



29 July 2013

Violence Prevention Coordination Unit
Women NSW
Department of Family and Community Services

By email: vpku@facs.nsw.gov.au

Dear Madam/Sir,

NSW domestic and family violence framework and reforms

1. Women's Legal Services NSW (WLS NSW) thanks the NSW Government for the opportunity to comment on the NSW domestic and family violence framework and reforms.
2. WLS NSW is a community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims compensation, care and protection, human rights and access to justice.
3. Women's Legal Services NSW is a member of the NSW Women's Alliance. The NSW Women's Alliance is a group of NSW peak organisations and state-wide service providers working within the sexual violence and domestic and family violence fields who are responding to and working to prevent violence against women. We endorse the NSW Women's Alliance submission to this consultation.

Overview

4. Since September 2012 we have actively participated in and provided input into the targeted consultations on the NSW Domestic and Family Violence Framework. This is the NSW jurisdictional plan that will support and complement the *National Plan to Reduce Violence against Women and their Children (National Plan)* which was endorsed by state, territory and commonwealth governments' in February 2011.
5. We applaud the government's consultative approach to date on the development of the NSW jurisdictional plan (NSW DFV Plan) and thank the Department of Family and Community Services for the opportunity to respond to this public consultation.



6. The documents for consultation raise many questions, as outlined below. Given this and the lack of detail on a number of issues including minimum practice standards; accountability mechanisms; information sharing protocols; safety action meetings; governance; and the development and independent monitoring and evaluation of the implementation plan, we believe it is essential that there be ongoing dialogue with civil society about the NSW jurisdictional plan. We recommend the forming of an implementation plan committee consisting of representatives of the intergovernmental steering committee and non-government representatives working in the specialist domestic and family violence sector, including representatives from the NSW Women's Alliance, be formed to provide advice, information and support to both the NSW Government and the NGO sector during the implementation of the NSW DFV Plan.
7. In gradually rolling out these reforms it will be important to start both where there is existing effective co-ordination and integration of services as well as in areas where gaps are likely to be identified. This will help to highlight what is required to provide effective services.
8. We note the need for better co-ordination and integration of services has been previously identified and attempts have been made to achieve this in NSW since the 1990s. Accountability mechanisms combined with independent monitoring and evaluation as well as strengthened governance and funding allocations are required to ensure a different outcome this time.
9. In summary, we recommend:
 - a. The NSW Domestic and Family Violence Reforms, Framework and Plan must be grounded in a human rights framework.
 - b. The NSW Domestic and Family Violence Reforms, Framework and Plan clearly recognise that discrimination against women and girls is both a cause and consequence of violence against women and girls.
 - c. The definition of domestic violence acknowledge the gendered nature of violence and includes people with disabilities who are dependent upon carers, residential facilities and flatmates.
 - d. The NSW government, in consultation with Aboriginal stakeholders, develop a NSW Domestic and Family Violence Strategy as a specific element of the NSW Domestic and Family Violence Framework which focuses upon prevention and early intervention.
 - e. There should be a single central state-wide referral point.
 - f. Concerns regarding the sharing of information without informed consent must be adequately addressed, including the development of information sharing protocols with input from those working in the domestic violence and sexual assault sectors, including the NSW Women's Alliance.
 - g. Victims of domestic and family violence should be present and able to participate in safety action meetings. On the rare occasion when this is not possible, their views should be canvassed prior to a safety action meeting. They should specifically be informed which services will be attending the meeting and asked which services they do not wish to engage with and their views should be respected.
 - h. Further consultation is required on the development of comprehensive minimum practice standards.

WOMEN'S LEGAL SERVICES NSW

- i. An integrated, co-ordinated and holistic response to domestic and family violence must include domestic and family violence services, a child protection response and family law.
- j. Governance structures should include representation from Aboriginal and Torres Strait Islander women, CALD women, women with disabilities and LGBTIQ people. The NSW Domestic and Family Violence Council should be supported by subcommittees that provide advice to the Council on vulnerable groups and emerging issues.
- k. That the reforms be rolled out initially in places both where integration and co-ordination of services is effectively working as well as in places where there are likely to be gaps in an integrated co-ordinated response so to take the best opportunity to develop a robust and sustainable co-ordination and integrated system.
- l. An implementation plan committee, consisting of intergovernmental steering committee representatives and non-government representatives working in the specialist domestic and family violence sector, including representatives from the NSW Women's Alliance, be formed to provide advice, information and support to both the NSW Government and the NGO sector during the implementation of the NSW DFV Plan.
- m. The legislation abolishing the NSW victims compensation scheme should be amended such that: the changes do not apply retrospectively; victims of domestic violence and sexual assault are able to apply for victims support at any time; there is a specific recognition payment that adequately acknowledges the impact of domestic violence; and documentary evidence requirements acknowledge barriers to victims of domestic violence, sexual assault and child abuse in reporting to police or government agencies.
- n. Domestic violence be included as a protected attribute in the *Anti-Discrimination Act 1977 (NSW)*.
- o. Additional and adequate funding to implement the reforms and the NSW DFV Plan, commensurate with the scale of the problem of violence against women in NSW and the need for long-term sustained action.
- p. An independent monitoring mechanism for the NSW domestic and family violence reforms and implementation plan and the resourcing of civil society to participate in this process.

Australia's human rights obligations and gendered nature of domestic and family violence (Questions 3, 4, 6, 7, & 10)

10. It is important that the domestic and family violence reforms, framework and implementation plan are grounded in a human rights framework. Violence against women is one of the most widespread human rights abuses in Australia. Domestic and family violence puts more women aged 15-44 years at risk of ill health and premature death than any other risk factor.¹ It is the biggest single cause of homelessness among women and children.² Violence against women

¹ VicHealth and Department of Human Services, *The Health Costs of Violence. Measuring the Burden of Disease Caused by Intimate Partner Violence – A Summary of Findings*, 2004 at 10.

² *Women, Domestic and Family Violence and Homelessness: A Synthesis Report*, Commonwealth of Australia accessed on 13 December 2012 at: <http://www.fahcsia.gov.au/our-responsibilities/women/publications-articles/reducing-violence/women-domestic-and-family-violence-and-homelessness-a-synthesis-report?HTML#sum>

also comes at an enormous economic cost. Research released by the Government shows that each year violence against women costs the nation \$13.6 billion.³ This figure is expected to rise to \$15.6 billion by 2021. It is therefore imperative that all necessary steps are taken to eliminate violence against women and girls.

11. Australia's human rights obligations to eliminate violence against women are outlined in the *Convention on the Elimination of All Forms of Discrimination Against Women 1979* (CEDAW) ratified by Australia on 28 July 1983 and *CEDAW Committee General Recommendation No 12 (General Comment No 12)* and *CEDAW Committee General Recommendation No 19 (General Comment No 19)*.
12. Discrimination against women and girls is both a cause and consequence of violence against women and girls. *General Comment No 19* makes clear that gender-based violence is a form of discrimination within Article 1 of *CEDAW*⁴ and Article 2 of *CEDAW* obliges state parties to legislate to prohibit all discrimination against women. Such violence is a violation of the rights to life, to equality, to liberty and security of person, to the highest standard attainable of physical and mental health, to just and favourable conditions of work and not to be subjected to torture and other cruel, inhuman, or degrading treatment or punishment.⁵
13. Active participation in decisions that affect you is a key human rights obligation.⁶
14. We strongly advocate for the active participation of Aboriginal and Torres Strait Islander peoples in decision-making processes that affect their lives and rights. We note the specific obligations with respect to the "rights and special needs" of Indigenous women for states to "take measures, in conjunction with Indigenous peoples, to ensure that Indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination".⁷
15. Under international human rights, states are required to act with due diligence to prevent, punish, investigate and redress harm as a result of acts of violence.⁸ It is important that all elements of due diligence are present in the domestic and family violence reforms, framework and plan.
16. We welcome the acknowledgment that the reforms will be underpinned by guiding principles which include "domestic and family violence is a violation of human rights."⁹ The guiding principles should extend beyond acknowledging violations of human rights to include a response within a human rights framework – thus requiring the active participation of victims/survivors of domestic and family violence in decisions that effect their lives and rights.

Definition of domestic and family violence (Questions 7, 10)

17. We welcome attempts to reach a common understanding of the meaning of domestic and family

³ KPMG, *The Cost of Violence against Women and their Children. Safety Taskforce*, Department of Families, Housing, Community Services and Indigenous Affairs, Australian Government, 2009.

⁴ CEDAW Committee, *General Recommendation No. 19: Violence against Women*, UN Doc A/47/38 (1992), para 7.

⁵ *CEDAW Committee General Comment No 19*, para 7. See also: *International Covenant on Civil and Political Rights (ICCPR)* ratified by Australia on 13 August 1980, Articles 2, 3, 7 and 26; *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, ratified by Australia on 10 December 1975, Articles 3 and 10.

⁶ *Declaration on the Rights of Indigenous Peoples*, endorsed by Australia 3 April 2009, Articles 3, 18; *ICESCR* Article 1; *ICCPR* Article 1.

⁷ *Declaration of the Rights of Indigenous Peoples*, Article 22.

⁸ Human Rights Committee, *General Comment No. 31*, CCPR/C/74/CRP.4/Rev.6, para. 8; Committee on the Rights of the Child, *General Comment No. 5*, CRC/GC/2003/5, 27 November 2003, para. 1; Committee on Economic, Social and Cultural Rights, *General Comment No. 14*, E/C.12/2000/4 (2000), para. 33.

⁹ NSW Government, *It Stops Here: Standing together to end domestic and family violence in NSW*, 2013 at 29.

violence. We note the current legislative review of the *Crimes (Domestic and Personal Violence) Act 2007* and recommend the definition be consistent with that review.

18. We further welcome the acknowledgement of groups of women who are particularly vulnerable to domestic and family violence.¹⁰ Given the explicit reference to women with disability and “dependence on perpetrator for personal care, power dynamics, access and opportunity to commit abuse”¹¹ it is unclear why carers and those in residential facilities are not included within the definition of domestic and family violence.
19. During the consultations prior to the release of these draft documents we expressed concerns about the definition of domestic and family violence excluding situations of power and control regarding a carer’s role, in residential facilities and for those living in the same household.
20. Women with disabilities are particularly vulnerable to abuse, especially within residential facilities, group homes, institutions and boarding houses. The reality of their home life can differ from traditional family settings but, nonetheless, a power imbalance can exist between carers and residents, and violence occurs in the context of power and control that makes it a form of domestic violence.¹² We are concerned that a failure to include these groups in the definition of domestic and family violence will reduce the access to justice for women who are already disenfranchised and marginalised.
21. In July 2010 the UN Committee on the Elimination of Discrimination against Women made a number of concluding observations with respect to Australia’s obligations under CEDAW. The Committee expressed its concern about “the high levels of violence experienced by women, particularly those living in institutions or supported accommodation” and recommended, “that the State party address, as a matter of priority, the abuse and violence experienced by women with disabilities living in institutions or supported accommodation”.¹³ A failure to include these groups in the definition of domestic and family violence is contrary to the CEDAW Committee recommendation.
22. In addition, in our experience, the nature of relationships that involve co-habitation are not always clear or straightforward. For example, we have had clients who have described themselves as a boarder or a carer but subsequent investigation has revealed that the relationship is in fact an intimate one, with high levels of dependency. Further, some same sex couples who share accommodation do not want the nature of their relationship to be revealed but are in fact in an intimate personal relationship. They may appear as flatmates but the relationship is in reality more than that. Failure to include flatmates in the definition of domestic and family violence may make responding to violence in that situation more difficult.
23. We repeat these concerns again.
24. The definition of domestic and family violence must also acknowledge the gendered nature of violence as discussed below.

Prevention of violence against women (Question 1)

25. Violence against women is an abuse of power caused by patriarchal systems and structures. It

¹⁰ *It Stops Here*, Note 9 at 7.

¹¹ *Ibid.*

¹² NSW Government, *Preventing domestic and family violence discussion paper*, 2013 at 3, 5.

¹³ Committee on the Elimination of Discrimination Against Women, *Concluding observations of the Committee on the Elimination of Discrimination against Women –Australia (CEDAW Concluding Observations)*, 30 July 2010, CEDAW/C/AUL/CO/7 at paragraph 43 accessed on 3 July 2012 at: <http://www2.ohchr.org/english/bodies/cedaw/cedaws46.htm>

is a consequence of misogyny. Discrimination against women is widely recognised as both a cause and consequence of gendered violence.

26. In seeking to address violence against women through the domestic and family violence reforms and implementation plan, it is imperative that the gendered nature of domestic and family violence is clearly acknowledged.
27. There are currently limited references to the gendered nature of domestic and family violence in the document *It Stops Here*. For example:

Anyone can become a victim of domestic and family violence, but women and children are more likely to experience domestic and family violence perpetrated by men.¹⁴
28. However, the gendered nature of domestic and family violence is not recognised in the definition of such violence. We recommend that it should be.
29. Additionally, while the *Preventing domestic and family violence discussion paper* acknowledges the gendered nature of violence¹⁵ and speaks of the need for gender equality, references to substantive equality are absent from the discussion paper.
30. Substantive equality recognises that policies and practices put in place for the benefit of all may appear to be non-discriminatory, but may not address the specific needs of certain groups, making them indirectly discriminatory. Given discrimination and inequality are at the heart of violence against women, it is vital the framework documents, reform and implementation plan incorporates the achievement of substantive equality.
31. The transforming of patriarchal systems and structures is also required.
32. We also refer to the NSW Parliamentary inquiry into domestic violence trends and issues. Recommendation 28 in the final report recommends the NSW government, in consultation with Aboriginal stakeholders, develop a NSW Domestic and Family Violence Strategy as a specific element of the NSW Domestic and Family Violence Framework which focuses upon prevention and early intervention. We endorse this recommendation.
33. Education about human rights and how to exercise these rights is also important.
34. Prevention strategies must be evidence-based with an emphasis on behavioural change. We note in addition to the NSW violence prevention research projects, the NSW Government is also contributing funding to the Centre for Excellence. It is imperative that the domestic violence and sexual assault sectors are actively involved in the setting of the Centre's research agenda.

Prevention of intergenerational transfer of violence (Question 2)

35. This response focuses particularly on preventing intergenerational transfer of violence among Aboriginal and Torres Strait Islander communities.
36. Self-determination and actively participating in decisions that affect one's life and rights are vital to preventing intergenerational transfer of violence.
37. Addressing social and economic disadvantage, including access to and enjoyment of affordable health, housing, and education is also key. This is consistent with Australia's human rights

¹⁴ *It Stops Here*, Note 9 at 4.

¹⁵ *Preventing domestic and family violence discussion paper*, Note 12 at 3, 5.

obligations.¹⁶

38. In recognition of the impact of dispossession and the forced removal of children and the resulting loss of land, culture, identity and language, and consistent with the *Bringing Them Home* recommendations, a reparations scheme for the stolen generations must be established.¹⁷
39. Aboriginal and Torres Strait Islander people who are suffering from the effects of trans-generational traumas and disenfranchised grief should also be provided appropriate support to address their traumas.
40. It is well known that Aboriginal and Torres Strait Islander people are disproportionately over-represented in prison populations and in the care and protection jurisdiction.
41. It is imperative that prevention strategies provide a holistic response which in addition to the above includes: a focus on justice reinvestment; care re-investment; and alternatives to custody for women offenders, particularly women who commit non-violent offences.¹⁸
42. The adequate resourcing of intensive early intervention programs which build on parenting skills with a view to creating safe families is also required. This could include mentoring/peer support by other parents in a non-judgmental context. It is important that this occurs in a strengths-based context and that mothers are not blamed for the violence they experience.
43. Timeframes for working with families must be realistic and flexible and decided on a case-by-case basis, acknowledging it takes time to recover from trauma.
44. The recent reporting of over 20 Aboriginal women being charged for retracting allegations relating to domestic and family violence in NSW suggests over policing of Aboriginal women in NSW is a continuing issue.¹⁹
45. Over the past few years we have conducted a series of workshops with Aboriginal women and community workers across rural and remote NSW. We have consistently received feedback from them about issues they are facing with police response. These issues include police telling women “to go home and stop being stupid”, police telling women that unless they “fear for their life” they cannot get an Apprehended Domestic Violence Order (ADVO), and police being unavailable when breaches occur, with police officers in some towns not being on duty 24 hours a day and taking so long to come at other times that ADVOs become effectively meaningless. Women have reported to us that they feel like “police are playing god”, choosing who will get protection and who will not.
46. We recommend that the government improve its response to domestic and family violence in Aboriginal communities, including through further training programs for police on domestic

¹⁶ ICESCR, Article 12, Convention on the Rights of the Child (CROC) ratified by Australia on 17 December 1990, Article 24; ICESCR, Article 11, CROC Article 27; ICESCR Article 13, CROC, Article 28.

¹⁷ Human Rights and Equal Opportunity Commission, *Bringing them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, 1997, Recommendations 3, 4 & 5a.

¹⁸ See Corrective Services NSW Women’s Advisory Council submission in response to the NSW Law Reform Commission Review Crimes (Sentencing Procedure) Act 1999 Special categories of offenders – Women, October 2012 accessed on 21 July 2013 at: http://www.womenslegalnsw.asn.au/downloads/law-reform/2013_WAC_LRCNSW_Specialcategoryoffenders_Women.pdf (WLS NSW is a consultant member of the Corrective Services NSW Women’s Advisory Council and contributed to this submission).

¹⁹ Natasha Robinson, ‘Lawyers stunned by police course of action,’ *The Australian*, 4 May 2013; Natasha Robinson, ‘Mercy plea from jailed mum living in fear,’ *The Australian*, 6 May 2013; Natasha Robison, ‘DPP ’should decide if victim charged,’ *The Australian*, 7 May 2013. Though the NSW Government is taking some steps to address this practice, more needs to be done. See Natasha Robinson, ‘Charges against victims dropped,’ *The Australian*, 22 June 2013.

47. and family violence and on Aboriginal culture and history, and improved guidelines and standard operating procedures for responding to reports of violence (including recording decisions and reasons for refusing to act).

Risk assessment (Question 3)

48. We welcome the intention to create consistency in assessing risk through a common risk assessment framework.
49. We further welcome the acknowledgment in the *Securing safety discussion paper* that in addition to identifying known risk factors, “professional judgment and a victim’s perception of risk are the critical determinants in a safety risk assessment process”.²⁰
50. We note that a threshold of 13 of the 26 outlined risk factors in the risk identification tool (RIT) will automatically constitute a serious threat.
51. We note the explicit inclusion of professional judgment as always overriding situations “where a lower number of risk factors are present but the practitioner considers there to be a serious threat”.²¹
52. However, given some intimate partner domestic homicide victims had little or no contact with police and may have presented with only one risk factor, for example, the threat to kill, we recommend the statement above be amended to “where a *low or even no* risk factors are present but the practitioner considers there to be a serious threat”. (emphasis added)
53. Similarly, this needs to be made clearer in the main consultation document, *It Stops Here*. It currently reads:

An assessment of “at serious threat” means that more than half of the risk factors on the RIT are present. An assessment of “at serious threat” can also be made based on the professional judgment of the person completing or reviewing the RIT, taking into account the victim’s own perception of the risk they face, even if 50% of the risk factors are not present.²²

We recommend this be replaced with:

The “at serious threat” threshold is automatically met when at least half of the risk factors on the RIT are present. Professional judgment and a victim’s perception of risk are also important. An assessment of “at serious threat” should also be made based on the professional judgment of the person completing or reviewing the RIT, taking into account the victim’s own perception of the risk they face, even if only a few or even no factors are identified.

54. While the *Securing safety discussion paper* states police will include the “safest means and time for contacting the victim” on the RIT, there is no question to this effect included in the RIT in Appendix 1 of *It Stops Here*. This should be the first question included in the RIT to ensure this information is collected.

Victim centric services (Questions 3, 5, 6 & 7)

55. We further welcome the inclusion of the guiding principles of “safety of the victim and any children or young people involved is paramount” and “support for victims is strengths-based,

²⁰ NSW Government, *Securing safety discussion paper (Securing safety)*, 2013 at 7.

²¹ Ibid at 9.

²² *It Stops Here*, Note 9 at 22.

empowering and focused on long-term recovery”.²³

56. Providing victims of violence with agency to make decisions that affect their lives and rights is consistent with a trauma informed response and human rights obligations.

Information sharing

57. We note the main consultation document states “best practice is always to obtain the consent of a victim before collecting or sharing information as part of a referral”.²⁴ We refer to the proposed new risk assessment tool, a form which it is proposed police will be required to complete following every domestic and family incident which is to be sent to the central referral point by the end of their shift. While it is not clear from the main consultation document whether this happens with or without the informed consent of the victim, the *Securing safety discussion paper* states when police submit this form to the central referral point it will include “information regarding the safest means and time for contacting the victim”.²⁵ This implies informed consent is required. We welcome the inclusion of safe contact procedures to avoid exposing the victim to further risk. As mentioned above, this should be included as the first question in the RIT.
58. We have previously raised concerns about the sharing of information without informed consent. We refer to our supplementary submission to the NSW Parliamentary Inquiry into domestic violence trends and issues in NSW.
59. Where the term “consent” is used, we understand this to be “informed consent” which means the person providing consent must understand the purpose for which their information will be used and any possible negative consequences arising from providing consent before consent is given. To avoid any confusion the term “informed consent” should be used.
60. While we support efforts made to improve the system’s responsiveness to disclosures of family violence, we believe information sharing is a very complex issue and requires careful consideration, particularly regarding the many and potentially serious implications of such information sharing.
61. There are inherent safety and breach of privacy risks which are not adequately addressed when informed consent is dispensed with. For example, victims of violence, especially in small communities, may not wish to engage with a service to whom the NSW Police has provided their personal information because a relative of the perpetrator works at that organisation or the organisation does not work in a culturally safe manner.
62. Additionally, the sharing of information, both with and without informed consent, has the potential to undermine the efficacy of sexual assault communications privilege. The broader the sharing of information with agencies outside a counselling relationship, the more easily confidential and sensitive communications can be subpoenaed and potentially used against a victim of violence in a sexual assault hearing.
63. Such information may be used by the perpetrator of violence in other court proceedings as a way of continuing the violence.
64. Information sharing can also potentially undermine legal professional privilege.

²³ *It Stops Here*, Note 9 at 29.

²⁴ *It Stops Here*, Note 9 at 23.

²⁵ *Securing safety*, Note 20 at 9.

65. We refer to the sharing of “relevant information” with a victim’s consent.²⁶ Protocols must clearly define “relevant information” with examples of what it does and does not include. Education of all involved in sharing information to assist victims of domestic and family violence with or without their informed consent is required to prevent the undermining of the sexual assault communications privilege and waiver of legal professional privilege discussed above.
66. Many women may be reluctant to report domestic and family violence to police as a result of information sharing without informed consent. We are particularly concerned this will be the case with Aboriginal and Torres Strait Islander women.
67. The NSW Domestic Violence Justice Strategy, released in December 2012, expands the circumstances in which information can be shared without consent. The *Crimes (Domestic and Personal Violence) Amendment (Information Sharing) Act 2013* enables the police to share personal and health information of each primary person and associated respondent without informed consent where an interim apprehended violence order has been made, an AVO has been sought or a person has been charged with a domestic violence offence.²⁷
68. We agree if a victim is at imminent risk it may not be possible to obtain informed consent before sharing information. However, this is the current law.
69. Any evidence base to suggest there is a need to change the current legislative requirements regarding information sharing has not been put forward. Any example, even in general terms, of circumstances in which privacy laws had proven an obstacle to a victim’s safety in the past have not been able to be given in response to questions at the targeted consultations.
70. We note the *Crimes (Domestic and Personal Violence) Amendment (Information Sharing) Act 2013* will remove the “imminent” threshold in sharing information without consent in circumstances of serious threat to life, health or safety.²⁸ We further note the proposal to do this in the NSW Domestic and Family Violence Framework as well.²⁹ As indicated above, we are opposed to this change. If this goes ahead, this provision should only be used in the rarest of situations and safeguards are required to ensure the provision is not misused.
71. While we are strongly opposed to the sharing of information without informed consent other than in circumstances of an imminent serious threat to life, health or safety, if this is to proceed there need to be important safeguards imposed. We note the Department of Attorney General and Justice is currently undertaking consultations on the development of Information Sharing protocols. Protocols for information sharing in the context of the NSW domestic and family violence framework are also required.
72. One safeguard is to limit the sharing of information without informed consent to one centralised body as discussed below.

Incorrect identification of the primary aggressor and information sharing

73. Our Domestic Violence Legal Service has been advising and representing women in applications for Apprehended Domestic Violence Orders (ADVOs) for over 25 years. Over those years, we have seen a significant improvement in police responsiveness to domestic violence –with now almost all applications for ADVOs being taken out by police, rather than privately.

²⁶ *It Stops Here*, Note 9 at 19.

²⁷ Section 98C(1) *Crimes (Domestic and Personal Violence) Amendment (Information Sharing) Act 2013*.

²⁸ Section 98D *Crimes (Domestic and Personal Violence) Amendment (Information Sharing) Act 2013*.

²⁹ *It Stops Here*, Note 9 at 23.

74. However, in the past 5 years our practice has changed significantly to one where the majority of our clients are women who are initially defendants to police ADVOs, but on further enquiry into their circumstances are victims of domestic violence – the primary aggressor being her partner and the person the police initially assessed as being the “person in need of protection”.
75. Given our experience, we have serious concerns about the impact of the “information sharing” provisions in the *Crimes (Domestic and Personal Violence) Amendment (Information Sharing) Act 2013* as they relate to defendants to ADVOs where the primary aggressor has not been correctly assessed. On the face of the legislation, such women would not be informed about the sharing of their information without consent nor given an opportunity to amend incorrect information.
76. In the case of the NSW Domestic and Family Violence Framework, it is unclear how such victims of violence will access the central referral point and safety action meeting if they have not been identified as a victim.
77. Information sharing protocols need to be developed about how victims can: access information held about them; correct information that is incorrect; have this incorrect information corrected at the source as well as with every organisation which may have been provided it by the agency which recorded the incorrect information.

Central referral point

78. There should be a single central state-wide referral point to which police and others provide information about the primary person and associated respondent through a completed RIT form. As discussed above we expect this would occur with the informed consent of the victim and without informed consent only in rare instances. Limiting the sharing of information without consent to only one agency will go some way to ameliorating some of the safety concerns we have raised about information sharing. After this, the central agency must have informed consent to share information further.
79. Restricting the sharing of information without informed consent to a single organisation also goes some way to addressing the breach of privacy rights.
80. It is important that the central referral point is a trauma service with staff very experienced in working with victims of domestic and family violence. Staff should also be highly competent in issues relating to culture and gender.
81. If this service, staffed by trauma counsellors, operates 24 hours 7 days a week, as we recommend it should, assistance can be provided immediately. Research indicates that the earlier the intervention after the trauma the more likely a victim is to engage with support services. Such an immediate response recognises and prioritises the importance of addressing trauma.
82. A single referral point will also help to achieve consistency of response and address the workforce capacity issues of not having sufficient skilled trauma workers in all regional areas.
83. It will ensure no one falls through the gaps, for example, because they have moved out of a particular area.
84. For women who may not wish to be accommodated in a local refuge, but rather in a refuge in another area, where, for example, they have family support, it provides more choice.
85. The NSW Domestic Violence line administered by Family and Community Services is an

example of such an agency. If they are to take on the central referral point role, this should be a separate telephone line so they can continue to offer a specialist service to women experiencing domestic violence. Whoever takes on this role must be adequately resourced to do so.

86. In acknowledging the importance of having local knowledge to effectively assist victims of domestic and family violence we support the operation of regional referral points. Victims of violence can be referred to regional referral points from the central referral point with the informed consent of the victim.
87. We refer to the newly established men's referral service "for men who have perpetrated violence against members of their family (or at risk of doing so)" linking to the central referral point to "enable concurrent referral of victims and perpetrators to support services".³⁰ This needs to be clarified as on the face of it, it would seem both victims and perpetrators are being referred to the same service which is inappropriate.
88. Specialist services for women understand the nature and dynamics of domestic and family violence and why such violence is primarily perpetrated against women and children. Such services are important for empowering and supporting women victims/survivors of violence. They provide a safe space for women and children and strongly support holding perpetrators to account. We acknowledge that men can also be victims of violence and should have access to services. However, this should not be at the expense of women only services. It is important that specialist services for women continue.

Vulnerable groups

89. A question in the domestic and family violence reforms survey acknowledges "an additional and/or different response is required for victims from high risk groups, (eg Aboriginal, CALD, people with disability and people who identify as LGBTIQ)".
90. Well-documented barriers to women reporting domestic and family violence to police and government authorities, particularly Aboriginal and CALD women, also need to be addressed.
91. Consistent with a human rights framework, any strategy to support victims of violence should be developed with the active participation of those affected and acknowledge different strategies within each identified group may be required.
92. It is important such participation includes that within the governance structures – from the NSW Domestic and Family Council all the way through to local domestic and family violence committees.
93. There are also risks for people who identify as LGBTIQ who report domestic and family violence that they may be outed before they would like to be. This needs to be addressed.
94. The extending of the definition of domestic and family violence to include situations of dependency in caring, residential institutions and flatmates would also go some way to addressing particular vulnerabilities for women with disabilities and LGBTIQ by ensuring they are able to access the relevant support services.
95. Ongoing training to ensure all services engaging with victims of domestic and family violence are culturally safe for the different communities with which the services work is also important.
96. We also note there are currently no minimum practice standards proposed for working with vulnerable groups. Minimum practice standards need to be developed. This should occur with

³⁰ *It Stops Here*, Note 9 at 25.

the participation of representatives from these groups and specialist domestic and family violence services, including representatives from the NSW Women's Alliance.

Safety action meeting (SAM) (Questions 5 & 6)

97. Safety action meetings (SAMs) are intended to be held to discuss safety arrangements for victims of domestic and family violence deemed to be at serious threat. The *Securing safety discussion paper* indicates such meetings will be chaired by NSW Police and co-ordinated by the regional referral points. Attendees may include representatives from NSW Health, Community Services, Housing, Education, Corrective Services and non-government services providers in the local area.³¹
98. Having a consistent representative from each organisation who has the authority to make decisions attend each meeting will be critical to the success of the SAM.
99. Each organisation attending the SAM is responsible for "researching their records ... and compiling information for discussion".³² There is no reference to this occurring with the informed consent of the victim. However, the earlier reference to it being best practice to obtain consent would suggest organisations obtain informed consent.
100. As outlined above, information sharing protocols are required to clearly outline, with examples, the circumstances when information can and cannot be shared without informed consent. What information can be shared and the protections required to ensure the efficacy of sexual assault communications privilege and legal professional privilege are not undermined will also need to be included.
101. We are also concerned that information shared at SAMs may be used for purposes other than to improve the safety of the victim. That information and knowledge can only be used to improve the safety of the victim must be clearly stated in the minimum practice standards regarding the SAMs.
102. Additionally, the section of the *Securing safety discussion paper* about confidentiality agreements refers to "information sharing at the meeting is shared for the purposes of supporting the safety of the victim and their family".³³ The word "only" should be inserted.
103. It is vital that victims are able to be present and participate in the SAM. Participating in decision-making about issues that affect your life and rights is a fundamental human right and a sense of agency is important in recovering from trauma.
104. It seems to run counter to the government's emphasis on the safety planning process "giv[ing] power back to the victim to make decisions and take control of their lives"³⁴ if victims cannot actively participate in SAMs.
105. In rare situations where it is not possible for the victim to participate in a SAM, a victim's views must be sought prior to the meeting to identify areas in which assistance is required. A consistent way of collecting and recording this information is required.
106. Victims' expectations need to be managed.
107. Victims must also be informed prior to a safety action meeting which services will be attending

³¹ *Securing safety*, Note 20 at 19-20.

³² *Securing safety*, Note 20 at 19.

³³ *Securing safety*, Note 20 at 22.

³⁴ *It Stops Here*, Note 9 at 21.

the SAM and asked about which services they do not wish to engage with. Their decision should be respected.

108. We are also concerned that where reference is made in the *Securing safety discussion paper* to safety plans, it states "the planning process should involve the victim". This should be a mandatory requirement.
109. In addition to issues already raised, minimum practice standards for SAMs must also include how the SAM will be held; a requirement for declaring a conflict of interest; accountability mechanisms; and record keeping.
110. It is unclear what will happen in situations where consensus on the safety action plan cannot be reached by those attending the SAM.
111. It is also unclear as to who will be doing the case-coordination and case-management of serious threat cases. This will require additional resources.
112. Those participating in SAMs are required to inform the coordinator of the SAM when actions they have agreed to in the safety action plan are completed. We recommend this also be communicated through a progress report on safety action plans as a standing agenda item at the SAM. This accountability mechanism would seek to ensure that victims at serious threat of violence do not fall through the gaps.
113. More than one SAM meeting per client must be anticipated in the development of the SAM system.
114. There should also be no punitive response if a victim disengages with services as there may be very good reasons for this occurring, including safety reasons.

Minimum practice standards (Questions 3-8 & 10)

115. In principle, we support minimum practice standards for all involved in working with victims of domestic violence and perpetrators to ensure consistency of response. However, the content of these standards needs to be clear, comprehensive and include measurables and accountability mechanisms.
116. We submit the minimum standards included in the paper, *It Stops Here*, are vague and unclear and require further consultation. For example, in the minimum practice standard regarding responding to all victims of domestic and family violence, the police complete a risk assessment form and send this through to the central referral point. Staff at the central referral point "use the form to identify victims at serious threat" who are referred to a safety action meeting. We would expect staff at the central referral point to make their own independent assessment of risk. This is unclear.
117. Additionally, those providing case co-ordination or case management are required "to ensure adequate arrangements" are in place for the victim's safety and recovery prior to case closure". It is unclear what "adequate arrangements" means.
118. Mainstream and specialist domestic and family violence services should be clearly defined.
119. It is also unclear what happens when police identify a person as being at serious risk but a different opinion is formed when a risk assessment is undertaken at the central referral point. Will this person be referred to a safety action meeting?
120. While the focus of the reforms seems to be on a co-ordinated and integrated response to

domestic and family violence and better integration between domestic violence and child protection services, the minimum practice standards refer to the safety of children being considered separately and where feasible children having their own case plans. We submit a family law response and assisting parents to be protective parents is also required and should be included in the minimum practice standard. See further comments below under "Intersection with Family Law".

121. Minimum standards for working with victims of violence should include requirements regarding qualifications; good practice management in addressing confidentiality and conflict of interest issues in line with professional ethics and responsibilities; knowledge or information gained about the victim should be used for the sole purpose of improving the victim's safety and for no other purpose.

Intersection with Family Law (Question 3)

122. We are concerned that in the context of domestic and family violence, it is often the case that rather than holding the perpetrator (often the father) to account, the mother is punished for not acting in a protective manner. This can be explained by the different professional approaches used in responding to domestic violence in criminal, child protection and family law contexts which can result in conflicting messages.
123. For example, in the family law courts the focus is on balancing a meaningful relationship with both parents and protecting the child from harm. While amendments to the *Family Law Act 1975 (Cth)* came into effect on 7 June 2012 prioritising safety over a meaningful relationship, the presumption of equal shared parental responsibility remains the starting point. While it is too early to tell the impact of these legislative changes, it will be important to monitor decisions in this area.
124. In contrast, the child protection context focuses on protecting children. It is often the case that if a mother is unable to leave a violent relationship within a suggested and often arbitrary timeframe, she will be viewed as failing to act protectively. It is therefore the mother who is unfairly seen as responsible for dealing with the consequences of violence in a child protection context.³⁵ This view fails to recognise that when a woman leaves a relationship, it is one of the most dangerous times of the relationship and requires planning and support.
125. In addressing the intersection of domestic and family violence with family law in the NSW DFV Plan the focus should be on the victim (generally the woman) who should be treated with dignity and respect, and supported to be a protective parent. Early intervention strategies should include early intervention services working with women who have experienced domestic and family violence to strengthen their protective parenting capacities. Such services should also be willing to support victims to seek protective orders in the family court rather than be subject to care proceedings. This could be through providing evidence to support no contact orders or supervised contact orders with the violent parent.
126. The government has a responsibility to help and support victims of domestic and family violence to be protective parents. We welcome the Government's acceptance in principle of Recommendation 37 in the *Domestic Violence Trends and Issues in NSW Report*. This recommendation requires Women NSW and Community Services to develop a joint plan for addressing the tension between child protection interventions and those for domestic violence, including "promot[ing] practices that harness the strengths of victims and children in order to move on from violence, and seek to build the relationship between them".

³⁵ L Radford and M Hester, *Mothering through domestic violence*, Jessica Kingsley Publishers, London, 2006 at 143.

127. We note reference is only made in the documents for this public consultation to developing an integrated response between domestic and family violence and child protection. To be truly integrative it must also include family law.
128. We further note the treatment of the safety of children as a “separate matter” which will result in the development of a separate case plan.³⁶ While acknowledging the importance of protecting children from harm, we would anticipate that in most cases consideration of children would be included in a woman’s safety plan.
129. We further refer to prevention strategy 2 which focuses upon supporting children and young people who have experienced domestic and family violence discussed in the *Preventing domestic and family violence discussion paper*.³⁷ Again, there is no reference to the integrated response including family law and supporting parents to be protective parents.
130. We further note the NSW Government is currently considering legislative reform in child protection which we expect will be informed by this consultation. We refer to our submission in response to the *Child Protection Legislative Reform Discussion Paper* for further information.

Governance

131. We welcome the establishing of a Ministerial Group which includes the Ministers for Women and Family and Community Affairs, Police and Emergency Services, Health, Aboriginal Affairs and the Attorney General. Strong leadership is crucial to the reduction of violence against women and the successful implementation of the NSW DFV Plan.
132. We refer to the recommendation made in the NSW Parliamentary inquiry into domestic violence trends and issues that the NSW Domestic and Family Violence framework be led by a Premier’s Ministerial Council.³⁸
133. It is disappointing that the Ministerial Council is not led by the Premier. Such involvement would be a tangible demonstration of leadership and commitment to addressing this important issue.
134. We further note the Minister for Education is not included in the Ministerial Group. We see this as a missed opportunity as education is vital in addressing and preventing violence against women.
135. We further welcome the establishing of the NSW Domestic and Family Violence Council (NSW DFV Council) made up of government and non-government representatives to provide advice to the Ministerial Group as well as “influenc[ing] and direct[ing] reforms”.³⁹ As the NSW Premier’s Council on Preventing Violence Against Women was disbanded in December 2012, it is important that this Council is established and becomes operational soon.
136. As mentioned above, it is essential that there are Aboriginal and Torres Strait Islander women, CALD women, women with disability and LGBTIQ people represented on the Council.
137. To ensure adequate mechanisms to fully engage with representatives from different communities, we support the NSW Women’s Alliance recommendation for the forming of subcommittees to provide advice to the NSW DFV Council. Subcommittees should also be

³⁶ *Securing safety*, Note 20 at 13.

³⁷ *Preventing domestic and family violence discussion paper*, Note 12 at 12.

³⁸ NSW Parliament, *Domestic Violence Trends and Issues, Final Report*, 2012, Recommendation 10.

³⁹ *It Stops Here*, Note 9 at 31.

formed as required in response to emerging issues.

138. We also refer to and endorse the NSW Women's Alliance recommendations relating to governance.

Community responsibility (Question 9)

139. To eliminate violence against women requires everyone in the community to be involved. As acknowledged in the *Preventing domestic and family violence discussion paper* "It is the responsibility of governments, community leaders, networks and organisations, employers and business leaders, workplaces, sporting clubs and faith based organisations to take action to prevent it".⁴⁰ While the human rights arguments for the elimination of violence against women should be sufficient grounds for everyone in society playing their role, the economic costs of violence outlined above also provide an incentive.

Protections for victims/survivors of domestic and family violence in NSW discrimination laws

140. Protection from discrimination on the grounds of status of being a victim/survivor of domestic and family violence in the *Anti-Discrimination Act 1977 (NSW)* provides an opportunity to further educate and engage the community in addressing domestic and family violence.

141. Such protection builds on the important work undertaken across Australia, including by the NSW government, to provide work entitlements for victims/survivors of domestic and family violence in the form of flexible work arrangements and additional paid leave through enterprise agreements and awards. Significantly, 1 million Australian employees have access to domestic violence leave as a consequence of the inclusion of such clauses in their enterprise agreements and awards.⁴¹

142. However, such provisions do not address negative treatment, attitudes and stereotyping that lead to unfair treatment. Anti-discrimination laws have traditionally been used to address stigma and challenge barriers posed to equal participation in public life.⁴²

143. Additionally, protection through clauses in enterprise agreements and awards is limited to employment only and not to all areas of public life. There is growing evidence highlighting the need for protection from discrimination on the grounds of status of being a victim/survivor of domestic/family violence in all areas of public life.⁴³

144. The Legal and Constitutional Affairs Legislation Committee recommended the inclusion of domestic violence as a protected attribute in the commonwealth Human Rights and Anti-Discrimination Bill.⁴⁴

Adequate reparations for victims of domestic violence and sexual assault

⁴⁰ *Preventing domestic and family violence discussion paper*, Note 12 at 3.

⁴¹ 'Domestic Violence Leave Comes of Age,' Media Release, 30 November 2012 accessed on 21 July 2013 at: <http://newsroom.unsw.edu.au/news/social-affairs/domestic-violence-leave-comes-age>

⁴² Tashina Orchiston and Belinda Smith, 'Empowering Victims of Family Violence: Could Anti-Discrimination Laws Play a Role?' *Australian Review of Public Affairs*, March 2012.

⁴³ National Association of Community Legal Centres, Submission in Inquiry into the *Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012 (2012)* (NACLC HRAD Bill submission) p25-29; *ADFVC, Submission to the Inquiry into the Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012 (2012)* p 8; Ms Adams, Ms Davis & Ms McCormack, *Senate Legal and Constitutional Affairs Legislation Committee, Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012, Hansard (23 January 2013)* p 29-30, 32-33.

⁴⁴ The Senate Legal and Constitutional Affairs Legislation Committee, *Report on the Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012 (2013)*, Recommendation 3.

145. We express great concern about the introduction of the *Victims Rights and Support Act 2013* which abolished the NSW Victims compensation scheme and removes any reference to compensation.
146. The awarding of compensation by the State, a due diligence obligation, particularly to victims of domestic violence, sexual assault and child abuse, moves these issues from the private sphere into the public sphere by providing public recognition of pain and suffering and that a wrong has been done. In this way, it engages the community in addressing violence against women. We believe this public recognition and state accountability play a role in reducing violence against women and children.
147. The changes to the NSW Victims Compensation scheme have been particularly unjust for victims of violence who had filed their claims and had a legitimate expectation of receiving compensation of up to \$50,000 due to a serious psychological injury as a result of domestic violence. Such victims of violence will now likely receive a recognition payment of \$5,000 if they can establish grievous bodily harm, \$1,500 if they can establish an assault, or in some cases, no recognition payment. This injustice is noted by PricewaterhouseCoopers who undertook the review of the victims compensation scheme and in discussing whether the changes should apply retrospectively asserted “it would be unfair to change the goalposts midway”.⁴⁵
148. Many victims of domestic violence and sexual assault are further penalised by being excluded from the \$5000 “special grant” as victims must have applied within 2 years of the act of violence (or within 2 years of turning 18 years if the act of violence occurred as a child) which again fails to acknowledge that it takes time to report such crimes.
149. We further note the high evidentiary requirements to establish eligibility for a recognition payment, namely a police report or report of a government agency in addition to medical, dental or counselling report. Such a requirement fails to recognise the many barriers for victims of domestic violence, sexual assault and child sexual abuse in reporting these acts of violence to police or a government agency⁴⁶ and effectively devolves the government and, in turn, the community from accountability and responsibility in addressing violence against women.
150. “Government agency” is a narrow category, proving particularly challenging for victims of violence in regional, rural and remote areas who may not have access to public health facilities, but rather private health facilities.
151. Much child protection work has been outsourced to non-government organisations which appears to be excluded from the definition of government agency.
152. As a matter of urgency, documentary evidence requirements should be amended so that evidence from any support services as defined in s3(1) of the *Victims Rights and Support Act 2013* should suffice.
153. The ten-year upper time limit for victims of domestic violence and sexual assault applying for victims support, half the upper time limit recommended by the Chair of the Victims Compensation Tribunal,⁴⁷ also restricts access to reparations. The removal of time limits for victims of child sexual abuse should extend to all victims of sexual assault and/or domestic violence.

⁴⁵ PricewaterhouseCoopers, *NSW Department of Attorney General and Justice Review of the Victims Compensation Fund*, 12 July 2012 at 51.

⁴⁶ See WLS NSW Submission to the NSW Victims Compensation Review, 2012 at 13-14.

⁴⁷ Victims Compensation Tribunal NSW, *Chairperson's Report 2009/2010*, Victims Services Attorney General and Justice, Sydney 2011 at 29.

Independent monitoring (Question 10)

154. UN Women notes “independent monitoring is a cornerstone of human rights based policy-making and democratic principles”.⁴⁸ Additionally, to be effective and lead to ongoing improvements, monitoring and evaluation should be regular and comprehensive. As UN Women argue, it should also include the following elements:

- time specific and measurable indicators and targets;
- an institutional multi-sectoral mechanism to monitor implementation;
- meaningful participation of civil society and other stakeholders;
- evaluation of practice and systems; and
- accountable reporting procedures.⁴⁹

155. The CEDAW Committee in reviewing Australia’s human rights record recommended an independent monitoring mechanism for the National Plan and the resourcing of civil society to participate in this process.⁵⁰ The United Nations Human Rights Council during Australia’s inaugural Universal Periodic Review process similarly recommended an independent monitoring mechanism for the National Plan.⁵¹ The NSW domestic and family violence implementation plan will be the NSW jurisdictional response to the *National Plan*. It is incumbent upon the NSW government to include an independent monitoring mechanism for its state plan.

156. We welcome the inclusion of a comprehensive evaluation framework of the NSW domestic and family violence reforms and implementation plan, but note there is no reference to an independent monitoring mechanism.

157. If you would like to discuss any aspect of this submission, please contact Liz Snell, Law Reform and Policy Coordinator or Janet Loughman, Principal Solicitor on 02 8745 6900.

Yours sincerely,

Women’s Legal Services NSW

Janet Loughman
Principal Solicitor

⁴⁸ UN Women, Good Practices in National Action Plans on Violence against Women, Report of the Expert Working Group, 2010 at 72.

⁴⁹ UN Women, Note 48 at 72-73

⁵⁰ CEDAW Concluding Observations, Note 13 at para 29.

⁵¹ Human Rights Council, Report of the Working Group on the Universal Periodic Review: Australia, UN Doc A/HRC/17/10, 24 March 2011, recommendation 86.80.