



9 November 2012

Review of NSW Court Support Services  
GPO Box 2650  
Sydney NSW 1171

By email: [CSSreview@au.pwc.com](mailto:CSSreview@au.pwc.com)

Dear Ms Orton,

### **Review of NSW Court Support Services**

1. Women's Legal Services NSW (WLS NSW) appreciates the opportunity to respond to the Issues Paper: *Delivering a consistent approach to the provision of court support services for victims of crime.*
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. In summary, as the Issues Paper states, NSW court support services assist victims of crime 'as they participate in the court process.' In many cases these victims are victims of domestic and family violence. WLS NSW recommends:
  - a. A co-ordinated approach to addressing domestic and family violence.
  - b. The establishment of a network of integrated and holistic services for women who have experienced domestic violence, which includes court support services.
  - c. Court support services should be timely, responsive to the needs of clients, client-centred and recognise the diverse needs of clients.
  - d. That there be properly funded, regular and ongoing training for those providing court support services.
  - e. That there be adequate funding for refuge, counselling, health, legal and court support services.



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### Clarification of Issues Paper

4. We wish to make comment on the Issues Paper itself as there are important issues that have not been adequately raised and addressed.
5. We understand victims of crime to include those applying for an apprehended violence order (AVO). As noted above many victims of crime in NSW are victims of domestic and family violence.
6. We refer to the *National Plan to Reduce Violence Against Women and their Children, 2010-2022 (National Plan)* which was endorsed by all Australian Governments in February 2011. The *National Plan* includes the outcome that justice responses are effective and includes strategies: to improve access to justice for women and their children; to strengthen leadership across justice systems; that ensure justice systems work better together and with other systems. It also includes the outcome that perpetrators stop their violence and are held to account. These outcomes and strategies are very relevant to the review of court support services in NSW.
7. We further note the gendered nature of domestic violence which is acknowledged in section 3(b) of the *Crimes (Domestic and Personal Violence) Act 2007*. Given the gendered nature of such violence it is imperative that specialist services for women who are victims of crime, such as the Women's Domestic Violence Court Advocacy Services (WDVCASs), are not replaced by gender-neutral services.
8. 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.
9. During our teleconference consultation with PricewaterhouseCoopers prior to the publishing of this Issues Paper, we raised the importance of including people applying for an apprehended violence order (AVO) in the list of court support services for victims of crime. This should be explicitly included in the description in the opening paragraph of Section 2.2. The explanation of the aims of court support services with respect to AVOs should also include ensuring AVOs are appropriate to a victim's needs.
10. Figure 3 on page 10 of the Issues Paper describes 'professional and community services' citing 'CLCs and NSW Women's Legal' as examples. The description of professional and community services does not necessarily reflect what WLS NSW or other CLCs may do. For example some of our casework with victims is long-term and/or complex casework related to court processes.
11. Page 17 of the Issues Paper states 'many courts only have WDVCAS workers on certain days of the week, which creates a gap if the mention is listed for an alternative day.' We agree this is a gap. It is also an issue on AVO hearing days.
12. We also refer you to our submission to the NSW Legislative Council's Standing Committee on Social Issues Inquiry into Domestic Violence Trends and Issues in which we outlined our support for a co-ordinated approach to addressing domestic and family

violence in NSW and the establishment of a network of integrated and holistic services for women who have experienced domestic violence, including court support services.<sup>1</sup> There should be adequate funding for all these services, including: refuge, counselling, health, legal and court support services.

## Response to Questions

### Referral pathways

#### ***Question 1a) What are the enablers and barriers for victims in accessing court support services in a timely manner?***

13. A number of issues can be either enablers or barriers for victims accessing court support services in a timely manner. These include: timely referrals by services and police; timely responses by services; access to interpreters; appropriately trained workers; culturally appropriate workers, including Aboriginal specific workers; services in attendance on relevant days at court, including AVO hearing days; ensuring adequate services and access to safe rooms particularly in regional, rural and remote areas.
14. Lack of services and access to safe rooms in regional, rural and remote areas is recognised both in this Issues Paper and in the NSW Legislative Council's Standing Committee on Social Issues' *Domestic Violence Trends and Issues Final Report*.
15. Some courts that do have a safe room provide only a very small space for victims of violence. While noting that this is better than no safe room at all, we outline below what should be included in a safe room.
16. Safe rooms for domestic violence victims in AVO matters need to be secure, have direct access to the court room and, if possible, a discrete entrance. It is critical that safe rooms include space for confidential advice sessions with a lawyer. Where possible there should also be space for children and a bathroom in the safe room. At a minimum there should be access to a laptop, printer, paper and a telephone in safe rooms. Safe rooms also need to be accessible on hearing days, not just AVO list days.
17. Additional barriers faced by Indigenous and CALD victims of violence in accessing courts and court support services include a mistrust of authority figures.<sup>2</sup>
18. Access to court support services and legal advice is critical for women who are victims of domestic violence but are subject to a private or police AVO application. For women in this situation, access to these services is currently haphazard. If a woman has previously been a client of the WDVCS it is likely that she will be identified by the WDVCS as needing assistance or she may seek it out herself. For others, access relies upon: a woman's awareness of the WDVCS; workers identifying there may be an issue before court or intervening to offer help for the woman once the court proceedings start if it becomes apparent there is an issue. The most vulnerable victims who know the least about their rights and the availability of services are the most likely to fall through the cracks,

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<sup>1</sup> Women's Legal Services NSW, *Submission to the NSW Legislative Council's Standing Committee on Social Issues Inquiry into Domestic Violence Trends and Issues*, 23 September 2012 accessed on 8 November 2012 at: <http://www.parliament.nsw.gov.au/Prod/parliament/committee.nsf/0/7C5189E62F79B9C5CA257925007EADA9>

<sup>2</sup> Mathew Willis 'Non-disclosure of violence in Australian Indigenous communities' *Trends & issues in crime and criminal justice no.405* Australian Institute of Criminology, January 2011 at 3 accessed on 7 November 2012 at: <http://www.aic.gov.au/publications/current%20series/tandi/401-420/tandi405.aspx>

and therefore to have an AVO made against them for the 'protection' of their abuser. AVOs by perpetrators provide further leverage for perpetuating abuse against women. Identifying a woman defendant who is a victim of domestic violence can be all the more challenging in the context of same sex relationships. The availability of specialised same sex court support services are essential to help in these instances.

19. To help ensure women victims of domestic violence who are defendants in an AVO application access court support services, a number of steps should be taken. These include: court lists clearly indicating whether a matter is an Apprehended Personal Violence Order (APVO) or an Apprehended Domestic Violence Order (ADVO); court support staff reviewing court lists to identify all women ADVO defendants and attempting to speak with each woman defendant to an ADVO to ascertain if she is a victim of domestic violence by the protected person;<sup>3</sup> court support services advertising the availability of their services to victims of domestic violence who are defendants to AVOs. Finally, we are aware that there have been issues with court support services being discouraged by Police from assisting women defendants who are subject to a Police application, despite the fact the court support service is not assisting the male protected person. This practice needs to be addressed in protocols between court support services and Police.

***Question 1b) Could court support services effectively support a victim to participate in their case, without attending court in person (except where the victim is required to attend as witness)?***

20. This question can be understood in two ways: whether court support services should be physically present at the court to offer face-to-face services or whether victims of crime need to be present at court to receive court support assistance.
21. We submit that the most effective court support services to assist a victim to participate in their case occur face-to-face. For example, legal practitioners representing victims of violence in APVO matters or women defendants in ADVO or APVO matters are able to identify and deal with issues as they arise in court or on the day. They are able to negotiate orders on behalf of victims of violence and explain the orders and what took place in court.
22. While legal services can provide legal advice to victims of crime regarding their court appearance by telephone there is only so much preparation that can take place by telephone. Legal practitioners also need to see the papers to provide full advice and this is not always possible when giving telephone advice. It is our experience that most clients do not contact support services until the day that their matter is in court and clients may often arrive at the court without papers. In such circumstances, clients need assistance to go to the Registry to obtain another copy of the papers, to speak to the prosecutor or domestic violence liaison officer (DVLO).
23. Face-to-face court support services can also offer comfort and reassure victims of crime at court.
24. Face to face assistance on the day at court can make a significant difference to a victim of crime as outlined in the case study below.

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<sup>3</sup> We note that in some cases, where parties to an AVO are from a cultural background that is not shared by court support staff, identifying female names from male names can be difficult.

**Case study**

Mrs Y\* is a CALD woman who was both the protected person and the defendant in a Police ADVO cross application. Her husband was the other party.

On the day her matter was first in court the WDVCAS noticed Mrs Y did not have any legal representation and asked her if she would like to speak to the solicitor attached to the WDVCAS. After speaking with the solicitor it became apparent that Mrs Y was clearly the victim in the relationship and had not been able to explain the abuse she was experiencing to the Police when they attended an alleged incident due to her low levels of English. The perpetrator was at court with her on the day and Police were going to ask for the AVOs against both parties to be withdrawn due to the apparent reconciliation.

With the assistance of the solicitor making direct representations to the DVLO and Police Prosecutor, the AVO for her protection was made by consent and the AVO against her was withdrawn.

Shortly after court Mrs Y ended the relationship. One month later Mrs Y was again assisted by the lawyer to seek support, family law information, deal with financial issues and access a refuge. The support service, in combination with immediate legal advice and face-to-face advocacy and negotiation by a lawyer at court, helped Mrs Y to leave the violent relationship.

Mrs Y and her children are now safe.

\* not her real name

25. With reference to the second way of answering this question, there are several ways that court support assistance can be provided to victims of crime prior to their court appearance. Court support assistance could include help with applying for a grant of legal aid. It could include explaining the court process before the victim of crime has to appear in court. It could include communicating with police on behalf of the client, for example if a change of orders is required or if another witness can be provided. Court support services could also include assisting clients to make a police complaint where relevant. It could include making referrals, for example, for housing, to the Staying Home Leaving Violence program, for counselling.
26. Such support, however, is contingent upon the client knowing such court support services exist and getting in touch with the court support services which can occur by telephone.
27. We are aware that there are currently some ad hoc information sharing programs in place for victims and/or survivors of violence in NSW known as the 'yellow card' system and also known by other names. We understand that these cards can be provided by Police to a third party, such as a WDVCAS worker, as an indication that the woman has consented to her information being shared. The third party then contacts the victim. This is another way victims of violence can be contacted in order to provide court support assistance prior to their court appearance.
28. We support these initiatives since they are aimed at improving responses to domestic violence and when all goes well, can result in an earlier resolution of an application for an

ADVO – with fewer court appearances. Importantly and necessarily, they rely on prior consent of the victim to be contacted by such services.

29. However, at present these systems are not uniformly administered nor demonstrably effective. Service feedback to us includes that information may not reach the WDVCS until after the first court date; only one side of a 2-sided document is on occasions faxed to the WDVCS which then has no information about the court and date that the matter is listed; there are lengthy delays in the referrals.
30. We note a shift towards the sharing of information. Efforts should be directed towards addressing current issues regarding interagency efforts before concluding that information-sharing is an appropriate policy response. We outline our concerns regarding information-sharing in more detail at paragraphs 42-43.
31. Court support services also need to be well-resourced with properly trained workers to provide effective support to victims of crime.

### **Key needs of victims**

#### ***Question 2a) What services are required by victims but missing from the list (Figure 4)?***

32. The services required that are missing from the list in Figure 4 of the Issues Paper include legal or other services to assist clients with preparation of statements for AVO hearings. Associated family law issues in AVO proceedings should also be included in 'legal or other services'. We submit that 'legal or other services' is distinct from 'court preparation' as defined on page 8 of the Issues Paper. While 'advocacy' is defined as 'legal or general advocacy' it is unclear if this is ongoing legal advocacy.
33. We are unclear why counselling is limited to 'crisis counselling', defined as 'counselling required specifically due to the impact of the court proceeding on the victim' when other counselling may also be required.
34. It is unclear what is meant by 'assessment and planning' and whether this relates to safety or something else?
35. We note that victims compensation is a right included in the Charter of Victims Rights. We further note the importance of receiving victims compensation referrals when accessing court support services as victims of crime may not otherwise be aware of victims compensation. Victims compensation referrals should be explicitly mentioned in the list of services for victims of crime.

#### ***Question 2b) What are the minimum services that should be provided to all victims of crime for court support?***

36. Minimum services that should be provided to all victims of crime for court support should include those listed in Figure 4, as well as legal or other services, counselling and victims compensation referrals. Minimum services should be consistent with the Charter of Victims Rights.

#### ***Question 2c) What services framework would be required to offer end-to-end victim centred court support services?***

37. To provide effective end-to-end victim centred court support services, a range of services

are required, including: women's services; Aboriginal and Torres Strait Islander women specific services or in the alternative Aboriginal and Torres Strait Islander women workers and targeted Aboriginal and Torres Strait Islander positions; Culturally and Linguistically Diverse specific services. Services also need to be accessible for women with disabilities and LGBTI victims of crime. There is no one size fits all. Services must be well resourced and workers must be properly trained with ongoing mandatory training on a yearly basis. Services should be provided face-to-face, particularly for Aboriginal and Torres Strait Islander people.

### **Co-ordination of court support services**

#### ***Question 3a) What are some enablers and barriers for collaboration between different court support service providers?***

38. The framework from which services operate can act as either an enabler or a barrier. For example, Women's Legal Services NSW operates from a feminist framework. While noting that men can also be victims of domestic and family violence, we recognise the gendered nature of such violence. We also strongly believe that perpetrators of violence should be accountable for their actions and challenge the view that women only claim family violence in order to improve the outcome of their family law matters.
39. A commitment to working together, a shared framework, an existing relationship or a commitment to building relationships are also important enablers for collaboration. Many domestic violence interagencies seem to work well as they include localised networks of people from a variety of services who are across the issues for that local community.
40. A lack of co-ordination of court support services can act as a barrier. For example, if a new service is not co-ordinating with WDVCAS victims may be diverted away from the court safe room or other services on the day.
41. Inadequate funding can also impact upon collaboration.
42. Women's Legal Services NSW has raised concerns about the risks of information-sharing without consent in a number of fora. These concerns include:
  - a. Contacting a victim of violence without their consent may further endanger them if there has been no check that it is safe to call.
  - b. Incorrect information may be exchanged and circulated without the victim's knowledge. If done without consent the woman may not be aware of what needs to be corrected and this could have adverse consequences, for example, if called as evidence in a subsequent ADVO hearing or sexual assault prosecution.
  - c. Relying on the fact that information has been passed on may be a way of passing off responsibility.
  - d. Given the increased number of women victims of violence who are inappropriately before the courts as defendants to an ADVO, we wonder how this information will be dealt with when the woman is the defendant and/or also subsequently becomes a defendant in a cross application or has charges laid against her.
  - e. There is a real potential for information to be used against a victim of domestic

or family violence in proceedings such as care proceedings, family court matters and defended AVO matters. This can act as a barrier to disclosing domestic violence and women seeking assistance in the first place.

- f. There is real potential to undermine the efficacy of the Sexual Assault Communications privilege.
- g. There is a real likelihood that a failure to indicate family violence could inappropriately lead to an assumption that there is no family violence and opportunities to be asked about family violence will be reduced.

43. The concerns of WLS NSW about the risks of information-sharing without informed consent are outlined in more detail in our supplementary submission to the NSW Legislative Council's Standing Committee on Social Issues' Inquiry into Domestic Violence Trends and Issues.<sup>4</sup> These concerns need to be addressed.

***Question 3b) What role can funding decisions play in achieving more effective co-ordination of services?***

- 44. Funding decisions can be restrictive and prescriptive in circumstances that do not take into account the particular community or problems the community face.
- 45. We also recommend that funding for court support services be available for all stages of proceedings. We understand that many WDVCS are not funded to help women victims of violence with the preparation of statements or at the time of their hearing. This is a significant gap.
- 46. Adequate funding for evaluation should also be included in funding agreements.

***Question 3c) How could victims of crime be empowered to select the most appropriate court support service to meet their needs?***

- 47. Victims of crime first need to know that services exist and how they can access relevant services.
- 48. Services need to be adequately funded so victims of crime have a choice of service – for example women's services and Aboriginal and Torres Strait Islander women's services or in the alternative Aboriginal and Torres Strait Islander women workers and targeted Aboriginal and Torres Strait Islander positions. Services also need to be available and accessible for CALD communities, LGBTI communities, people with disabilities, older and younger women.
- 49. Victims are empowered through receiving relevant information in a timely manner. As points of first contact with victims of crime, police and ambulance services should be providing referrals and information to victims of crime, including information about victims compensation.
- 50. It is important that victims of crime are not provided with too much information by way of irrelevant brochures as too much information can be disempowering. For example, if a

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<sup>4</sup> WLS NSW Supplementary submission the NSW Legislative Council's Standing Committee on Social Issues inquiry into Domestic Violence Trends and Issues, 3 July 2012 at 4-7 accessed on 2 November 2012 at: <http://www.parliament.nsw.gov.au/prod/parliament/committee.nsf/0/E3BC222D6B3403B1CA257A32008374E5>



woman has no dependent children, information about Child Support is generally not necessary.

## **Training**

### ***Question 4a) Should there be a standard state-wide training program for all staff delivering court support services and what should such a training program include?***

51. Training needs to be properly funded, regular and ongoing. Training should be tailored and specific to the particular environment, whether it be criminal, family law or the child protection jurisdiction.
52. Appropriate policy and resource support should be provided to ensure that court support workers are kept up to date on how to support and advocate for clients effectively, for example, in relation to the 2012 AVO Practice Note or client conflict check policies. Where appropriate, training regarding court policies and practices should be provided by legal practitioners.
53. Minimum standard competencies should be met in all the areas of court support services as outlined in Figure 4 of the Issues Paper. In addition to that they should include:
  - a. Safety assessment and planning;
  - b. Communicating and dealing with difficult clients;
  - c. Client confidentiality and retaining client information to the services provided;
  - d. Making appropriate referrals;
  - e. Worker safety;
  - f. Demystifying mental illness;
  - g. Aboriginal Cultural Awareness;
  - h. Working with Culturally and Linguistically Diverse communities;
  - i. Working with interpreters;
  - j. Nature and dynamics of family/domestic violence.
54. If there are mandatory minimum standards for training, what will happen if workers do not attend training? Will this mean workers and/or organisations will be unaccredited?

### ***Question 4b) What is an effective and appropriate way to incorporate volunteer workers into service delivery of court support services while meeting agreed standards of training, qualifications and screening?***

55. We support seconded workers working with Court Advocacy Services, for example, from Housing NSW or Women's Health. Such workers should undergo minimum training before undertaking work in a court support service.
56. We express concern about the basis of a duty of confidence and the storing of notes about victims of crime by volunteers and believe this issue needs to be addressed.

57. If there is not going to be a single coherent set of performance standards for all court support services, the provision of appropriate and adequate court staff is required to direct people to the relevant court support services. This could limit confusion, potential misdirection to different court support services and distress on the part of victims of crime.

### **Quality**

#### ***Question 5 What are the defining characteristics of quality in the delivery of court support services?***

58. It may be possible to use the Charter of Victims Rights to assess the quality of court support services, by considering the manner and extent to which service providers fulfil the requirements of the Charter. However, it is questionable how useful this would be if it occurs through self-assessment.
59. If minimum standards are introduced in addition to drawing on the Charter of Victims Rights, other characteristics of quality could include timeliness of response according to level of urgency, responsive to the needs of clients and recognition of the diverse needs of clients.
60. It is also important that quality is not limited to the number of clients a service sees. This is discussed further at Question 6.
61. All services should have a transparent complaints mechanism that is easy to access which includes an outline of how complaints will be responded to and how complaints can be made to an independent body.

### **Measures of reporting**

#### ***Question 6: Should all providers of court support services be required to report against a set of common performance measures?***

62. In principle we agree that all providers of court support services should be required to report against a set of common performance measures. However, there are challenges regarding how this could happen in practice. Who would enter the data? What quality control measures would operate to ensure accuracy of information? Services would also need to be funded to collect data.
63. Further challenges arise in deciding upon what to measure. For example, measuring the number of times someone contacts a service does not necessarily indicate the quality and/or effectiveness of the service.
64. Further questions arise as to whether this takes place by self-assessment or if services are audited how this would occur and what ramifications there would be for failing an audit?

### **Funding and resourcing**

#### ***Question 7: What would the ideal funding model look like to fund NSW court support services?***

65. We recommend that funding not be based on quantitative measures and data alone. Qualitative measures and data are also important. This is particularly important when

dealing with complex matters that take time.

66. We are concerned about a potential reliance upon volunteers to deliver court support services that should be delivered by trained paid staff. Volunteers should not replace the adequate funding of court support services.
67. If volunteers are to assist, they must be properly trained and supported.
68. We do not believe there is a good case for single source funding or a centralised and standard funding model for court support services for victims of crime. Services for victims of crimes are services for people who may have a variety of needs for which the service might be appropriate and might involve court support but it is not the purpose or the focus of the service. Additionally, given the diverse needs of victims of crime, a variety of services should be available.

### **Gaps and duplications**

#### ***Question 8: What are the current gaps and duplications in court support services?***

69. Victims of crime who have poor or limited access to court support services include Aboriginal and Torres Strait Islander people, people living in regional, rural and remote areas, people from culturally and linguistically diverse communities, people with disabilities, LGBTI communities and those appearing at a court with either no court support services or services not attending on the day they are in court.
70. The design of referral and access to court support can be improved through better funding of services, training and a commitment by agencies to making timely referrals.
71. We note that information-sharing has been suggested as a way of improving access to services. We recommend that information-sharing should only take place with the informed consent of the victim. We refer to paragraphs 42-43 above for further information regarding our concerns with information-sharing.
72. We refer to the *Legal Australia-Wide Survey: Legal Need in NSW* recently published by the Law and Justice Foundation of NSW for further information about unmet legal need.

#### ***Question 9: What improvements could be made to the delivery of court support services?***

73. The following paragraphs refer to the suggested improvements to court support services outlined in Section 2.9.
74. WLS NSW supports a victims centred approach to court support services. We acknowledge the importance of proactive case management and note this needs to be properly resourced. We again refer to the importance of having the client's informed consent before information-sharing takes place. We refer to paragraphs 42-43 above for further information.
75. We refer to 'an assessment process and streamed services'. It is important that there is flexibility in such a system and that it be victim centred. It may be that things change as the matter progresses and a client needs to access other services.
76. We refer to 'timelines of service' and note that delays by police in contacting victims or in making referrals is common. We support the recommendation that first contact with the

victim should be as soon as possible before the court hearing.

77. 'Comprehensive and proactive case communications and briefings' should include assistance with preparing statements.
78. We refer to 'independent complaints and feedback process'. We support an independent complaints mechanism, however, we are unclear as to how this would work in practice. It is important that complaints can be made to an independent body and that such a body has the power to take action where appropriate.
79. We refer to 'referral pathways' and recommend that referrals are made only with the informed consent of the client. See paragraphs 42-43 above.
80. As mentioned at paragraph 16 it is also important that safe rooms are accessible on AVO hearing days as well as AVO list days.
81. We refer to the proposal on page 31 of the 'need to expand the Privacy Codes of Practice or similar provisions to the rest of NSW, and to develop interagency guidelines for information exchange.' We again refer to paragraphs 42-43 and our recommendation that information-sharing take place with informed consent of the client.

***Question 10: What referral pathways, resources and governance is required to contact and provide pre-court services to all victims of crime prior to their first court mention?***

82. As previously raised, there can be no one size fits all approach to court support services for victims of crime. What is required is a co-ordinated approach that is responsive to the needs of clients, is client-centred and recognises the diverse needs of clients.
83. We refer again to our concerns regarding information-sharing raised at paragraphs 42-43 above.
84. As discussed at paragraph 68 above, we do not believe there is a good case for a single source of funding and governance body tendering the provision of court support services.
85. If you would like to discuss any aspect of this submission, please contact Liz Snell, Law Reform and Policy Co-ordinator on 02 8745 6900.

Yours sincerely,

**Women's Legal Services NSW**

Liz Snell  
Law Reform and Policy Co-ordinator