



Submission from WESNET:

To the Australian Law Reform Commission

Family Violence: Improving Legal Frameworks Review – May 2010

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1. ABOUT WESNET

Established in 1992, the Women's Services Network (WESNET) is a national women's peak advocacy body which works on behalf of women and children who are experiencing or have experienced domestic or family violence.

With almost 400 members across Australia, WESNET represents a range of organisations and individuals including women's refuges, shelters, safe houses and information/ referral services.

Through its large national network of members and associate members, WESNET plays an important role in identifying unmet needs, canvassing new and emerging issues, facilitating policy and sector debate and lobbying government to provide improved responses to the problem of domestic and family violence. We do this within our communities and in partnership with non-government stakeholders.

Our Vision

WESNET seeks to ensure that all women and children live free of domestic and family violence and its consequences.

Our Purpose

WESNET is a National women's peak advocacy body which facilitates and promotes policy, legislative and programmatic responses relevant to women and children who have experienced domestic or family violence.

WESNET advances responses which:

- Ensure the safety of women and children;
- Empower them to live free of violence; and
- Improve the social, political and economic status of women.

WESNET works within a feminist framework which promotes an understanding of domestic and family violence as gendered violence against women, because they are women. In addition WESNET acknowledges that women's and children's experiences are also intrinsically shaped by their ethnicity, ability, age, sexuality and class.

Our Objectives

- (a) To provide leadership as a national women's peak advocacy body in relation to domestic and family violence.
- (b) To contribute to and monitor policies, legislation and programs which impact on women and children experiencing domestic and family violence.
- (c) To promote equity of access to services for all women including Aboriginal women, Torres Strait Islander women, women from immigrant, refugee and/or non-English speaking background, women in rural and isolated areas, older women, young women and women with a disability and give issues relating to equity of access highest priority.

- (d) To promote community awareness of violence against women and its personal and social consequences at a national level and support and facilitate the community education role of services at a local level.
- (e) To undertake research relating to the provision of support and accommodation services for women and children escaping violence and for women using SAAP funded services for other reasons.
- (f) To build and promote collaborative relationships with key stakeholders.
- (g) To ensure a viable, well governed and credible organisation representing WESNET members nationally.

2. INTRODUCTORY COMMENTS

"Family violence is any act or behaviour of gender based violence that occurs within the context of familial or domestic relationships and results in or is likely to result in physical, sexual or psychological harm or suffering to women (or children), including fear, threats of such acts, coercion or arbitrary deprivation of liberty. Family violence most often occurs where a woman resides." (Adapted from the United Nations Declaration on the Elimination of Violence Against Women 1993 Resolution 48/104.)

In "Time for Action: the National Council's Plan for Australia to Reduce Violence against Women and their Children" the Council states that "while some aspects of domestic and family violence constitute a criminal offence, all behaviour that causes a victim to live in fear is intolerable."

The report goes on to say that "Behaviour associated with domestic and family violence includes:

- **Emotional abuse** – blaming the victim for all problems in the relationship, constantly comparing the victim with others to undermine self-esteem and self-worth, sporadic sulking, withdrawing all interest and engagement (for example weeks of silence), emotional blackmail.
- **Verbal abuse** – swearing and continual humiliation, either in private or in public, with attacks following clear themes that focus on intelligence, sexuality, body image and capacity as a parent and spouse.
- **Social abuse** – systematic isolation from family and friends through techniques such as ongoing rudeness to family and friends to alienate them; instigating and controlling the move to a location where the victim has no established social circle or employment opportunities; and forbidding or physically preventing the victim from going out and meeting people.
- **Economic abuse** – complete control of all money, including: forbidding access to bank accounts; providing only an inadequate 'allowance'; not allowing the victim/survivor to seek or hold employment; and using all wages earned by the victim for household expenses.
- **Psychological abuse** – includes: driving dangerously; destruction of property; abuse of pets in front of family members; making threats regarding

custody of any children; asserting that the police and justice system will not assist, support or believe the victim; and denying an individual's reality.

- **Spiritual abuse** – denial and/or misuse of religious beliefs or practices to force victims into subordinate roles; or misuse of religious or spiritual traditions to justify physical violence or other forms of abuse.
- **Physical abuse** – includes: direct assault on the body (strangulation or choking, shaking, eye injuries, slapping, pushing, spitting, punching, or kicking); use of weapons including objects; assault of children; locking the victim out of the house; and sleep and food deprivation.
- **Sexual abuse** – any form of pressured/unwanted sex or sexual degradation by an intimate partner or ex-partner, such as sexual activity without consent; causing pain during sex; assaulting genitals; coercive sex without protection against pregnancy or sexually transmitted disease; making the victim perform sexual acts unwillingly (including talking explicit photos without their consent); criticising, or using sexually degrading insults.”

WESNET agrees with the above definitions and believes that domestic and family violence is a breach of an individual's human rights and that it is unacceptable in any culture or community.

We acknowledge that domestic and family violence occurs within a power and control context. We also acknowledge the gendered nature of domestic and family violence - that violence is mostly perpetrated by men towards women and children.

Our belief is that broader social systems and structures – including courts and legislation – must work to ensure the safety of women and children experiencing domestic and family violence, and to hold perpetrators of domestic and family violence accountable.

3. RESPONSE TO CONSULTATION PAPER AND QUESTIONS

Firstly, we congratulate the Australian Law Reform Commission and the New South Wales Law Reform Commission on undertaking this complex set of reviews. We believe robust examination of all laws relating to family violence must be undertaken with a view to improving the safety of women and children experiencing domestic and family violence.

It is obvious a great deal of work has been undertaken by the Commission and we commend the scope of the review. It is unfortunate however, that the breadth of the report and the short consultation and submission timelines has meant we have not been able to broadly canvass the views of our national membership. We are sure that if we had been able to do so, we could have provided a much more comprehensive response to the many issues raised in the review.

We have not attempted to answer each section in detail, rather, highlighting key issues and considerations we wish the commission to take into consideration in finalizing its review.

Also, we commend the reviews and submissions prepared by a number of women's domestic violence organisations and women's legal services across the country and note that many of those reports contain a comprehensive response to the issues canvassed in the consultation papers.

3.1 General Comments – Definitions (Section 4)

WESNET is of the view that it is desirable for state and territory family violence legislation to recognize the same types of physical and non-physical violence in definitions. Whilst it would be very positive to have the same definition, we are not sure if this is possible.

Also, whilst we accept it may not be possible to have a "gendered" definition of domestic and family violence, nonetheless, we do believe that state and territory legislation can include, for example, as the *Victorian Family Violence Protection Act 2008 (Vic)* has done, a preamble which notes the gendered nature of domestic and family violence in our community, and of the impacts it has on children etc.

As noted in Table A of the report (pg. 157), there are discrepancies across states and territories. For example, there are only 3 jurisdictions that specifically refer to breaching a protection order in the definitions. Women's domestic violence services know from experience that one of the highest risk factors for women is from men who breach intervention and protection orders. Harming animals is also an area that indicates significant risk of future violence for women and children. Achieving consistency in definitions would help the criminal justice system and other system responses in better assessing and managing risk.

Definitions must provide clarity and consistency not only for the criminal justice system, but for other related systems such as family law, child protection and community interventions.

We agree with the Commission (proposal 4.10) that state and territory family violence legislation should include in the definition of family violence exposure of children to family violence as a category of violence in its own right.

As stated in 4.122 to 4.125, the definition of "family violence" is far too limiting and subjective. The examples provided at 4.123 and 4.124 reflect the views of WESNET.

We agree with the Commission at 4.151 that the definition is too narrow and support the view that the Victorian family violence legislation provides a solid base to work from.

We agree with the Commissions view at 4.201 and proposal 4.20 that "state and territory family violence legislation should include as protected persons those who fall within Indigenous concepts of family, as well as those who are members of some other culturally recognised family group".

We also believe that carers should also be included in the category of relationships covered in family violence legislation.

We support proposal 4.21 that "state and territory family violence legislation should contain guiding principles, which should include express reference to a human rights framework".

Further, we support proposal 4.22 that “State and territory family violence legislation should contain a provision that explains the nature, features and dynamics of family violence including: its gendered nature; detrimental impact on children; and the fact that it can involve exploitation of power imbalances; and occur in all sectors of society.”

We support proposal 4.27 that State and territory family violence legislation should adopt the same grounds for obtaining a protection order.

3.2 General Comments – Protection Orders and the Criminal Law (Section 6)

For many women, the taking out of protection orders that provide full and unqualified protection is often hampered by judicial reluctance in granting exclusion orders where both parties have a legal or equitable interest in the premises. This often results in women being forced to leave their homes as the orders do not provide them with the capacity to remove the perpetrator of violence.

We agree with proposal 6.7 that “State and territory family violence legislation should require judicial officers considering the making of protection orders to consider whether or not to make an exclusion order—that is, an order excluding a person against whom a protection order is made from premises shared with the victim, even if the person has a legal or equitable interest in such premises”. This is particularly important where women appear unrepresented and are unaware of the full range of provisions available to them under the legislation.

Further, we agree with proposal 6.8 that “State and territory family violence legislation should specify the factors that a court is to consider in making an exclusion order—that is, an order excluding a person against whom a protection order is made from premises shared with the victim, even if the person has a legal or equitable interest in such premises. Judicial officers should be required to consider the effect that making or declining to make an exclusion order will have on the accommodation needs of the parties to the proceedings and on any children, as recommended by the ALRC in the Report *Domestic Violence* (ALRC 30) 1986. ”

It is our experience that women often are “threatened” with being charged with aiding and abetting the breach of a protection order. These situations often occur through enforced contact regarding child contact arrangements, or, where protection orders have not been effectively tailored to the needs of the victim and her children. We support proposal 6.13 that “State and territory legislation should be amended, where necessary, to provide that a person protected by a protection order under family violence legislation cannot be charged with or guilty of an offence of aiding, abetting, counselling or procuring the breach of a protection order.”

3.3 General Comments – Family Violence Legislation, Family Law and Parenting Orders (Section 8)

There have been many concerns raised about the impacts of the 2006 Family Law Reforms in relation to women and children who have experienced family and domestic violence.

WESNET, together with women's domestic violence organisations, women's legal services and other commentators, have repeatedly expressed our concern at these changes.

The three reports released by the Federal Attorney General earlier this year identified that shared parenting is sometimes being used in a way that is harmful to children, particularly where family violence has been an issue. It is the experience of many of our member agencies that many women are under pressure to agree to shared parenting provisions without a full and proper assessment about the range of factors that impact on a child.

As reported in "The Age" newspaper at the time these reports were released:

"The legal starting point is in fact equal shared parental responsibility or major decision-making. Factors including the risk of violence, or that shared responsibility isn't in the child's best interests, make it non-applicable and when this happens the courts don't have to consider ordering shared time."¹

The Australian Institute of Family Studies report evaluating the 2006 Family Law reforms² concluded:

"Generally, shared care time did not appear to have a negative impact on the wellbeing of children except where mothers had safety concerns. Irrespective of care-time arrangements, safety concerns had a negative impact on children's wellbeing. However, the negative impact of mothers' safety concerns on children's wellbeing was exacerbated where they experienced shared care-time arrangements."

The report goes on to say:

"The link between mothers' safety concerns and poorer child wellbeing outcomes, especially where there was a shared care-time arrangement, underlines the need for these sectors to have a more explicit focus on identifying the minority of highly vulnerable cases in which concerns about child or parental safety must take priority in decisions about care-time arrangements."

Professor Richard Chisholm, a former Family court judge who conducted a review into the Family court has made a number of recommendations to government about changes to shared parenting – suggesting that the legislation be amended to remove shared care and instead replace it with "shared responsibility".³

Professor Chisholm, together with Dr. Jennifer McIntosh have repeatedly expressed concern about these matters. In their paper "Shared Care and Children's Best Interests in Conflicted Separation"⁴, they state that shared care is a:

¹ <http://www.theage.com.au/opinion/politics/reports-show-shared-care-needs-fixing-20100203-nd7a.html>

² <http://www.aifs.gov.au/institute/pubs/file/evaluationreport.pdf>

³

[http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/%283273BD3F76A7A5DEDAE36942A54D7D90%29~Chisholm_report.pdf/\\$file/Chisholm_report.pdf](http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/%283273BD3F76A7A5DEDAE36942A54D7D90%29~Chisholm_report.pdf/$file/Chisholm_report.pdf)

⁴ <http://www.familylawsection.org.au/resource/SharedCare.pdf>

"viable arrangement for a small and distinct group of families, who self-selected into shared care arrangements and who had the following relational and structural profile:

- o *Geographical proximity;*
- o *The ability of parents to get along sufficiently well to develop a business-like working relationship;*
- o *Child-focused arrangements (with children kept 'out of the middle', and with children's activities forming an integral part of the way in which the parenting schedule is developed);*
- o *A commitment by everyone to make shared care work;*
- o *Family-friendly work practices for both mothers and fathers;*
- o *Financial comfort (particularly for women);and*
- o *Shared confidence that the father is a competent parent.*

Professor Chisholm and Dr. McIntosh go on to say:

"Many separating parents who require Court or formal dispute resolution involvement to determine their contact and care arrangements unfortunately do not share these characteristics.

Studies that have specifically addressed the dynamics of uncooperative post separation family care, involving protracted and/or serious levels of parental conflict, support the need for careful consideration of the impact upon children of acrimonious co-parenting arrangements. These studies have shown that shared parental care is unlikely to be appropriate in high conflict situations where parental attunement is compromised, and where the child, in order to maintain a relationship with both parents, develops conditional, high maintenance loyalties to each parent."

We believe that family law legislation should be amended to reflect the concerns expressed by many influential commentators and women's groups about the danger posed to women and children who have experienced family and domestic violence in relation to parenting and shared parenting orders.

Specifically, WESNET supports the following proposals put forward by the Commission:

Proposal 8.1 - State and territory child protection laws should be amended to require a child protection agency that advises a parent to seek a protection order under state or territory family violence legislation for the purpose of protecting the child to provide written advice to this effect to ensure that a federal family court does not construe the parent's action as a failure to 'facilitate, and encourage, a close and continuing relationship between the child and the other parent' pursuant to s 60CC(3)(c) of the *Family Law Act 1975* (Cth).

Proposal 8.3 - State and territory family violence legislation should provide mechanisms for courts exercising jurisdiction under such legislation to be informed about existing parenting orders or pending proceedings for such orders. This could be achieved by:

- (a) imposing a legally enforceable obligation on parties to proceedings for a protection order to inform the court about any such parenting orders or proceedings;
- (b) requiring courts making protection orders to inquire as to any such parenting orders or proceedings; or
- (c) both of the above.

Proposal 8.4 - Application forms for protection orders in all states and territories, including applications for variation of protection orders, should clearly seek information about existing parenting orders or pending proceedings for such orders.

Proposal 8-5 The 'additional consideration' in s 60CC(3)(k) of the *Family Law Act 1975* (Cth), which directs a court to consider only final or contested protection orders when determining the best interests of a child in making a parenting order, should be:

- (a) repealed, and reliance placed instead on the general criterion of family violence contained in s 60CC(3)(j);

OR

- (b) amended to provide that any family violence, including evidence of such violence given in any protection order proceeding—including proceedings in which final or interim protection orders are made either by consent or after a contested hearing—is an additional consideration when determining the best interests of a child.

We agree that the experience of women and the advice from community lawyers and domestic violence agencies that parenting orders are often made that are inconsistent with protection orders. As noted in the report, "community lawyers and family violence workers have reported instances where women felt pressured into agreeing to consent-based parenting orders that were inconsistent with protection orders and that, as a result, exposed them to the risk of violence."

WESNET supports proposal 8.6 that "Rule 10.15A of the Family Law Rules 2004 (Cth) should apply to allegations of family violence in addition to allegations of child abuse. A substantially equivalent rule should apply to proceedings in the Federal Magistrates Court. "

As mentioned above, women and children often continue to experience violence from the perpetrator as a result of parenting orders. We support proposal 8.9 that "Application forms for protection orders under state and territory family violence legislation should include a clear option for an applicant to request a variation, suspension, or discharge of a current parenting order. "

3.4 General Comments regarding Undertakings - Protection Orders (Section 10)

It is the experience of our member services that women are often pressured into accepting Undertakings in lieu of a Protection Order. This happens for many reasons, even when women have lawyers acting for them. We agree with the Commission proposal at 10.2 that:

Before accepting an undertaking to the court from a person against whom a protection order is sought, a court should ensure that:

(a) the applicant for the protection order understands the implications of relying on an undertaking to the court given by the respondent, rather than continuing with their application for a protection order;

(b) the respondent understands that the applicant's acceptance of an undertaking does not preclude further action by the applicant to address family violence, if necessary; and

(c) the undertaking is in writing.

3.5 General Comments – Alternative Processes (Section 11)

The sector's concerns about the appropriateness of mediation and dispute resolution in matters involving family and domestic violence have been well documented. In addition, the various family law reviews undertaken in recent times have also expressed concern at how these processes and practices impact, often negatively, on women who have experienced family and domestic violence.

WESNET supports any proposals regarding improvements that prioritise the safety of women and children, including better screening, improved training for lawyers and FDR practitioners around family and domestic violence etc.

3.6 General Comments – Family Violence and Sexual Assault (Section 15)

WESNET, via its Victorian representative, submitted the following information to the submission prepared by Domestic Violence Victoria – DV Vic. WESNET is of the view that the following reflects the broad understanding of these issues by its members.

It is the experience of domestic violence services that sexual violence and sexual assaults occur frequently in the context of intimate partner relationships. Some women report repeated experience of sexual violence and sexual assault throughout their relationships.

Many women present to domestic violence services and identify the sexual assaults they have experienced, though not always that they have been a victim of a criminal assault. Women present with a mixed understanding of what is happening – from "it's normal in a marriage" to "I am too scared to say no", to "he forced himself on me". Some women have identified that their partners threaten to abuse the children if they do not comply with his "requests" and demands.

A domestic violence service estimates that 50-60% of the women accessing the service for domestic violence support also disclose sexual abuse or rape. Workers report that quite often women do not see what they have experienced as sexual abuse until the worker provides a definition. At that point many women acknowledge that they have experienced sexual violence.

A domestic violence service reports that women often become pregnant as a result of the sexual assaults, which creates further complications and safety risks as time progresses.

The risk of future sexual violence and sexual assault often rates highly in risk assessment processes and in safety planning with women.

Women experience a range of traumatic responses to the violence – including sexual violence - they have experienced in their relationships.

Domestic violence services report that only a small number of women who have disclosed experiencing sexual assault/violence as part of their relationship have sought professional counselling from a specialist sexual assault service.

Workers in domestic violence, women's health and sexual assault services report that their capacity to support women and children who have experienced domestic and/or sexual violence is limited – with demand outstripping the capacity of the services to respond.

The availability of counselling and support to women and children through state based victim compensation schemes is limited to those women who have either reported a criminal offence and/or taken out an intervention order. In the case of many of the women our services work with, this only represents a very small percentage.

Some women do not readily disclose acts of sexual assault committed by their male partners or former partners and are unlikely to pursue legal remedies – criminal (ie., reporting) or civil (intervention orders) in relation to acts of sexual assault committed against them. Reasons for this include shame, "who will believe me?" etc.

One men's behaviour change program reports that most men assessed for the program – regardless of whether approaching the program voluntarily or mandated – rarely acknowledge their use of sexual violence or the threat of sexual violence – in their past or present relationships. When asked directly if they have sexually assaulted their partners, nearly all respond by stating that they haven't. Common responses to this broad question include "no, what sort of a man do you think I am?" However, when programs ask men to rate themselves against a behaviour checklist – with questions being asked "rapid fire", many men do admit to behaviour that is considered sexual violence and possibly sexual assault as defined by criminal law. One program reports that men have answered "yes" either rarely, occasionally, frequently or very frequently, to questions such as "have you had sex with your partner whilst she was asleep?"; "have you ever forced your partner to watch pornography against her will?"; "have you ever pressured your partner into having sex"; "have you ever made her feel guilty about not wanting sex?".

Men say things such as, "she says no but with that little smile on her face that really means yes". Or, "she was asleep when I started so it woke her up and I thought she would get into it". They do not see their behaviour as sexual violence or sexual assault.

Women's services and Men's Behaviour Change (MBC) programs regularly contact women as part of the MBC partner contact process to offer support and provide ongoing safety and risk assessments. During these contacts, women routinely report acts of sexual violence/assault against them by their partners or ex-partners – in many cases their male partners/ex-partners do not identify or disclose sexual violence or sexual assault to the men's behaviour change programs.

Sexual assault – or the threat of it - is one of many behaviours on the continuum of violence used by men to coerce and control women and children.

Case Study:

A woman had separated from her husband due to years of emotional violence and coercive and controlling behaviour. They were living apart. She reported that whilst she believed the relationship to be over, she was unable to tell him that the relationship had fully ended. She states that she was unable to tell him because she was frightened of his response and that he regularly told her he could not live without her. His coercive behaviour often meant that he was "invited" to dinner a few nights a week. On one occasion, a mutual male friend joined them for dinner. After the dinner the husband left to go to his own home. As the male friend had consumed some alcohol, the woman invited him to stay on the couch rather than try to make his way home drunk.

The male friend was awoken around 2am to a disturbance. Not knowing what had happened, he eventually fell asleep again.

In the morning the woman spoke to her male friend and said that at 2am her husband had let himself in to her home (he still had the key) and demanded to know why the male friend's car was still outside her home. He asked if she had sex with the man to which she answered no. He did not believe her and pulled her pants off to inspect her genitals. He then proceeded to sexually assault her. The woman was devastated and felt unable, due to the circumstances, and even with specialist support, to report the matter to the police.

Case Study:

A woman went to the Police to report that she had been raped by her ex-partner. She was told by the police officer that the best course of action was to apply for an Intervention Order against him to prevent him from contacting her again. The woman approached her local domestic violence service for support who rang the Sexual Assault unit (SOCAU) and advocated for the police to take the allegations seriously and investigate the matter. The SOCAU unit contacted the woman and took a statement from her. Understandably, the woman was very upset and demoralised by her initial treatment.

Clearly laws and legal frameworks on their own are not enough. Even in the current context, the following examples would be considered sexual assaults – yet community understanding, attitudes and beliefs impact in the interpretation of the law. Law reform needs to be supported by rigorous and consistent community education.

3.7 General Comments – Integrated Responses and Best Practice (Section 19)

Much progress has been made in recent years by stakeholders across Australia in developing integrated responses. WESNET is of the view that an integrated system and best practice response prioritises the safety of women and children and through

the criminal justice system and other system responses, holds men accountable for their use of violence.

The internationally renowned Duluth model sets out some key features of integrated responses to domestic and family violence.

The Duluth Model identifies eight key components that comprise an integrated response:

- a) *Creating a coherent philosophical approach centralizing victim safety* – which provide the basis around which the goals of victim protection, offender accountability, and changing the social climate of tolerance for domestic violence can be achieved.
- b) *Developing "best practice" policies and protocols for intervention agencies that are part of an integrated response* – victim safety will not be achieved simply by having actors in a coordinated response think differently. They must act differently.
- c) *Enhancing networking among service providers*
- d) *Building monitoring and tracking into the system* – ensuring accountability
- e) *Ensuring a supportive community infrastructure for battered women* – coordinated community responses need to ensure that essential services are available to women trying to negotiate a violence-free life for themselves and their children.
- f) *Providing sanctions and rehabilitation opportunities for abusers* – batterer intervention programs are one component of the response to abusers, which includes criminal justice sanctions.
- g) *Undoing the harm violence does to women and children*
- h) *Evaluating the coordinated community response from the standpoint of victim safety* – an essential part of any coordinated response.⁵

Given our views on this, WESNET supports Proposal 19.1 that:

“State and territory governments should establish and further develop integrated responses to family violence in their respective jurisdictions, building on best practice. The Australian Government should also foster the development of integrated responses at a national level. These integrated responses should include the following elements:

- (a) common policies and objectives;
- (b) mechanisms for inter-agency collaboration, including those to ensure information sharing;
- (c) provision for legal and non-legal victim support, and a key role for victim support organisations;
- (d) training and education programs; and
- (e) provision for data collection and evaluation.”

⁵ “Coordinating Community Responses to Domestic Violence – Lessons from Duluth and Beyond”, Melanie F. Shepard & Ellen L. Pence (eds), Sage Publications 1999, pages 16-21

Given the focus of the Duluth approach is a victim centered process, WESNET is supportive of the Commission's proposals as follows:

Proposal 19.2 - State and territory governments should, to the extent feasible, make victim support workers and lawyers available at family violence-related court proceedings, and ensure access to victim support workers at the time the police are called out to family violence incidents.

Proposal 19.3 - The Australian Government should ensure that court support services for victims of family violence are available nationally in federal family courts.

With regard to compensation for victims of domestic and family violence, WESNET agrees with the following proposals:

Proposal 19.4 - State and territory victims' compensation legislation should:

- (a) provide that evidence of a pattern of family violence may be considered in assessing whether an act of violence or injury occurred;
- (b) define family violence as a specific act of violence or injury, as in s 5 and the Dictionary in the *Victims Support and Rehabilitation Act 1996* (NSW) and cl 5 of the *Victims of Crime Assistance Regulation* (NT); or
- (c) extend the definition of injury to include other significant adverse impacts, as is done in respect of some offences in ss 3 and 8A of the *Victims of Crime Assistance Act 1996* (Vic) and s 27 of the *Victims of Crime Assistance Act 2009* (Qld).

Proposal 19.5 - State and territory victims' compensation legislation should provide that:

- (a) acts are not 'related' merely because they are committed by the same offender; and
- (b) applicants should be given the opportunity to object if multiple claims are treated as 'related', as in s 4(1) of the *Victims of Crime Assistance Act 1996* (Vic) and s 70 of the *Victims of Crime Assistance Act 2009* (Qld).

Proposal 19.6 - State and territory victims' compensation legislation should not require that a victim report a crime to the police, or provide reasonable cooperation with law enforcement authorities, as a condition of such compensation for family violence-related claims.

Proposal 19.7 - State and territory legislation should provide that, when deciding whether it was reasonable for the victim not to report a crime or cooperate with law enforcement authorities, decision makers must consider factors such as the nature of the relationship between the victim and the offender in light of the nature and dynamics of family violence.

Proposal 19.8 - State and territory victims' compensation legislation should require decision makers, when considering whether victims contributed to their injuries, to consider the relationship between the victim and the offender in light of the nature and dynamics of family violence. This requirement should also apply to assessments of the reasonableness of victims' failures to take steps to mitigate their injuries, where the legislation includes that as a factor to be considered. Section 30(2A) of the

Victim Support and Rehabilitation Act 1996 (NSW), which makes such provision in relation to a failure to mitigate injury, should be referred to as a model.

Proposal 19.9 - State and territory victims' compensation legislation should not enable claims to be excluded on the basis that the offender might benefit from the claim.

Proposal 19.10 - State and territory victims' compensation legislation should ensure that time limitation clauses do not apply unfairly to victims of family violence. These provisions may take the form of providing that:

- (a) decision makers must consider the fact that the application involves family violence, sexual assault, or child abuse in deciding to extend time, as set out in s 31 of the *Victims of Crime Assistance Act 2006* (NT); or
- (b) decision makers must consider whether the offender was in a position of power, influence or trust in deciding to extend time, as set out in s 29 of the *Victims of Crime Assistance Act 1996* (Vic) and s 54 of the *Victims of Crime Assistance Act 2009* (Qld).

Proposal 19.11 - State and territory victims' compensation legislation should ensure that victims of family violence are not required to be present at a hearing with an offender in victims' compensation hearings.

Proposal 19.12 - State and territory governments should ensure that data is collected concerning the claims and awards of compensation made to victims of family violence under statutory victims' compensation schemes. The practice of the Victims' Compensation Tribunal in NSW provides an instructive model.

Proposal 19.13 - State and territory governments should provide information about victims' compensation in all courts dealing with family violence matters. The Australian Government should ensure that similar information is available in federal family courts.

With respect to training of judicial officers, lawyers and others charged with the responsibility of assessing or working in the field of domestic and family violence, we agree that there needs to be national consistency concerning frameworks, risk assessment tools, and approaches to responding and intervening to family violence.

WESNET supports proposal 19.17 that:

The Australian Government and state and territory governments should ensure the quality of family violence training by:

- (a) developing minimum standards for assessing the quality of family violence training, and regularly evaluating the quality of such training in relevant government agencies using those standards;
- (b) developing best practice guidelines in relation to family violence training, including the content, length, and format of such training;
- (c) developing training based on evidence of the needs of those being trained, with the ultimate aim of improving outcomes for victims; and
- (d) fostering cross-agency and collaborative training, including cross-agency placements.

3.8 General Comments – Specialisation (Section 20)

In order to achieve the objectives of an integrated and best practice focus in responding to domestic and family violence, WESNET is of the belief that appropriately trained and resourced system responses must be implemented.

There is emerging evidence that specialist responses, provided in a joined up, integrated way, achieve better outcomes for victims of domestic and family violence, and work to hold men accountable for their use of violence towards family members.

WESNET is supportive of the following proposals:

Proposal 20.1 - Each state and territory police force should ensure that:

- (a) victims have access to a primary contact person within the police, who specialises and is trained in family violence issues;
- (b) a police officer is designated as a primary point of contact for government and non-government agencies involved in responding to family violence;
- (c) especially trained police have responsibility for supervising, monitoring or assuring the quality of police responses to family violence incidents, and providing advice and guidance to operational police and police prosecutors in this regard; and
- (d) there is a central forum or unit responsible for policy and strategy concerning family violence within the police.

Proposal 20.2 - State and territory governments should ensure that specialised family violence courts determine matters relating to protection orders and criminal proceedings related to family violence. State and territory governments should review whether specialised family violence courts should also be responsible for handling related claims:

- (a) for civil and statutory compensation; and
- (b) in child support and family law matters, to the extent such jurisdiction is conferred in the state or territory.

Proposal 20.3 - State and territory governments should establish mechanisms for referral of cases involving family violence to specialised family violence courts. There should be principled criteria for determining which cases could be referred to such courts. For example, these criteria could include:

- (a) where there are concurrent family-related claims or actions in relation to the same family issues; *238 Family Violence—Improving Legal Frameworks Summary*
- (b) where there have been multiple family-related legal actions in relation to the same family in the past;
- (c) where, for exceptional reasons, a judicial officer considers it necessary.

Proposal 20.4 - State and territory governments should establish or further develop specialised family violence courts in their jurisdictions, in close consultation with relevant stakeholders. These courts should have, as a minimum:

- (a) especially selected judicial officers;
- (b) specialised and ongoing training on family violence issues for judicial officers, prosecutors, registrars, and police;
- (c) victim support workers;
- (d) arrangements for victim safety; and
- (e) mechanisms for collaboration with other courts, agencies and non-government organisations.

WESNET members, as part of their individual agencies and services have observed international courts and projects where proceedings related to domestic and family violence incidents such family law, protection orders, criminal charges are heard by an integrated court. The observations, and feedback from courts, victims and other stakeholders are overwhelmingly positive – particularly in the capacity of the integrated court system to prioritise the safety of victims and hold perpetrators accountable.

WESNET is supportive of Proposal 20.5 - State and territory governments should review whether, and to what extent, the following features have been adopted in the courts in their jurisdiction dealing with family violence, with a view to adopting them:

- (a) identifying, and listing on the same day, protection order matters and criminal proceedings related to family violence, as well as related family law act and child protection matters;
- (b) providing victim and defendant support, including legal advice, on family violence list days;
- (c) assigning selected and trained judicial officers to work on cases related to family violence;
- (d) adopting practice directions for family violence cases;
- (e) ensuring that facilities and practices secure victim safety at court; and
- (f) establishing a forum for feedback from, and discussion with, other agencies and non-government organisations.

We also believe that an integrated service system – such as the “one stop shops” pioneered in places such as San Diego, California and Brooklyn, New York, provide an opportunity for service providers across the spectrum to deliver victim centered responses.

We therefore support proposal 20.6 - State and territory governments should establish centres providing a range of family violence services for victims, which would have the following functions:

- (a) recording victim statements and complaints;
- (b) facilitating access to victim support workers for referrals to other services;

- (c) filing all claims relating to family violence from victims on behalf of the victim in relevant courts; and
- (d) acting as a central point of contact for victims for basic information about pending court proceedings relating to family violence.

Concluding Remarks

WESNET appreciates the opportunity to contribute to this wide ranging Family Violence review and again congratulates the Commission on the scope and breadth of the review.

We await the outcome of the review process and would welcome an opportunity for further dialogue in relation to these matters.

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On behalf of WESNET

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