

14 March 2014

The Secretariat,  
National Plan  
Department of Social Services

By email: [npsecretariat@dss.gov.au](mailto:npsecretariat@dss.gov.au)

Dear Colleagues,

**Call for written submissions to inform the development of the Second Action Plan under the *National Plan to Reduce Violence against Women and their Children 2010-22***

We write to you on behalf of the following women's legal services which collectively form the Coordinating Committee of Women's Legal Services Australia (WLSA) -

- Central Australian Women's Legal Service;
- Top End Women's Legal Service;
- Women's Law Centre WA;
- Women's Legal Centre ACT;
- Women's Legal Service Queensland;
- Women's Legal Service Tasmania;
- Women's Legal Service Victoria; and
- Women's Legal Services NSW.

Women's Legal Services Australia (WLSA) is a national network of community legal centres specialising in women's legal issues. Members of WLSA regularly provide advice, information, casework and legal education to women and service providers on a range of topics including family law, child protection, domestic violence personal protection orders, reproductive health rights and discrimination matters.

We provide holistic, high quality and responsive legal services to women from a feminist framework that places the client at the centre of our interactions and responds to them as a 'whole person' rather than just a 'legal problem' that needs a solution. Some of our members have been in existence for over 30 years and we have members in each State and Territory. We also have a range of members from like-minded organisations who support and contribute to the work that we do.

WLSA has a particular interest in the intersection of violence against women and the law and ensuring that disadvantaged women, such as Aboriginal and Torres Strait Islander women, women from culturally and linguistically diverse backgrounds, women with

disabilities, rural women, women from LGBTIQ<sup>1</sup> communities and women in prison are not further disadvantaged by the system.

One of WLSA's National Convenors, Rhonda Payget, attended a Roundtable held in Canberra on Thursday 6 February 2014.

### ***Key questions for consideration***

#### **1. What have been the achievements/gaps under the First Action Plan?**

WLSA notes some of the achievements of the First Action Plan including:

- ❖ Bi partisan support for the recognition of the gendered nature of family violence and sexual assault;
- ❖ Providing a national impetus for States and Territories to each develop their own action plans linked to the National Plan;
- ❖ The establishment of the 1800 RESPECT counselling line;
- ❖ The establishment of the national social marketing campaign, *The Line*, aimed at young people;
- ❖ The establishment of the National Centre for Excellence tasked to develop a national research agenda to improve policy and service delivery; and
- ❖ Working towards developing nationally consistent data definitions and collection methods.

WLSA identifies the following gaps under the First Action Plan:

- ❖ A lack of opportunities for active participation by civil society in the implementation of the plan. The Plan provided for the establishment of advisory groups to report to the National Plan Implementation Panel (NPIP). Despite the mandate in the Plan, this did not occur. Given the diverse, multi-sector involvement of civil society in the implementation of the National Plan, it is WLSA's view that there must be a conduit of information sharing such that the NPIP can respond effectively to an evolving agenda. The advisory groups play a clearly separate role to monitoring and evaluating the effectiveness of the National Plan.
- ❖ While acknowledging the expertise of the NGO representatives to NPIP, there were no practising lawyers appointed.
- ❖ WLSA understands that the NGO representatives to the NPIP initially had to sign confidentiality agreements which necessarily restricted open communication with the

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<sup>1</sup> Lesbian, gay, bi-sexual, transgender, intersex and queer.

sector. While the NGO representatives worked hard to have these confidentiality agreements lifted, communication has been slow due to the delays in release of official summaries of the meetings.

- ❖ The First Action Plan did not adequately develop specific programs for marginalised groups of women. We suggest that the lack of consultation may have been partly responsible for this failure. WLSA notes in particular the lack of specific programs for Aboriginal and Torres Strait Islander women. We address this issue below.
- ❖ WLSA supports an independent monitoring and evaluation mechanism. We support community consultation in developing an evaluation framework. WLSA endorses AWAVA's view that independent monitoring body should measure:
  - 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 system;
  - Accountable reporting procedures.<sup>2</sup>
- ❖ Adequate resourcing is and continues to be a vital issue. With increased awareness about domestic and family violence and sexual assault, there is expected to be an increase in reporting and thus an increased demand on front line services which will likely place pressure on existing services in the near term. It is essential that funding for front line services, such as women's health, counselling, housing and legal services, increases in addition to funding prevention services.
- ❖ The national register of apprehended violence orders still has not been implemented. WLSA understands that the "mutual recognition scheme" was agreed to by the Standing Committee of Attorneys General in March 2011, with legislation expected to be finalised in 2011-12.<sup>3</sup>
- ❖ The National Plan includes a commitment to consider the recommendations made in the 2010 report by the Australian and NSW Law Reform Commissions, *Family Violence – a National Legal Response*. As noted in a previous media release<sup>4</sup>, this commitment has not been demonstrated to the level we would expect.
- ❖ There are legal issues which are associated with the goals of the National Plan to reduce violence against women and children which have not been addressed. For example, in the family law space, despite the family violence amendments, the continuation of the presumption of equal shared parental responsibility continues to put at risk women and children who are escaping violence.

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<sup>2</sup> Sourced from UN Women, *Good Practices in National Action Plans on Violence against Women*, Report of the Expert Working Group, 2010, at 72.

<sup>3</sup> See MacDonald, E & Snell, L, *Transforming rhetoric into reality: addressing the challenges of making elimination of violence against women a lived reality* (2013) J. Juris 179 at 190-191

<sup>4</sup>[http://www.wlsa.org.au/media\\_releases/governments\\_commitment\\_to\\_eliminating\\_violence\\_against\\_women\\_yet\\_to\\_be\\_proved/](http://www.wlsa.org.au/media_releases/governments_commitment_to_eliminating_violence_against_women_yet_to_be_proved/)

## **2. What are the opportunities for consolidating and building upon the actions undertaken under the National Priorities of the First Action Plan?**

It continues to be important to find the right balance between prevention, early intervention and response. It is not clear how priorities are established and WLSA calls for consultation about setting priorities. For example, whilst WLSA notes the value of the Foundation to Prevent Violence against Women and their Children, it is vital that such initiatives are not at the expense of adequately funding specialist women's response based services. When establishing priorities it is important to remember that work in the prevention and early intervention space can increase reporting and demand on response based services.

### *Prevention*

The Second Action Plan must clearly show that addressing violence against women is a priority issue in the Government's reform agenda. Specific commitment to the following actions would demonstrate the commitment:

- ❖ Continued public discourse including regular and ongoing discussion in relation to eliminating violence against women;
- ❖ A demonstrated commitment to achieving gender equity;
- ❖ Consideration of how the government can influence and/or regulate the portrayal of women, and violence against women, in the media;
- ❖ Continuing to research and build upon factors that identify risk;
- ❖ Challenging the myth that domestic and family violence is excused in Aboriginal and Torres Strait Islander communities as culturally acceptable. A recognition of the complexity of definitional issues within an Aboriginal context and an acknowledgment of the impact of forced removal of children on family and domestic violence precedes a meaningful discussion of prevention of violence for Aboriginal and Torres Strait Islander women and children;
- ❖ Genuine consultation processes, for example, fostering equal and meaningful partnerships in the Aboriginal community with a focus on dialogue (not one-off consultation);
- ❖ Implementing the outcomes of the Stop the Violence: Improving Service Delivery for Women and Girls with Disabilities project (STVP), funded by the Commonwealth government and co-ordinated by Women with Disabilities Australia;
- ❖ Regulating emerging forms of violence such as cyber stalking, cyber bullying and privacy violations that compromise women and girl's safety, after adequately consulting with communities<sup>5</sup>; and

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<sup>5</sup> See, for example, Women's Legal Services Victoria and Domestic Violence Resource Centre Victoria's submission in response to the Australian Law Reform Commission's Issues Paper: Serious Invasions of Privacy

- ❖ Acknowledging the importance of women specific services as specialist services who understand the nature and dynamics, and gendered nature of, domestic and family violence. 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 /survivors of violence and should have access to services. However, this should not be at the expense of women only services.

### *Early Intervention*

The ALRC/NSW *Family Violence – A National Legal Response* (Report 114) set out recommendations for actions<sup>6</sup>. WLSA calls for the recommendations to be implemented. As a way of improving accountability, the Commonwealth government and the State and Territory governments should clearly define their respective implementation actions.

Continued and improved access for women and children to legal advice, information and representation is essential as both prevention and early intervention strategies. This is a role that Community Legal Centres, particularly specialist women’s legal services, have undertaken for many years.

The Australian Domestic Violence Clearinghouse Workplace Rights and Entitlement project made a significant contribution to addressing the importance of financial security and independence of women particularly victims/survivors of domestic and family violence. While significant progress has been made, for example, with over one million workers in Australia now protected by domestic violence clauses, there is still a significant amount of work to do. Further funding is required in this area.

### *Improving responsiveness of court system*

There is a need to continue to provide a clear agenda and national leadership on the implementation of the recommendations of the ALRC Report *Family Violence: A National Legal Response*. The Commonwealth Government’s response to over half of the recommendations was that it falls to states and territories to change laws, practices and procedures regarding sexual assault in the context of family violence.<sup>7</sup> The work already being done by the States and Territories needs to be reflected in the Second Action Plan so that we are all working towards a consistent response.

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in the Digital Era, accessed on 11 March 2014 at:

[http://www.alrc.gov.au/sites/default/files/subs/48\\_org\\_womens\\_legal\\_service\\_victoria\\_wlsv\\_and\\_domestic\\_violence\\_resource\\_centre\\_victoria\\_dvrcv.pdf](http://www.alrc.gov.au/sites/default/files/subs/48_org_womens_legal_service_victoria_wlsv_and_domestic_violence_resource_centre_victoria_dvrcv.pdf)

<sup>6</sup> <http://www.alrc.gov.au/publications/Family%20Violence%20-%20A%20National%20Legal%20Response%20%28ALRC%20Report%20114%29/list-recommendations>

<sup>7</sup> Ibid, at 193

Access to legal information, advice and representation continues to be a critical issue and requires adequate resourcing. Of concern are funding cuts in this sector which are made without any consultation.<sup>8</sup>

The Second Action Plan should continue to support an integrated response of police, courts and prosecution across jurisdictions bearing in mind the intersection between the criminal justice system and the civil justice response.

There should also be recognition that many victims/survivors of domestic violence and sexual violence do not engage in a criminal justice response so there should be other doorways to access support services while work continues on improving responsiveness of the court system.

### **3. What types of other initiatives could benefit from a national focus?**

WLSA supports the view that addressing violence against women and children must be progressed in a broader context of addressing gender inequity. It is therefore important that the Commonwealth government takes effective steps to ensure the equal participation of women and men in all spheres of political life, political reform and all levels of decision-making.<sup>9</sup> In this way there is increased investment in gender equality and the empowerment of women and girls, taking into account the diversity of needs and circumstances of women and girls including victims and survivors of violence. Commonwealth government policy across the government should be mindful of the goals of the National Plan to Reduce Violence. For example, in making decisions about overseas aid, priority could be given to women as a key focus supporting programs such as gender responsive education and health services, economic empowerment for women and ending violence against women.

Some specific examples where the Commonwealth Government could show leadership are:

- ❖ Including domestic violence / family violence as a protected attribute in anti-discrimination laws ;
- ❖ Supporting the ABS to collect gender specific information which can be used to develop policy, for example, data indicators on family violence and sexual assault and gender;
- ❖ Supporting workplace reform to support workers who are experiencing domestic or family violence;
- ❖ Supporting the development and use of ICT and social media as a resource for the empowerment of women and girls, including access to information on the prevention and response to violence against women and girls; and develop mechanisms to combat

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<sup>8</sup> See <http://www.lisasingh.com.au/newsroom/media-releases/372-frontline-legal-services-cuts-without-consultation>

<sup>9</sup> Commission on the Status of women, 57<sup>th</sup> meeting of the Commission on the Status of women, 4-15 March 2013, Concluding statements aimed at eliminating and preventing all forms of violence against women and girls, p 7

the use of ICT and social media to perpetrate violence against women and girls, including the criminal misuse of ICT for sexual harassment, sexual exploitation, child pornography and trafficking in women and girls

**4. In order to achieve greater efficiency and effectiveness in addressing violence against women, where is there scope to reduce duplication of programmes and services provided by the Commonwealth and the states and territories, as part of the Second Action Plan?**

It is important to ensure that the specialist services and targeted reforms developed over the last decade are not swept up in an attempt at displaying efficiency. In our view, the most effective response is a co-ordinated, integrated response which is predicated upon good communication and adequate funding. The cost of violence against women and their children is well recognised<sup>10</sup> and it is important that any examination of efficiencies resulting in cost-cutting is examined in light of the potential savings by investing in pursuing the agenda of the Second Action Plan. Once again, we stress the importance of community consultation in this decision-making process.

**5. Which vulnerable groups and communities would benefit from an increased focus under the Second Action Plan?**

We acknowledge the work of the six National Women's Alliances (the Alliances) in representing and working with vulnerable groups and communities of women. The Alliances represent over 180 women's organisations. They bring forward the views, voices and issues of Australian women and, in particular, women from marginalised and disadvantaged groups. The Alliances take the lead in ensuring that the voices of as many women as possible are heard, especially those who in the past have found it difficult to engage in advocacy and decision making. The continuation of funding for the Alliances works is an integral component of the achieving the goals of the National Plan.

*Aboriginal and Torres Strait Islander Women*

Aboriginal and Torres Strait Islander women face the barriers of inter-generational trauma and poor health outcomes associated with colonisation and dispossession of land. Aboriginal or Torres Strait Islander women are 35 times more likely to be hospitalised due to a family violence related assault than non-Aboriginal or Torres Strait Islander women<sup>11</sup>. Aboriginal or Torres Strait Islander people are also overrepresented in the child protection system and the prison system. Aboriginal or Torres Strait Islander women face unique challenges in family law and other matters due to their large kinship systems (i.e. multiple parties to proceedings, difficulty finding legal assistance due to conflicts of interest, for example). Aboriginal or Torres Strait Islander people also experience challenges in navigating through a system that does not recognise their traditional laws and does not take their cultural needs into account.

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<sup>10</sup> See The National Council to Reduce Violence Against Women and their Children Report on this topic, March 2009.

<sup>11</sup> AIHW, 2006

There is a need to deliver front-line services to Aboriginal and Torres Strait Islander women in a way that they will actually access the service. WLSA supports the view that specific, culturally appropriate prevention and early intervention activities must be done in consultation with Aboriginal and Torres Strait Islander women.

### *Culturally and Linguistically Diverse (CALD) women*

Women from CALD backgrounds face a range of additional barriers in accessing justice in the justice system. Women from CALD backgrounds do not all have the same needs and it is important to consider how different women from different backgrounds experience disadvantage.

There are a range of factors that must be addressed to assist CALD women in experiencing the benefits of the National Plan, including:

- Migration status - women who are on temporary visas (including tourist, bridging and spousal visas) are particularly vulnerable when experiencing family violence and relationship breakdown. They are often isolated, without family support and entirely reliant on their abusive partner. They may be fearful of leaving a violent relationship because of the consequences for their migration status. Accessing legal advice and navigating the complexities of an unfamiliar court system are some challenges that they face.
- Knowledge of family law, family violence law and child protection – women often come from countries where their systems of law are vastly different to the Australian justice system. For example, family law disputes in India include return of a woman's dowry under specific Indian legislation. Without timely access to legal information and advice that is in a form that is understood by women, women are unable to effectively access justice.
- Access to interpreters – it is surprising how often women are unable to access appropriate interpreters in the legal system. The availability of interpreters is an ongoing issue at court, and in some instances the same interpreter must interpret for both parties (which we consider to be a conflict of interest). Women who require interpreters of specific dialects or come from a small community where the interpreter is known face even greater barriers.

### *Women with disabilities*

In some instances the legal system has limited capacity to provide practical assistance as the law is only effective if current levels of social support are strengthened. For example, if a woman with a disability is suffering domestic violence from her spouse but her spouse is her carer, obtaining a domestic violence protection order might not assist her because she will have no one to provide ongoing personal care. She may be unable to leave because she can't physically call the police, she has communication difficulties, there is no refuge that is disability accessible or can provide the level of care required and there are real concerns about the woman's ability to obtain suitable long-term accommodation.



## *Women in prison*

Many of our members provide legal assistance to women in prison who are a particularly vulnerable group; many of whom have experienced multiple disadvantage including sometimes shocking childhood trauma, neglect and abuse. Depending on the openness of prison authorities, it can be difficult to access the group adequately and there are always issues of funding to be able to do this. For women in prison, especially where they have been the primary carers to their children, access to their children through family law and child protection processes is critically important and can help with their stability and recidivist rates on release.

Additionally, we also note that gender-bias in society is not only linked to legal aid provisions<sup>12</sup>, but also evident in sentencing for a range of related and specific reasons including perceptions of gender roles and norms, access to legal assistance and pervasive female poverty. Although women commit fewer and less-violent offences than men do, they are 4 times less likely to receive a community based order than a man<sup>13</sup>, despite often being the primary caregiver of any children. This has ramifications on the individual, her children and family as well as society at large. For example, women spend an average of two months in prison. In this time, her house can be taken, her children are put into care, she can lose her job, etc. This is quite a cost to our various systems for a two month jail period for typically non-violent offences.

### **6. How can we better engage our leaders and broader civil society to address the attitudinal and cultural change required to reduce violence against women and their children?**

We have discussed engagement with civil society elsewhere in our submission. We identify communication as a key issue for and responsibility of the NPIP. Over the next three years it will be important to:

- ❖ Continue to be responsive to emerging forms of violence;
- ❖ Try to reach understanding of root causes and intersecting issues and ways to address root causes of violence against women and children;
- ❖ Work with community in creating a sound evidence base from which to make decisions by supporting continued multidisciplinary research and analysis on the structural and underlying causes, and prevalence, of violence against women and girls as well as the cost and risk factors;
- ❖ To examine and respond to intersections between family violence and child protection, homelessness/housing and income support.

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<sup>12</sup> See the Women's Legal Services Australia submission to the Productivity Commission Access to Justice Inquiry: [http://www.pc.gov.au/data/assets/pdf\\_file/0016/129121/sub029-access-justice.pdf](http://www.pc.gov.au/data/assets/pdf_file/0016/129121/sub029-access-justice.pdf) at page 6

<sup>13</sup> Australian Bureau of Statistics, (2010). 4517.0 Prisoners in Australia 2010.

We thank you for the opportunity to provide a submission. If there are any matters arising, please contact the writer on (02) 6257 4377 or Heidi Guldbaek on (08) 9272 8855 or [heidi@wlcwa.org.au](mailto:heidi@wlcwa.org.au)

Yours faithfully,  
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