plan risks conceptualising coercive control as non-physical forms of family violence, which reflects a concerning trend towards distinguishing between coercive control and physical forms of family violence. Coercion and control is the intention and/or outcome of physical and sexual violence just as it is the intention and/or outcome of non-physical forms of family violence. Distinguishing coercive control as a stand-alone tactic or type of family violence can create a hierarchy of family violence behaviours, and position non-physical abuse as less harmful. Non-physical forms of abuse are serious and harmful in their own right.

It is critically important the National Plan recognises coercive control not as a *form* of family violence, but as the *dynamic* that characterises family violence. This evidence-based understanding of the nature and dynamics of family violence must be applied across all of the National Pillars, and inform policy action to improve response systems, early intervention programs, community awareness, and the prevention of family violence.

## Technology-facilitated abuse and women at greatest risk

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Technology-facilitated abuse harms women financially, psychologically, emotionally, and can have significant legal consequences. It is a welcome inclusion in the draft Plan. To meet the needs of women who are at greatest risk of technology-facilitated abuse, the forthcoming Plan must commit to addressing all of the ways technology-facilitated abuse is perpetrated.

One such area of technology-facilitated abuse that must be strengthened is recognition that online visa applications is a way in which technology-facilitated abuse is perpetrated against migrant women



and traps them in violent relationships. Visa applications are predominantly completed online and migrant women are often unaware of the information provided on their behalf. As the current law stands, if a victim-survivor of family violence reports that incorrect information has been provided in her application, she is considered to have provided fraudulent information. Effectively this means victim-survivors are held responsible for perpetrators' actions. If a safety lens is to be applied with consistency to the ways in which technology-facilitated abuse occurs, this barrier to migrant women's safety must be reflected in the National Plan so that it can be addressed as a priority.

### 3. Strengthening the foundation principles and their application

*Consultation survey: "The four Foundation Principles... appropriately underpin the National Pillars and actions within the National Plan."*

#### Foundation principle: Gender equality

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Appropriately, the gender equality foundation principle in the draft Plan makes reference to systemic and structural drivers of gendered violence, and the need to address barriers to women's economic and financial security. However, systemic and structural gender inequality, and women's economic and financial security, are not reflected in the National Pillars of the draft Plan.

Commitment to gender equality as a foundation principle in the National Plan requires the application of a gender lens across all areas of Commonwealth responsibilities, including action to address structural and systemic gender inequality. To do otherwise would be to weaken the notion that it is a foundation principle.

#### Foundation principle: Lived experiences are informing policies and solutions

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Throughout the nation-wide consultations attended by Women's Legal and at the Women's Safety Summit, the contributions of victim-survivors were substantial, informative and valued. It is impossible to know the extent to which the diverse experiences of victim-survivors have informed the draft Plan, if at all, because the findings from the consultations have not been released publicly.

The Commonwealth Government should release the consultation findings to enable review of the draft Plan in light of contributors' input, and so that expertise gathered from people with lived experiences can be known and utilised, in implementation of the forthcoming National Plan and beyond.

#### Foundation principle: Closing the Gap

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Women's Legal supports the call by Djirra in Victoria and Aboriginal-led organisations nationally for the establishment of a separate, dedicated National Plan for Aboriginal and Torres Strait Islander women and children.

The plan must be developed in collaboration with Aboriginal and Torres Strait Islander communities and must have dedicated, secure funding attached.

#### Foundation principle: Intersectionality

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The Intersectionality foundation principle in the draft Plan must be strengthened.

An intersectional approach requires a great deal more than recognising difference and disadvantage. Our Watch explains that intersectionality “...recognises that violence and gender inequality exist in relation to multiple and intersecting systems of sexism; racism; colonialism; classism; heteronormativity; cisnormativity; homo-, bi- and transphobia; ableism and ageism; and their corresponding systems of power and privilege. These intersections create systems of structured inequality, characterised by the unequal distribution of power, wealth, income and social status. These intersecting forms of oppression and privilege also affect the prevalence and dynamics of violence against women. This means addressing them is critical.”<sup>5</sup>

As explained in *Change the Story*, an intersectional approach to preventing and responding to violence requires attention to both “...its gendered drivers and the intersecting systems of oppression and discrimination, power and privilege that shape the social context in which this violence occurs, and influence men’s perpetration and women’s experiences of violence.”

We advocate consistency in the National Plan with the approach to intersectionality outlined in the *Change the Story* national framework for the prevention of violence against women.

#### 4. Strengthening pillar one: PREVENTION

Consultation survey: “*The four National Pillars in the draft National Plan provide a holistic approach to identifying and responding to gender-based violence.*”

To date, much of the focus of primary prevention of violence against women across Australia has been on rectifying cultural norms and attitudes that are underlying causes of violence against women. This work targets gender stereotypes that limit women’s roles and opportunities, as well as attitudes that disrespect women and condone violence. These efforts are a crucial component of primary prevention of violence against women.

However, to date there has been inadequate attention to mechanisms to address structural gender inequality. Without policy action that targets the material barriers to women’s safety and independence, efforts to prevent gender-based violence will have limited impact.

The draft Plan does not put forward a contemporary and evidence-based approach to the primary prevention of violence against women. At present, only individual attitudinal and behaviour change is within scope. This is inconsistent with *Change The Story*, Australia’s national framework for the prevention of violence against women<sup>6</sup>. A contemporary and evidence-based approach to prevention of violence against women requires mutually reinforcing action across all of the drivers of violence against women, including action to address structural and systemic gender inequality. The National Plan must reflect the evidence-based national framework and commit to sustained investment and action across the systemic, structural and attitudinal drivers of gendered violence.

<sup>5</sup> Our Watch (2021). *Change the story: A shared framework for the primary prevention of violence against women in Australia* (2nd ed.). Melbourne, Australia, p.46-47

<sup>6</sup> *ibid*

## 5. Strengthening pillar two: EARLY INTERVENTION

Consultation survey: *“The four National Pillars in the draft National Plan provide a holistic approach to identifying and responding to gender-based violence.”*

### Address factors that contribute to child protection intervention

Removal of children from the care of a non-offending parent can exacerbate the profound physical and mental health impacts of family violence, often with long-term effects on child development and wellbeing.

While child protection services are the jurisdiction of states and territories, collaboration between the Commonwealth and the states and territories to achieve nation-wide consistency in best-practice responses to family violence, including in child protection, would considerably improve the likelihood that children remain in the care of a non-offending parent.

Child-focused, trauma-informed responses to family violence require integrated systems that recognise the enduring significance of family and kinship ties for children, including where a child is unable to remain in or be returned to parental care. The National Framework for Protecting Australian Children and the National Plan to End Violence Against Women and Children need to reflect best-practice in responding to family violence and ensure that reforms align with and reinforce holistic responses to children.

To ensure the National Plan reflects the safety and wellbeing needs of women and children who are engaged with Australia’s child protection systems, the Commonwealth must commit to policy action and investment to ensure consistent best-practice responses to family violence nationally.

Moreover, to ensure the National Plan achieves safety and wellbeing outcomes for all women and children, the Commonwealth must commit to investment in early intervention and addressing socio-economic disadvantage, to minimise the need for child protection intervention before it occurs.

## 6. Strengthening pillar three: RESPONSE

Consultation survey: *“The four National Pillars in the draft National Plan provide a holistic approach to identifying and responding to gender-based violence.”*

### Best practice response system framework

We advocate as a priority commitment for the National Plan the development of a best practice system framework that will establish foundations for consistency across all parts of family violence response, including the justice system, nationally.

A response system framework should cross over the family law system and other federal, state and territory systems, including family support services and the family violence and child protection systems. Having a seamless framework focused on safety and perpetrator accountability is vital for those who engage with the family violence response system and rely on it for their safety and financial recovery. A national framework is an essential foundation for ensuring that justice systems respond appropriately to family violence, that effective legal help is provided for the most disadvantaged, that

all professionals in the system have a robust understanding of family violence and that families have increased access to safe dispute resolution models.

## Recognise the role of specialist women's services, including legal services

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There is inadequate recognition in the draft Plan of the importance of specialist domestic, family and sexual violence services, including specialist women's legal services, to the achievement of victim-survivor safety and perpetrator accountability.

Specialist family violence services, including women's legal services, are victim-centred and have a deeply nuanced understanding of the causes, dynamics and lived impacts of gendered violence. With a whole-of-system viewpoint, specialists recognise the broader societal and institutional influences on victim-survivors' safety, autonomy and wellbeing. The victim-centred approach and whole-of-system viewpoint of specialists is critical to embedding best-practice and achieving integration across broader response systems. Specialists learn from working with victim-survivors to build the capability of non-specialist professionals, services and response systems. Specialists bring insight to the attention of decision-makers on institutional, systemic, and legislative and policy barriers to victim-survivor safety and perpetrator accountability, and advocate for change.

The National Plan must explicitly recognise the role of specialist domestic, family and sexual violence services, including women's legal services, to the achievement of safety and accountability outcomes. Along with people with lived experience, experts from the specialist sectors must be considered crucial contributors to all system and policy reform processes.

## Perpetrator interventions must be victim-centred

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Women's Legal strongly supports the draft Plan statement that perpetrator interventions must work as part of an ecosystem of programs and in partnership with women's services. While the shift in recent times to perpetrator visibility and accountability in response system design is welcome, there must be no drift away from the core principle that perpetrator interventions must be victim-centred. This is critical to achieving a properly integrated family violence response system that supports victim-survivors' safety and holds perpetrators to account.

## Safety and the justice system

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Providing safety for victim-survivors and holding perpetrators of violence to account across the justice system is essential.

The draft Plan places emphasis on one area of law – criminal justice – in discussing the safety and accountability role of the justice system. The weight given in the draft Plan to the criminal justice system is disproportionate to its role in responding to domestic, family and sexual violence, when compared to the justice system broadly. Further, while improvements to the criminal justice system are warranted, criminal justice is, in the main, outside the jurisdiction of the Commonwealth.

To achieve safety in the justice system, all areas of law must be in scope. There must be commitment in the National Plan to eliminating justice system barriers to safety and consistency. Areas of law that are the jurisdiction of the Commonwealth and that particularly impact the safety of women and

children include family law, immigration, social security, employment, anti-discrimination law and national child information sharing.

Access to justice is crucial to the safety and long-term wellbeing of victim-survivors, and the accountability of perpetrators. The draft Plan minimises justice barriers to “...legal terminology, complex processes, [and] lengthy trials”. While institutional and practice norms certainly do impair accessibility, the focus on these factors obscures the far more significant structural barriers to accessing justice. This includes the inability to access legal representation because of socio-economic disadvantage. Inequitable access to justice results in inequities in safety and wellbeing outcomes. The National Plan must make clear that achieving safety in the justice system requires addressing systemic barriers to justice, including equitable access to legal representation.

## Safety for women on temporary visas

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The instability that plagues women on temporary visas and, occasionally, permanent residency visas needs to be acknowledged in the National Plan. More specifically, consideration should be given to how the Plan can ensure services and supports are not only tailored to the specific needs of temporary visa holders but do not further cause abuse to the victim-survivor.

There needs to be safe and expeditious resolution of immigration matters to ensure victim-survivors can separate from their partners and maintain future safety, stability and economic security. Any adverse decision made by the Department of Home Affairs can bar visa holders from applying for further visas. In most cases, family violence is not a factor relevant to decision making. Where it is relevant, the “proof” of family violence required is inconsistent with a best practice approach to responding to family violence. There needs to be:

- A family violence lens applied to visa decision making
- Access to independent legal advice and a review process.

Separating from a partner may be in the best interests of a temporary visa holder and her children for their safety, but often comes at their migration detriment, leaving them no pathway to stay in Australia other than remaining with a violent partner. This follows for temporary visa holders with Australian citizen children. There needs to be an immediate exemption or eligibility pathway for alternative and permanent visa options for victim-survivors of family violence on temporary visas.

## Safe and expeditious resolution of family law matters

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We support the linkage of economic security and safety for women. We encourage recognition that our family law system should provide the opportunity for women to access their legal entitlements and fair financial outcomes. These financial outcomes add to women’s safety.

Women’s Legal put forward recommendations in our 2016 report, *Small Claims Large Battles*, for a number of reforms to reduce delays, improve accessibility and achieve better financial outcomes for women, particularly those experiencing family violence and financial disadvantage<sup>7</sup>. Some of these have been taken up by government and the courts. Some remain in pilot stage. Pilots such as the

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<sup>7</sup> Women’s Legal Service Victoria (2016), *Small Claims Large Battles*, <https://www.womenslegal.org.au/small-claims-large-battles/>

PPP500 list and legally assisted family dispute resolution in property disputes should be expanded and resourced.

While “easy to navigate” systems may suggest a level of self-help would be appropriate, legal representation and other supports need to be resourced and available to women experiencing family violence and other disadvantage. While the issue of family violence remains in contention and safety remains a concern, victim-survivors should not be navigating the system without legal representation.

Government attention to the family law system has too often been diverted away from safety to responding to particular interest groups. Inquiries may have outnumbered reforms and the resourcing for reforms, such as the ban on direct cross examination of a victim-survivor in family violence matters, have been underestimated.

The Lighthouse Project recognises the value of risk assessment for family violence in family law proceedings and is an important step towards improving safety in the family law system. It remains a pilot at this stage, only available in three registries. Government needs to commit to the roll out of thorough risk assessment in all family law registries and ensure its effectiveness in remote/online settings. It also needs to ensure historic jurisdictional boundaries do not adversely impact the family law journey of victim-survivors and their children or funding decisions about the resources and services needed to support them.

Risk assessment alone will not address safety. We need to combine this with further reforms including

- the early judicial determination of the issue of family violence in litigated matters
- removal of the legislative presumption of equal shared parental responsibility
- recognition of the importance of victim-survivors accessing better financial outcomes through the family law system as a way of improving safety
- inclusion of family violence as a factor relevant in family property division
- resourcing of legal representation for those victim-survivors unable to meet legal costs privately at all stages of their family law/family violence journey.

These reforms, discussed further in Focus area 4, will add to the safety of victim-survivors and their children whether participating in the family law system as litigants, accessing family dispute resolution, negotiating their post separation arrangements outside the system, or deciding whether to leave a violent relationship.

## Focus area 1: Service system resourcing

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The draft Plan identifies some elements to be considered in regard to the resourcing required for a service system that meets the needs of victim-survivors and holds perpetrators to account. These include providing services in remote communities, workforce development and minimum service standards nationally.

There is no indication in the draft Plan that funding will be increased to achieve nation-wide response system improvements. The extent of improvements required to achieve an integrated, best practice response system nationally, necessitates Commonwealth commitment to substantial investment and whole-of-government budget approach.

## Focus area 2: Needs of diverse communities

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The draft Plan identifies the need to embed understanding of the needs of diverse communities across the response system. The section is troublingly light on detail in regard to what is meant by “diverse communities” and the intended improvements and outcomes it aims to achieve.

Although the Plan identifies several “diverse” population groups, it fails to acknowledge that each “diverse” population group faces unique barriers to safety and equality. For example, while the Plan appropriately identifies that women from migrant and refugee backgrounds require culturally appropriate support in their language, there is no recognition of the magnitude of barriers to help-seeking for women on temporary or no visas.

The Commonwealth must commit to the elimination of the barriers to safety and equality that are specific to each population group, and reflect this approach in the forthcoming National Plan. The Plan must clearly articulate the intended population groups captured under the otherwise opaque banner of “diversity”. The Plan must recognise that meeting the diverse needs of population groups will require substantial program innovation and service system improvements, and commit to the resourcing it requires.

## Focus area 3: Housing

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We support the inclusion of housing as a focus area in the draft Plan. The reference to delivering safe housing options is welcome; however, the National Plan must be explicit as to whether this includes a commitment to increase social housing stock.

While specialist homelessness services are providing services to women leaving violent partners in record numbers, too often they cannot provide these women with long-term stable housing due to the lack of supply. As a result, women are returning to violent partners or experiencing homelessness.

Inability to secure safe and affordable housing is a key barrier to women and children’s safety and recovery from family violence. The focus on safe and secure housing must be strengthened in the National Plan across all pillars, along with commitment to invest in the availability of affordable housing as an urgent priority.

## Focus area 4: Improve legal responses

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### Enhancing the response to family violence in family law matters

We support the strengthening of inter-agency collaboration to improve the safety response in the family law system. This requires improved understanding by all parties to the legal and justice system (including the judiciary, legal professionals, family report writers/consultants, child protection practitioners, and police) of the operation of the intersecting legal jurisdictions, particular family law, migration law, state family violence protection law and state child protection law. Information sharing that does not risk the safety of victim-survivors and adequately addresses issues such as: the misidentification of victim-survivors as primary aggressors, the over representation of first nations people in child protection systems and the prevailing inconsistencies between different state laws and practices, may improve the safety response. But the operation and effectiveness of collaboration and

information sharing needs ongoing monitoring and evaluation. If it is adding to efficiency but not to safety, it needs to be reassessed.

Improved legal response to family violence in family law will require:

- legislative change to address current gaps and amend those parts which contribute to risk
- the early judicial determination of the issue of family violence in litigated matters
- government leadership and commitment to ensure historic jurisdictional boundaries do not adversely impact the family law journey of victim-survivors and their children
- recognition of the importance of victim-survivors accessing better financial outcomes through the family law system as a way of improving safety
- resourcing of legal representation for those victim-survivors unable to meet legal costs privately at all stages of their family law/family violence journey.

The draft National Plan correctly indicates that most family law matters are resolved outside the court system. More importantly, most separating families make their post separation arrangements completely outside the formal family law system. They do so without the benefit of those family law services referred to in the draft Plan and certainly without the benefit of thorough legal advice or representation. It is often our observation that victim-survivors (without the benefit of trauma informed and expert legal advice) accept the misinterpretation of the family law put or imposed by their controlling former partners. They remain impacted by family violence and do not achieve arrangements ensuring their safety or that of their children. They do not pursue their legal entitlements and suffer significant financial insecurity as a result.

## Legislative reform

While these families are making arrangements outside the system, they are influenced by the current form of family law legislation, often misinterpreted, but in the shadow of which their decisions are made. Two prominent legislative reforms which would improve safety and the response to family violence are

- the removal of the presumption of equal shared parental responsibility, a provision that invites misinterpretation, and
- the introduction of the experience of family violence as a separate factor to be taken into account in the assessment of property division.

## Early determination of family violence

A procedural reform which would improve safety and the response to family violence would be the early judicial determination of the fact and impact of family violence in litigated matters. The parties' evidence would be tested through cross examination, with appropriate protections in place for victim-survivors, and findings of fact made. In addition to informing the decision making of both the court and the parties going forward, it would provide a useful starting point for family report writers and other expert consultants used in the court process. It could encourage earlier, safer settlements and address some forms of systems abuse.



This would be a step towards responsibility for the safety of victim-survivors and their children being shared by the court rather than managed by the victim-survivor during the uncertainty of legal proceedings.

In the current litigation process the testing of evidence generally does not take place until trial. Parties are encouraged to reach agreement. This has the benefit for many of reducing costs and conflict. Where victim-survivors remain impacted by family violence or continue to experience family violence at the hands of their former partner, there may be no such benefit. Settlement may be as a result of emotional or economic attrition, fear, failure to access adequate legal representation. It may be a matter of risk management.

Conversely, some victim-survivors are denied resolution of their matter by settlement as their former partner is committed to conflict, to denying the allegations of family violence, to maintaining control through prolonged litigation and systems abuse.

## Preventing escalation of legal matters to crisis and in complexity

Early access to legal assistance leads to safer outcomes and is cost effective. A 2016 study found that unresolved and/or escalating family violence legal issues can lead to detrimental effects on victim-survivors, the cost of which is passed on to publicly funded systems as well as increased cost burden on the courts where matters escalate<sup>8</sup>.

Intervening early to improve safety and prevent the escalation of legal matters requires a well-integrated response system, where non-legal professionals are skilled to identify legal issues early and refer for help, and legal assistance is available to respond to this need. Often, however, disadvantaged people cannot access the legal assistance they need, which is often crucial to their safety and long-term wellbeing. The legal needs of highly disadvantaged clients cannot be met via duty lawyers and advice services. Investment is urgently needed to resource the legal assistance sector nationally to provide representation.

The National Plan must recognise the central role of the justice system to victim-survivor safety and wellbeing, and perpetrator accountability, and commit to resource legal assistance that will enable equitable access to justice.

## Family violence capability of the justice system workforce

A range of reports and public inquiries have identified a need to improve the capability of professionals working in the justice system to respond to family violence. The Law Council of Australia has recommended that mandatory family violence education should be provided to all legal practitioners as part of their continuing professional development requirements, as they play a pivotal role to support victim-survivor safety and perpetrator accountability. Victim-survivors of family violence are 10 times more likely than others to experience a myriad of legal problems such as family, civil and criminal law issues. It is crucial that lawyers have the knowledge and skills to identify and respond to family violence, as an important mechanism of early intervention and protection of victim-survivor safety and wellbeing.

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<sup>8</sup> Victorian Government (2016), *Access to Justice*, Department of Justice, Melbourne

## 7. Strengthening pillar four: RECOVERY

Consultation survey: *“The four National Pillars in the draft National Plan provide a holistic approach to identifying and responding to gender-based violence.”*

### Focus area 1: Supporting victim-survivor recovery

A striking omission across all National Pillars is the absence of recognition that financial disadvantage is a major barrier to women and children’s safety, and a determining factor in women and children’s ability to recover from violence.

The inability to afford housing is one of the main barriers to safety, and the risk of homelessness is a leading reason why victim-survivors return to violent relationships. Lack of income security and inability to access social security safety nets are key reasons why women are unable to escape violence, particularly for women on temporary visas.

It is estimated that 98 per cent of victim-survivors of family violence experience financial abuse, which is frequently perpetrated against them long after the relationship has ended, often by exploiting legal processes, including the family law system.

Family violence can have life-long impacts on women’s economic wellbeing. The National Plan must prioritise financial wellbeing and independence as a core element of recovery under the Recovery Pillar, as well as integrating strategies to improve women’s economic security and independence across all of the National Pillars.

### Focus area 2: Diverse populations

The draft Plan fails to put forward an approach which acknowledges that many of the barriers to recovery for marginalised population group are unique and specific. The rationale for the limited population groups listed in the draft Plan is unclear, and they therefore present as tagged on and their needs conflated. Many of the barriers to recovery faced by women who hold temporary visas, for instance, are specific to their visa status. They are ineligible for many government supports that are otherwise available to permanent residents to enable financial security when recovering from family violence.

To meet the recovery needs of all victim-survivors of family violence, the National Plan must reflect an approach that acknowledges the specific recovery barriers experienced by marginalised population groups and commitment to their rectification.

### Focus area 3: Sexual violence specialist help

The focus area on sexual violence specialist help is extremely limited in scope, and inadequate to meet victim-survivors’ recovery needs. In regard to sexual violence perpetrated in the context of family violence, it refers only to acknowledging that family violence and sexual violence can co-occur.

Sexual offending perpetrated against women by a cohabiting partner is significantly under-reported<sup>9</sup>. Women who experience sexual assault in the context of family violence experience significant barriers to help-seeking, reporting and accessing justice system recourse, and the barriers are substantially compounded by socio-economic disadvantage.

The National Plan must commit to doing a great deal more if it is to rectify the barriers to safety and recovery for victim-survivors who experience sexual assault in the context of family violence.

We strongly encourage the prioritisation of sexual violence in the forthcoming National Plan, and the integration of actions across all National Pillars.

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<sup>9</sup> Cox, P. (2015), *Sexual assault and domestic violence in the context of co-occurrence and re-victimisation: State of knowledge paper*, Sydney: ANROWS  
Victoria Police (2018), *Policing Harm, Upholding the Right: Victoria Police strategy for family violence, sexual offences and child abuse 2018-2023*, Victoria