WOMEN'S LEGAL SERVICES NSW

Incorporating
Domestic Violence Legal Service
Indigenous Women's Legal Program

4 May 2015

Professor Helen Rhoades
Chair
Family Law Council
C/- Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

By email: flcreference@ag.gov.au

Dear Professor Rhoades,

Family Law Council reference on *Families with Complex Needs & the Intersection of the Family Law and Child Protection Systems*

1. The Attorney-General, Senator The Hon George Brandis QC, has made a reference to the Family Law Council which includes the following:

> Many families seeking to resolve their parenting disputes have complex needs, including emotional, sexual and physical abuse, family violence, substance abuse, neglect and mental health issues. These disputes may be able to be better addressed with the assistance of relationship support services and/or court processes that can cut across the child care and protection and family law systems.
>
> I request that the Family Law Council consider and advise … on the following matters in relation to the needs of these families [the first 2 of 5 Reference questions]:
>
> - The possibilities for transferring proceedings between the family law and state and territory courts exercising care and protection jurisdiction within current jurisdictional frameworks;
>
> - The possible benefits of enabling the family courts to exercise the powers of the relevant state and territory courts including children's courts, and vice versa, and any changes that would be required to implement this approach, including jurisdictional and legislative changes.

2. We refer to your letter to Women's Legal Services Australia (WLSA) seeking submissions on these first 2 questions. You have provided 6 questions to guide submissions:

> - What are the experiences of children and families who are involved in both child protection and family law proceedings? How might these experiences be improved? What problems do practitioners and services face in supporting clients who are involved in both child protection and family law proceedings? How might these problems be addressed?

- What are the possible benefits for families of enabling Children's Courts to make parenting orders under Part V11 of the *Family Law Act?* In what circumstances would this power be useful? What would be the likely challenges for practice that might be created by this change?

- What are the possible benefits for families of enabling the family courts to make Children's Court orders? In what circumstances would this power be useful? What challenges for practice might be created by this change?

- Are there any legislative or practice changes that would help to minimise the duplication of reports involved when families move between the family courts and Children's Courts?

- How could the sharing of information and collaborative relationships between the family courts and child protection agencies be improved?

3. Women's Legal Services NSW is a member of WLSA and we thank you for seeking our views.

4. We have been guided by the questions provided in making this submission, and note that the overarching theme is the needs of families involved in both family law and Children's Court proceedings. We have focussed on the need for professionals in both systems to fully understand domestic and family violence and the effects on women and children; and on the need to enhance services to families with complex needs.

Women's Legal Services NSW

5. Our service predominantly provides early intervention legal services in these two areas of law including legal advice, advocacy to help navigate the family law and child protection systems and legally assisted family dispute resolution (FDR) or alternative dispute resolution (ADR). We also act in litigation in some matters for women who have experienced family violence and have complex needs.

6. We note that some people prefer to identify as victims of violence and others as survivors of violence. When we use the term 'victim' this is intended to mean both victims and survivors.

Previous work on the jurisdictional issues

7. We note that the intersection of the family law and child protection systems has been the subject of inquiry, analysis and recommendations many times in the past. You will be well aware of the previous work of the Family Law Council (FLC) which reported in 2002 on Family Law and Child Protection[1] and in 2009 provided a letter of advice about the intersection of family violence and family law issues.[2] More recently the Australian Law Reform Commission and NSW Law Reform Commission inquired into and made recommendations in their important family violence report published in 2010[3] [*Family Violence Report*].

[1] Family Law Council. Family Law and Child Protection Final Report. September 2002.
[2] Family Law Council, *Improving Responses to Family Violence in the Family Law System: An Advice on the Intersection of Family Violence and Family Law Issues*, 2009.
[3] Australian Law Reform Commission and NSW Law Reform Commission *Family Violence - A National Legal Response Final Report.* ALRC Report 114 Volume 2. See in particular para 19.44.

8. It is disappointing that the terms of reference do not also extend to the state/territory family violence courts. While this issue was extensively researched and discussed in the *Family Violence Report* we feel it is remiss to focus on the family law and child protection systems without also including the state/territory family violence courts.

Family violence

9. Family violence is an issue common to almost all child protection matters and family law matters that go to family dispute resolution where lawyers represent the party/ies and that go to hearing.

10. While we can provide further detail here, we submit that there is already a body of evidence about the effects of domestic and family violence on women and children and the need for professionals to fully understand these effects. What is required is resources and action to improve understanding and practice, as well as services, across both jurisdictions. Two particular issues are expanded upon below in relation to the family law courts.

Risk assessment

11. We commend the mandatory use of Notice of Risk forms in all family law proceedings in the Federal Circuit Court, to try and ensure that the court is alerted to family violence.

12. We express concern about the question in the Notice of Risk about a person relevant to the proceedings 'suffer[ing] a serious parental incapacity'. We fear this question may be misused and abused by perpetrators in situations of family violence. This highlights the importance of training including emphasis on the impacts of the violence on parenting capacity, particularly the tactics perpetrators use to undermine the mother / child relationship.

13. Further, we note the Family Court is continuing with the practice of only completing a Form 4 where child abuse, family violence or risk of family violence is present. We recommend a Notice of Risk be mandatory in all family law matters.

14. Risk assessment should also be seen as a continuous process as risk may change over time.

Accreditation of family report writers

15. A number of concerns were raised in the 2013 Australian Institute of Family Studies (AIFS) *Independent Children's Lawyer Study Final Report* (*ICL Study Report*). These included the focus given to some issues in Family Reports at the expense of giving adequate focus to the presence of family violence; the weight given to these reports; and the seeming lack of critical analysis of such reports resulting in the reports often going untested.

16. A judicial officer who participated in the AIFS ICL Study noted, 'the over focus on the need to preserve the child/parent relationship, sometimes at the risk of minimising other issues of concern.'[4] The judicial officer notes this as a 'failing with some report

[4] AIFS, *Independent Children's Lawyer Study*, 2013 at 134.

writers, which is then carried on by the ICL'.

17. Similarly, a non-ICL lawyer commented 'Too often the ICL takes the easy way out and follows the recommendations of the family report writer, whereas it should be a further, more sustained, independent assessment. I have rarely seen a matter where the ICL has disagreed with the family report writer.'[5]

18. Another comment: 'It concerns me that it is the family consultant's report that carries so much weight in children's matters [when they] often only spend a few hours with a family'.[6]

19. We note that untested Family Reports are often relied upon:

    - by the ICL in coming to their decision; and
    - by Legal Aid in determining legal aid funding decisions.

20. We recommend Family Report Writers who provide evidence in family law proceedings must be accredited. They must have clinical experience in working with victims of family violence and be bound by standards and there must be an effective mechanism for complaints.

Lack of Services

21. Our experience is that there is a paucity of services for our clients, including legal aid provision (see further below on Legal Aid).

22. There can be very long waiting lists for housing, drug and alcohol services, children's contact services, and family relationship centres for example. Given family violence is the leading cause of homelessness, access to safe, affordable housing close to existing support networks is vital.

23. The NSW Women's Alliance[7] and Men's Behaviour Change Network published a *Blueprint to End Sexual Assault and Domestic and Family Violence in NSW* in March 2015 with key recommendations in the areas of leadership, prevention and early intervention and the service and support system. It identified the need for a minimum investment of an additional $100 million over the next 3 years for services that meet the health housing, justice and legal needs of women and children.

24. A very significant investment in front line services nationally is crucial for clients with complex needs.

25. We are very concerned that the terms of reference mention that the 'disputes may be able to be better addressed with the assistance of relationship support services' (and/or court processes that can cut across the child care and protection and family law systems). Our argument for the need for enhanced services is for the broad range of services that are needed to meet the complex needs of clients and are

[5] Ibid at 130.
[6] Ibid at 130.
[7] The NSW Women's Alliance was established in 2013 by a number of NSW feminist and social justice peak organisations and state-wide services provides working in sexual assault and domestic and family violence fields. WLS NSW is a member of the alliance.

necessarily much more than 'relationship support services'.

26. Further, given the prevalence of domestic and family violence, and its consequences, including lethality, services must be evidence based and properly resourced.

27. Greater investment in services, including early intervention services, would greatly improve the experiences of and meet the needs of families with complex needs and avoid any engagement with the intersection of the two jurisdictions.

28. As the inaugural *Children's Rights Report* identifies, a significant and recurring issue arising in meetings with child advocates included:

> the call for a comprehensive and coordinated investment across the nation in early intervention and preventative services for children and families, in order to build resilient children within families and communities, and break the cycle of disadvantage.[8]

Legal Aid

29. The difficulty in obtaining grants of legal aid in family law cases, and its limits, are issues that seriously impact on clients with complex needs.

30. The legal aid system, including Legal Aid Commissions, Community Legal Centres, Family Violence Prevention Legal Services and Aboriginal and Torres Strait Islander Legal Services all require a serious injection of funding to meet the needs of complex families.

31. This is supported by the recent Productivity Commission's recommendation of an additional $200 million funding for the legal aid system.[9]

Specialised family violence funding pathway in Legal Aid

32. We do a considerable amount of work assisting women who have experienced family violence seek a grant of legal aid. Although family violence is recognised in the guidelines in NSW, the tests are complex, are described in gender neutral language which is contrary to lived experience and aid can be difficult to obtain unless advocacy is provided.

33. Women who have been victims of family violence are pressured to settle in accordance with the recommendations of Family Reports as a grant of legal aid is generally withdrawn should a party wish to challenge the findings. This is a concern that WLSA has raised in other inquiries.[10]

34. As WLSA argues, it is particularly troubling that even if there are aspects of the Family Report that should and could be challenged, many of our clients do not have the capacity or are too scared to self-represent if legal aid is withdrawn.

---

[8] Australian Human Rights Commission, *Children's Rights Report 2013* at 72, 87-88.
[9] Productivity Commission, *Access to Justice Arrangements*, 2014, Recommendation 21.4
[10] See, for example, WLSA Submission in response to the Productivity Commission, Access to Justice Arrangements, 4 November 2013 at 18, accessed on 21 April 2015 at: http://www.pc.gov.au/__data/assets/pdf_file/0016/129121/sub029-access-justice.pdf

35. In situations of family violence, we believe access to justice and a fair hearing is jeopardised where legal aid is withdrawn simply because a parent seeks to pursue an application for orders which are different from those recommended by a Family Report Writer. This is more worrying in the absence of accreditation which ensures an understanding of the impact of trauma. In such circumstances it is important that the evidence is tested to determine arrangements which are in the best interests of a child.

36. If both parties are unrepresented and there is a history of family violence this raises additional concerns. There are currently insufficient protections to prevent an alleged perpetrator from directly cross-examining the victim of violence in family law proceedings. Additionally, the victim of violence may have to directly cross-examine the alleged perpetrator of violence.

37. The Productivity Commission recently recommended legislative amendment to provide protection for vulnerable witnesses in family law matters.[11] Legal aid provision is needed as well.

38. We refer to WLSA's submission to the Productivity Commission discussed above and support the development of a specialised family violence funding pathway in Legal Aid Commissions for family law matters that is developed with family violence experts to guide internal decision-making on merit. Enhanced funding is also required.

Early legal advice

39. Based on the experience of our clients, there is a need for earlier intervention in matters involving child protection concerns. Parents and/or primary caregivers should be informed of child welfare authority concerns and referred for free legal advice at an early stage.

40. In NSW, following the 2014 legislative amendments to the *Children and Young Persons (Care and Protection) Act 1998 (NSW)* the Department of Family and Community Services (FaCS) has funded Legal Aid NSW to provide early legal advice to parents and primary caregivers.

41. Legal Aid NSW is working with Community Legal Centres in NSW as well as the Aboriginal Legal Services NSW to provide such services. The focus is on legal advice for parent responsibility contracts, parent capacity orders and alternative dispute resolution processes for contact disputes.

42. This is an excellent initiative to engage families with early intervention legal services.[12] Access to early free legal advice is particularly important in the context of the move towards permanency planning within legislated timeframes.

43. There is also great value in parents and primary caregivers being able to access free

[11] Productivity Commission, *Access to Justice Arrangements Report*, 2014, Recommendation 24.2.

[12] Unfortunately, inadequate funding has been provided for this role, and referrals have been slow to develop. For example, most Community Legal Centres receive funding for 1 day a week for this service. These are matters for monitoring and development of the initiative.

legal advice following their first interaction with FaCS or a non-government organisation child protection service, that is, at an earlier stage than is currently happening.

44. The purpose of such legal advice would be to help the parents/primary caregivers understand the reason for the contact with the child protection service, identify issues that need to be addressed and discuss what the parent/primary caregiver can reasonably do to address these issues – including ensuring the service(s) with whom they engage are accessible, available and affordable.

Enabling Children's Courts to make parenting orders under Part VII of the Family Law Act?

45. We support enabling Children's Courts to make Family Law Act parenting orders. This issue was well canvassed in the *Family Violence Report* and we support Recommendation 19-4 of that Report: The *Family Law Act 1975 (Cth)* should be amended to give children's courts the same powers as magistrates courts.

46. As recognised at paragraph 19.142 of the *Family Violence Report*, it is imperative the necessary resources are allocated to support this implementation. It is also important that the effectiveness of this be evaluated.

Enabling the family courts to make Children's Court orders?

47. We have reservations about enabling family law courts to make Children's Court orders. Our concerns include:

- the public vs private law nature of the proceedings
- the lack of investigative power of the family law courts
- reliance on litigants to gather evidence, and to bear the cost of 'child protection' litigation
- potential for courts choosing carers over parents in circumstances where the parent may be an appropriate caregiver with additional support[13]

48. We also note that while financial assistance may be available for carers and guardians caring for children in the child protection system, such support is often not available or not accessed through the family law pathway.

49. We note the *Family Violence Report* suggested [at para 19-145] that the work that was then proposed in Western Australia, involving integration of family law and child protection issues, be used as an instructive pilot.[14] We are interested to know if this has proceeded.

50. Our reservations lead us to favour ensuring that the Magellan arrangements are operating effectively. We note and support the *Family Violence Report*

[13] Given both the recent case law in the Children's Court and the broad standing for parties in the family law courts, if there is a unified family court assuming the jurisdiction for family law and care and protection we believe it is likely we will see more carers / NGOs as parties.

[14] We also note Julie Jackson's Churchill Fellowship report: *Bridging the Gaps between Family Law and Child Protection* where she referred to consultations underway with stakeholders in Western Australia including the option of a unified family court.

Recommendation 19-5:

> Federal, state and territory governments should ensure the immediate and regular review of protocols between family courts, children's courts and child protection agencies for the exchange of information to avoid duplication in the hearing of cases, and that a decision is made as early as possible about the appropriate court.

51. This built on the FLC 2002 Recommendation 13:

> Families / parties can avoid being in 2 jurisdictions if a decision is taken as early as possible whether a matter should proceed under the Family Law Act or child welfare law with the consequence that there should be only one court dealing with the matter, 'One Court Principle'.

52. Child protection agencies should stay engaged with parents when they advise them to apply to the family court. Within the existing jurisdictional framework, we note the *Family Violence Report* [at para 19.135, Recommendation 19.3] recommends that where a child protection agency investigates child abuse, locates a viable and protective carer, and refers that carer to a family court for parenting orders, the agency should, in appropriate cases, provide written information to a family court about its advice and the reasons for it, provide reports and other evidence as appropriate and/or intervene in the proceedings [para 19.118]. We support this approach and make additional comments below.

Family law pathway as early intervention in child protection

53. Part of a solution to meeting the needs of families with complex needs and who may find themselves interacting with both care and protection and family law proceedings is to see a family law pathway as an early intervention strategy in child protection. Rather than intervening at a late stage and pursuing matters through the Children's Court, parents/primary caregivers should be referred for early legal advice to see if the matter could more appropriately be resolved in the family law system.

54. WLS NSW adopts such an early intervention approach. In our experience this has resulted in reduced acrimony within the family, safer arrangements for children, reduced trauma (noting the trauma associated with a child's removal) and we submit is a better use of state and federal resources as opposed to the costs of removing a child from his/her family and assuming him/her into care.

55. There needs to be further training and education within the community and with service providers about the family law pathway. We refer to the DVD entitled *Looking After Family* produced by Northern Rivers Community Legal Centre as another good example.[15]

56. This is particularly important within Aboriginal and Torres Strait Islander communities where given the history of the Stolen Generations there is a fear of engaging with FaCS.

[15] Northern Rivers Community Legal Centre, Looking After Family, accessed on 21 April 2015 at: http://www.lookingafterfamily.org.au

57. This is further supported by recommendations in the 2012 Family Law Council inquiry report: *Improving the Family Law System for Aboriginal and Torres Strait Islander Clients*.

58. As discussed above, where it is safe and there is an appropriate carer, for example, a parent or family member, FaCS should provide evidence to support an application through the family law pathway as recommended in the Australian and NSW Law Reform Commissions Family Violence report.[16]

59. This evidence to be used in family law proceedings could be in the form of a letter addressed to a parent victim which is prepared by Child Protection services (statutory and voluntary) which explains the child protection concerns and that the taking of family law proceedings is deemed sufficient by FaCS to address the child protection concerns.

60. It is the experience of our clients that such evidence is not forthcoming. Furthermore, if the father does not participate in mediation, our clients are left not knowing whether they should pursue the matter further by filing a family law application. If they do file such an application they generally cannot afford legal representation and are not eligible for a grant of aid because the children are living with them, and so are left to self-represent. Furthermore, when clients contact FaCS to seek evidence to support their family law application in such circumstances, FaCS routinely refuses to provide such evidence.

61. Supporting evidence from child protection services is also important because despite the 2012 family violence amendments to the *Family Law Act 1975 (Cth)* which prioritises safety over a meaningful relationship with both parents, a meaningful relationship is still considered. This can cause tension with the child protection jurisdiction.

Needs of diverse families with complex needs

Primary caregivers in prison

62. WLS NSW provides legal advice and advocacy to women in prison. As part of this work, we help women who have become separated from their children because of their incarceration.

63. If there is no statutory risk of significant harm issues for the children and the issue is the absence of the mother when she enters custody, we recommend an alternative pathway than FaCS and the Children's Court. This is to reduce the stigma which is associated with Children's Court matters and the stress the mother and children may experience where there are no risk of significant harm issues.

64. We support an assessment of *all* placement options as it is the experience of some of our clients in custody that where there are no risk of significant harm issues in relation to the mother, the child may be placed with a violent father or a paternal relative who may alienate the children from the mother.

[16] ALRC and NSWLRC, *Family Violence – A National Response*, 2010, Recommendation 19.3.

65. There are additional concerns when the mother and children are Aboriginal or Torres Strait Islander and the father is not. The importance of cultural identity and connections are not necessarily given adequate attention.

66. Once the mother is released from custody she often faces significant difficulty in having the children returned to her care.

67. Additionally, courts are not generally well informed about the pathways to prison for women as a result of family violence, including sexual assault.

Aboriginal and Torres Strait Islander families

68. A key factor that can positively influence outcomes for children is connection to their culture and identity. This is particularly important for Aboriginal and Torres Strait Islander children.

69. In our experience family report writers and independent children's lawyers do not always demonstrate cultural competence.

70. We note there is a lack of Aboriginal and Torres Strait Islander family report writers.

71. We refer to the Family Law Council 2012 report: *Improving the Family Law System for Aboriginal and Torres Strait Islander Clients.* Some recommendations include:

    - the Australian Government provides funding for further positions for Indigenous Family Consultants and Indigenous Family Liaison Officers
    - Building an Aboriginal and Torres Strait Islander workforce in the family law system
    - Promoting cultural competency in the family law system

72. We submit each of these recommendations applies equally to the care and protection system.

73. If children are removed from the care of their parents and restoration to parents is not possible for Aboriginal and Torres Strait Islander children, guardianship is an option most preferred by kinship carers. This allows the child to remain within the family while transferring the responsibilities for the child to the adult that is considered to be the best carer. This provides continuity of identity and culture for the child.

74. We refer to the Aboriginal and Torres Strait Islander principles, including placement principles, as outlined in s13 of the *Children and Young Persons (Care and Protection) Act 1998 (NSW)*. We regularly advise Aboriginal and Torres Strait Islander clients who report to us that FaCS workers have failed to apply the kinship principles when considering placements for removed children. This is in spite of the Wood Inquiry which recommended the development of guidelines to ensure compliance with these principles.[17]

75. The failure to adhere to Aboriginal and Torres Strait Islander placement principles is

[17] The Hon James Wood, *Report of the Special Commission of Inquiry into Child Protection ('Wood Inquiry')*, November 2008, Recommendation 11.5.

also acknowledged in the *Children's Rights 2013 Annual Report*.[18]

76. We are concerned that rigid timeframes and the permanency principles hierarchy recently introduced as part of the NSW Child Protection Legislative Reforms will pressure decisions for long-term care, leaving many Aboriginal and Torres Strait Islander children without culturally appropriate care.

77. We submit there needs to be greater focus on the development of cultural plans which need to be more extensive than attending events during NAIDOC Week. Cultural plans should be in place when children are taken into care or shortly thereafter and should not be left until the matter is being finalised.

78. We do acknowledge the important work of the NSW Children's Court President in trying to address the issue of the failure to adhere to Aboriginal and Torres Strait Islander placement principles.[19] This is an issue that needs to be constantly monitored.

79. There is also a need for FaCS workers and NGO child protection staff to be more transparent and accountable for the decisions they make from removal to long-term care arrangements.

80. We submit that when Aboriginal and Torres Strait Islander children are removed from the care of their parents, wherever possible, they should be placed with family or in a culturally appropriate kinship placement.

81. To facilitate this, where removal of children is a possibility, parents should be asked by government or NGO early intervention/child protection services that in the event of their child being removed from their care who they would like to be assessed to be the carer. As this process takes some time, the question should be asked before the child/ren are removed from the parents' care.

Culturally and linguistically diverse families and the need for Interpreters

82. Access to interpreters in both child protection and family law proceedings continues to be an ongoing issue. The recommendations from past inquiries must be implemented.[20]

How could the sharing of information and collaborative relationships between the family courts and child protection agencies be improved?

83. While we support efforts made to improve the system's responsiveness to family violence disclosures, we believe information sharing is a very complex issue and requires careful consideration, particularly regarding the many serious implications of

[18] *Children's Rights 2013 Annual Report* at 72.

[19] See, for example, President of the Children's Court, the Hon Judge Peter Johnstone, "The five critical issues confronting the Children's Court of NSW,' *ACWA Research Forum*, 23 July 2014, paragraphs 59-73 accessed on 22 April 2015 at: http://www.acwa.asn.au/downloads/research_forums/presentations/Johnstone-ACWA_Research_ForumFINAL23July.pdf

[20] Family Law Council, *Improving the Family Law System for Aboriginal and Torres Strait Islander Clients,* 2012, Recommendation 8; Family Law Council, *Improving the Family Law System for Clients from Culturally and Linguistically Diverse Backgrounds*, 2012, Recommendation 6

such information sharing.

84. There are real concerns about a range of issues that arise in moving towards a system where there is more disclosure and sharing of information. These include potential risk of harm to the person disclosing violence; the integrity of counselling relationships and family dispute resolution processes; and the possibility that failure to indicate family violence could inappropriately lead to an assumption that there is no family violence. These and other concerns must be fully considered.

85. It is also important that there is an assessment of the structural barriers to seeking support in both family law and child protection matters.

86. We also refer to research which recognises the vital need to adequately resource a system of family and sexual violence services as 'an essential first step before safety-focused information exchange between agencies could be of value'. This is particularly the case in NSW, 'where service provision for victims of violence is ad hoc, and varies enormously across localities'.[21]

87. An Australian study undertaken by Dr Heather Douglas and Dr Tamara Walsh considers four different ways mothers experiencing family violence can be categorised by child protection authorities. These are outlined below.[22]

- Due to a lack of understanding about the nature and dynamics of violence, the violence may be minimised, which has implications for the way child protection workers respond.
- If a mother is not seen to be acting in a so-called 'protective manner', her children may be removed from her care.
- Child protection workers often blame the mother rather than holding the perpetrator accountable for the violence.
- The mother is told to leave or risk losing the children.

88. As discussed above it can be difficult to secure alternative safe housing options. There also needs to be better understanding that the point of separation is one of the most dangerous times in a violent relationship and requires careful planning and support.

89. An inadequate assessment or report that does not fully understand the nature and dynamics of family violence can have a detrimental impact on the safety of victims of violence, including children.

90. Mandel observes this is an issue with respect to reports by child protection agencies where they do not see the mother's response as one of resistance to the violence

[21] Karen Wilcox, *Issues in Good Practice: Privacy, information sharing and coordinated practice – _ dilemmas for practice*, Australian Domestic and Family Violence Clearinghouse, 2010. While noting this paper was published in 2010, this issue of lack of a state-wide system of services and adequate funding of services continue to be live issues.

[22] H Douglas and T Walsh, 'Mothers, Domestic Violence and Child Protection (2010) 16 *Violence against Women* 489 cited in ALRC and NSWLRC, *Family Violence – A National Legal Response*, 2010 at 19.36.

that includes taking protective measures.[23]

91. Rather if she remains with the violent parent she is deemed to not be acting in a so called 'protective manner'. The mother is held accountable for the violent partner's actions.

92. Notably the violent partner is often invisible in the casework notes. This is reflective of our clients' experiences.

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 faithfully,
Women's Legal Services NSW

Janet Loughman
Principal Solicitor

[23] Mandel, *Child Welfare and Domestic Violence*, Note 21 at 10-11.