



# Women's Legal Service WA

Justice for women



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6 June 2019

Manager, Family and Domestic Violence Unit  
Department of Communities  
99 Plain Street  
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**By email to:** [Linda.Higgie@communities.wa.gov.au](mailto:Linda.Higgie@communities.wa.gov.au)

Dear Linda,

## **10 YEAR STRATEGY FOR REDUCING FAMILY AND DOMESTIC VIOLENCE**

Thank you for the opportunity to provide information in relation to the WA Government's proposed 10 Year Strategy for Reducing Family and Domestic Violence and, particularly, for kindly providing an extension to legal assistance services to the time in which to respond.

### **ABOUT THE WOMEN'S LEGAL SERVICE (WLSWA)**

WLSWA is a not-for-profit community legal centre funded mainly by the Commonwealth Attorney General's Department to provide state wide legal services to disadvantaged women in Western Australia. We provide free legal advice and casework in the areas of family law, family and domestic violence (FDV) issues, care and protection proceedings and criminal injuries compensation for victims of family and domestic violence and/or sexual assault. We also provide community legal education and professional development training in our casework areas.

We undertake several outreach programs to specific target groups in partnership with other organisations, including:

- to Aboriginal women in remote communities in the Ngaanyatjarra Pitjantjatjara Yankunytjatjara Lands;
- to Aboriginal victims of FDV in the metro area through Djinda Services, which we auspice in partnership with Relationships Australia WA; and

- to women who are homeless or at risk of homelessness as a result of family and domestic violence through the Safe as Houses partnership and program.<sup>1</sup>

The majority of our clients are women who are victims of FDV. It is well recognised that women are many times more likely to suffer FDV than men. Whilst there are many elements to a successful long term strategy to combat FDV and its effects, we wish to emphasise how *it is essential* that within the scope of any strategy is included effective legal services. Poor legal advice or a lack of it altogether can have disastrous long term and even intergenerational consequences for victims, which costs the community substantially as a whole. It is therefore an essential component in any scheme that endeavours to achieve better outcomes.

As experts in this field, WLSWA has made many previous submissions to Government regarding law reform proposals at both federal and state level. WLSWA welcomes now the opportunity to provide our views in relation to the 10 Year Strategy.

Please find, accordingly, our submission below. We also endorse as part of this submission:

- “A Response to the WA 10 Year Family and Domestic Violence Strategy Consultation” by the Safe Systems Coalition
- the submission and all recommendations made in relation to this review from the Humanitarian Group dated 28 March 2019.

Please do not hesitate to contact the writer if there are any queries.

Yours sincerely,



**Carrie Hannington**  
Senior Executive Officer  
WOMEN'S LEGAL SERVICE WA INC

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<sup>1</sup> <http://www.tenancywa.org.au/safeashouses>



**Women's**  
Legal Service WA  
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# **Submission to 10 Year Strategy for Reducing Family and Domestic Violence**

**Contact:**

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## - SUBMISSION -

### 1. Introduction

The Women's Legal Service WA (**WLSWA**) is appreciative of the Western Australian Government for initiating a proposal for a 10 Year Strategy for Reducing Family and Domestic Violence (**Ten Year Strategy**) (**FDV**). We are appreciative of the identification of the gender specific nature of FDV on page 5 of the Consultation Paper on the Ten Year Strategy (**Consultation Paper**) and of the recognition of the need for a new approach on page 6.

WLSWA further welcomes the opportunity to provide input.

### 2. Preliminary observations

"A future where all Western Australians live free from FDV and where women and children are safe, respected, valued and treated as equals..." is a noble goal indeed. Few could possibly disagree with it. Whilst significant progress has been made that include some excellent measures in Western Australia to address high rates of FDV, we are unlikely to be realise this goal in the immediate future. We would say at the outset, therefore, that it is important the strategy focus on practical means that will move us towards real and positive changes, with a commitment and application of resources that avoid whatsoever any suggestion of "tokenism".

We also agree with the position of *Our Watch*, the *Safe Systems Coalition* and other likeminded bodies that the basis of FDV lies within gender equality. We suggest that any high aspirational goal needs also to include that of a society free from any notions of inequality between the genders, with equality so much the 'norm' that it does not even bear a mention. Only when inequality is looked back on as a historical, archaic train of thought from which we have thankfully moved on will that goal be fully achieved.

We recognise that FDV is highly complex in terms of both cause and effective response Any strategy needs to differential carefully between elements and have an overarching framework that includes:

- primary prevention as a discreet sub strategy from response strategy that involves a whole of community approach;
- input from experts in the field;
- the recognition of gender inequality as a fundamental enabler of violence against and abuse towards women;
- a recognition of the need for both short term/crisis and long term responses;
- collaborative response with inclusion of all elements necessary to enable that response;
- leadership and effective governance of that coordinated response;
- effective business planning that allows adequate allocation of resources to all of the above areas, including development of the strategy framework itself;
- safety first and trauma informed approaches; and
- effective monitoring, evaluation and feedback systems.

In a practical sense, any response system should include:

- Safety planning;

- Accommodation and housing support, both short term and – importantly – long term;
- Adequate source of income (eg through Centrelink or employment);
- Practical support – eg with transport; and
- Emotional support and counselling services.

With respect to all stages of the address of FDV, it is essential to recognise the crucial importance that legal assistance services play a particularly vital role in both preventative and response capacity. In our submission, information about legal rights, legal advice and representation should provide a “core” of service as without protection by the law women may not even survive, let alone thrive.

Other non-legal services should support women in the actions they take according to the legal advice they receive. We believe it useful at the outset to outline the length and breadth of ways in which women may be adversely affected by FDV and require such advice, which we outline in the table below.

Presenting issue	Legal advice required
Physical abuse	Getting a VRO or FVRO, making complaint to police, support during criminal proceedings, getting compensation for criminal injuries
Emotional abuse	
Financial abuse and debt	Financial counselling, civil law advice
Accommodation problems/homelessness	Tenancy advice Family law/property advice
Issues involving children, access, removal of children	Family law, child protection
Involvement in criminal justice system (eg as a result of drug and alcohol issues), fines	Criminal law
Loss of job, poor employment performance	Employment law
Mental health issues	Competency in proceedings, mental health orders

Financial disadvantage is a distinct contributing factor and outcome of FDV. Private Lawyers are expensive, and out of the reach of many FDV victims. At present, there simply are not enough legal assistance services to meet demand. It is essential therefore that the Ten Year Strategy contain a commitment to funding such services.

**Recommendation 1:** That the strategy include an evaluation of current legal need in terms of adequate responses to FDV, identifies gaps and commits to providing adequate funding to address that need.

**Recommendation 2:** That provision of legal services be a key core element within the Ten Year Strategy.

Provision of information, together with accurate and expert legal advice can have a drastic effect on how well a victim responds to FDV and is able to avoid returning to future adverse situations. In our experience, no one need occurs in isolation, and programs are required that allow for collaboration between legal services as well as with the wider service sector. This will be illustrated through program examples later in this submission.

In the meantime on the following page is an example of a very real (and all too common) situation which illustrates the need for legal advice, the length and breadth of that advice and the potential consequences of not getting any advice. The trauma inherent in re-telling stories should also be evident as well as that by adoption of a social return on investment approach, the provision of legal assistance can have a key influence in conserving resources, with a reduction in both financial and social costs to the community.

**Recommendation 3:** that the WA Government particularly consider funding for joined up legal services as well as for legal and non-legal servicing arrangements, with the use of a Legal Health Check to ascertain requirements for legal services in individual cases.

### CASE SCENARIO 1

Jenny is meeting with her bank manager to discuss options to refinance the marital home after her divorce from Fred, her ex-husband. The relationship has been a long term violent one; Jenny wants to leave and is trying to figure out her options. She is unable to leave without finances to do so and she believes Fred will become violent if he thinks she wants money from him.

During her appointment, Jenny appears visibly distressed when she starts to talk about the violence. The manager suggests she goes to counselling and refers Jenny to a family violence counsellor, and Jenny makes an appointment (waiting time a few weeks). Jenny again tells her story and again becomes visibly upset. The counsellor helps her develop a safety plan for her and the children, and also helps her to develop coping strategies. She then refers Jenny to a family lawyer.

Jenny retells her story yet again to the family lawyer, but this time in much more detail. The appointment takes 2 hours before the lawyer even gets to the point of considering the appropriate advice. Resulting advice includes potential property settlement entitlements (what she might get ultimately in terms of percentage of the marital assets), Jenny's options for spousal maintenance (as a potential source of income post separation), child support and care arrangements for the children.

The lawyer "flags" the option for restraining orders and going to police if Fred threatens her.

Fred learns that Jenny has been to see a lawyer and becomes threatening. Jenny follows her lawyer's advice and goes to the police and retells her story yet again. The police suggest she apply for a restraining order and refer her to the Magistrate's Court of WA to apply for one.

In the meantime, Jenny's case is referred to the Department of Communities (DOC) who investigate. They form the view that children are at risk because of Fred's behaviour and tell Jenny they will remove the children from her care unless she 'acts more protectively' – i.e. leaves the father and gets a VRO about against him.

Jenny is scared about losing her children. Although she believes Fred might kill her if she tried to leave him (and take the children with her) she is terrified of what might happen if children are taken from her. She goes to the Magistrate's Court to apply for the restraining order. Jenny's matter is called on for an ex parte hearing before the Magistrate.

Jenny has to retell her story again to the Magistrate who then grants an interim family violence restraining order for Jenny (as the protected person). Jenny was unable to get covering the children as the threat was considered to be only towards her and Court found no evidence of recent risk or direct threat towards the children. Jenny is scared about how Fred will react when he learns she is trying to leave him and has got a restraining order against him.

She calls 1800Respect after hours and retells her story again. She receives on the spot information about a safety plan until the VRO is served (which includes going to a women's refuge with the children if she can't stay with someone else), tips on taking notes and photos to prove any breaches which she can show the police to help prove them if need be.

Over the weekend, Fred is served while at work and Jenny flees to a women's refuge with the children. Jenny waited until Fred left for work as usual one day and then while he was away grabbed a bag of clothes and items for her and the children and jumped on a bus and went. There was no communication to Fred about where they had gone. Fred thinks the VRO means he will never see his children again. He calls Legal Aid WA and tells them his wife has "taken off" with the children and gets a grant of aid for a family lawyer so he can get advice about his options. He says this is part of her plan to keep him away from the children.

Fred commences Family Court proceedings seeking location and recovery orders for the children and orders that they be placed in his sole care. His affidavit talks about Jenny hating him and this is part of her plan to alienate the children from him. He discloses the VRO but Because his lawyer helped him, Fred files a Form 4 Notice of Risk where he discloses the children at risk from the mother.

Jenny has no money, as Fred cut off her access to the one credit card of his she used to pay for children's expenses pre-separation. Centrelink is refusing to pay all of her benefits and says she needs to seek child support from Fred for the children. Jenny can't afford a private family lawyer so she calls around to find a Community Legal Centre (CLC). She retells her story each and every time to see if that CLC can help her. Whether a CLC can depends on the area of practice that her issue requires and availability of lawyers. Each CLC is concerned for her as she sounds highly distressed and suicidal and referred her to counselling.

On her third attempt, Jenny gets an appointment. Jenny sees a CLC lawyer who advises her that there are options in the Family Court to vary or override restraining orders. The Family Court has made interim orders as to date it has only heard from the father and considered his sole evidence to be sufficient for at least an urgent location and recovery order. The next court hearing is important that she attends as this will determine how the matter proceeds from here and the future of Jenny and her children.

Before the next court hearing, Jenny needs to file her responding documents (3 documents). Her responding court documents need to contain evidence about the family violence and why she fled etc so the Court has sufficient evidence to place the children back in her care and order only supervised visits with father to manage risk. The documents need to mention the DCPFS so the FCWA can ask the Dept. for information about why they considered children at risk in father's care.

In the best case scenario Jenny files her responding family court documents *well in advance of hearing*. Her submissions pertain to both parenting and financial matters. The Court obtains information from DOC about father and information from the police about his criminal history (breaches of VRO and criminal assaults from former partners of which Jenny knew nothing). The Court believes her evidence and finds the children at risk if they are in Fred's care, so interim orders are made placing the children in Jenny's care with only supervised time with the Fred. The matter is listed for final hearing and procedural orders made (for trial material etc to be filed which involves the retelling in more detail of Jenny's story and ideally witness affidavits and a engagement of a single expert witness regarding the children.)

FCWA also make interim orders for Fred to pay Jenny spousal maintenance (the same \$200 per week he paid to her while they were together for household items) and exclusive occupation orders to allow Jenny to live in the former family home with the children pending trial. Fred must also attend a perpetrator course.

Imagine if Jenny had no legal advice? Here's a possible scenario if she was only able to obtain very scant legal advice:

Jenny struggles to complete her court documents in time for the CLC lawyer to finalise them. She doesn't include anything to do with financial matters and most of her content is opinions and not admissible evidence. She's not in a good state emotionally, and forgets to mention DOC involvement. She files her documents late so the Family Court doesn't have time to request information from the police or DOC.

Jenny attends the Family Court at the next hearing without representation and appears cold, disinterested and even hostile at times when asked questions (physical signs of her trauma given an alternate explanation or assumptions). The Court believes Fred's evidence on an interim basis and the children continue in his care. Procedural orders are made for single expert to be appointed to look into risk of psychological harm to children. The Family Court also request information from DOC and the police which could shed important light on the matter – but the next hearing is 4-5 months away.

Fred is bolstered because the Court appear to be justifying his abusive behaviour. Jenny receives threats from unknown number mobile phone saying she will never see her children again.

Finally, we suggest that in designing services that might optimise the prevention of the above situation, it would be useful to be informed by the work of other jurisdictions where comprehensive planning has driven service provision and where evaluation is an ongoing part of the system.<sup>2</sup>

## **GOALS OF THE TEN YEAR STRATEGY**

**Goal 1: Identify, challenge and change the structural, social and cultural conditions that support family and domestic violence, including family violence a sit impacts Aboriginal people, families, community and culture.**

In endorsing the submission by the Safe Systems Coalition (**Safe Systems**), we agree with Safe Systems that identifying the social factors conducive to FDV is a crucial precursor to preventing it, and are appreciative that page 10 of the Consultation Paper recognises the role that a response to gender equality is crucial as part of this approach. We also agree that prevention requires a distinct system that requires skilled research and encompasses relationships across the community, and that any preventative approach needs to be underpinned by an effective monitoring and evaluation/feedback that is properly resourced. To this end we fully support recommendations 1-16 of the Safe Systems Submission.

We further believe that important insights can be gained through legal practice that can provide useful input and data to those working in this area. In terms of practical prevention and early intervention, we draw attention to the component of work of legal assistance services that provides community legal education, which can valuably assist people to know their options and rights at an early stage should they be considering leaving a relationship.

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<sup>2</sup> See for instance <https://w.www.vic.gov.au/familyviolence/family-safety-victoria/industry-plan.html>



This is particularly important in the areas of family law and child protection, where effective education can reduce poor choices and unnecessary litigation, leading to better outcomes for victims and their families. Women victim-survivors should have sufficient confidence in governing legislation to see both as a means of support through episodes of FDV, until a more stable situation can be achieved.

#### CASE SCENARIO 2

Gemma moved to Perth as her husband Peter's work was in WA, but all her family are in the eastern states. Gemma is anxious about her Peter's drinking and about his increasing tendency towards verbal abuse and to make threats that involve throwing her out of the house and taking their two children away. Gemma is terrified that Peter will turn physically violent and also that he will carry out his threats. Because he's very amiable and likeable when sober, Gemma also fears that friends and relatives will not believe her concerns, and will ultimately support Peter in any action he takes.

Taking the advice of a friend, Gemma attends an information session that not only includes useful tips from a psychologist on how to best respond to Peter's drinking and abuse, but also the legal options available. She did not know previously that she could seek an FVRO without Peter becoming physically violent, that there were now options available whereby she could seek to remain in their rented home, or that Family Court proceedings at an early stage could prevent Peter from carrying out any of his threats, ensure the safety of their children and maybe even force Peter to start looking at his behaviour.

Gemma sincerely hopes by the end of the session that she can in fact assist Peter to get the support he needs. However, she knows this may not prove realistic, that safety is paramount and that more drastic action may need to be taken. Armed with accurate legal information and put in touch by a counsellor with who the legal service providers regularly liaise, Gemma can now explore future options and make informed choices. She also has details of the legal assistance service and has the option of making an appointment with a solicitor experienced in the relevant areas should she wish to explore legal options relevant to her particular situation.

**Recommendation 4:** that funding of legal assistance services includes the provision of community legal education

#### **Aboriginal women**

We agree with the submissions of Safe Systems that violence against women in Aboriginal Communities is part of a complex range of responses that cannot be isolated from the effects of colonisation. The high rates of Aboriginal children being taken into care and the devastating effects from separation of families should compel the Government to develop particular preventative measures in consultation with Aboriginal people.

We also emphasise the value of specialist early intervention legal advice to Aboriginal women and to the importance of Aboriginal specific programs such as are provided by Aboriginal Family Law Services and Djinda Service. It should be noted that Djinda Service further serves as an example of

where legal services are effectively backed up by support services from a non-legal organisation in partnership,<sup>3</sup> whilst AFLS provides crucial holistic support in the regions.

**Recommendation 5:** That Aboriginal FDV Services be separately maintained and funded, with adequate contribution from the WA Government and with Aboriginal people continuing to lead co-design.

**Goal 2: Ensure women and children at risk of, or experiencing family and domestic violence are identified early, offered supports and protection, and are assisted to recover and thrive.**

Whilst goals to eliminate FDV are noble and relevant, we have to acknowledge that FDV is at present a reality and so WLSWA welcomes the recognition of the need for a responsive service system, one in which victims can “recover and thrive”.

In achieving this, however, it is important to recognise that need for both early intervention and crisis support, and for long term planning and supports. It should be evident from Case Scenario 1 that FDV victims do not just receive a few services, after which all is OK and they proceed with their lives; for Jenny the court proceedings are just the beginning of a long difficult and possibly dangerous road. Jenny will require various assistance from multiple providers, including ongoing legal advice. The traumatic ramifications from abuse, relationship breakup, making arrangements for children, financial difficulties and adequate accommodation can persist for decades. With respect to this:

- Early intervention is crucial as it can minimise the damage in the long terms, thus reducing the burden on longer term services
- Long term supports need to exist, so that meaningful planning can occur at the early intervention stage and victims can have confidence that they will be safe and secure, moving into the future.

### **Early intervention**

WLSWA appreciates the recognition that “legal and justice systems to be fair and just” as an important aspect of victim safety. However good and just the laws are, people still need to be aware of how to best make use of them in ensuring their future safety (which we note is the primary goal of the strategy) their future recovery and sustainability. If we return to Case Scenario 2, what happens when Gemma doesn’t seek immediate legal assistance’?

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<sup>3</sup> See <https://www.wlswa.org.au/wp-content/uploads/2018/11/WLCWA-Annual-Report-2017-18-FINAL.pdf> at page 39 onward.

### CASE SCENARIO 2 (Contd.)

Following the legal information session, Gemma is unable to get an appointment to see a lawyer. Let's say that for technical reasons she does not satisfy the criteria for legal aid and that none of the CLC's have any appointment vacancies. Because she can't get any guidance as to what she legally can or can't do, she procrastinates, remaining in the potentially very dangerous situation and hoping - as many victims do - that things will just somehow get better as in fact Peter's drinking and now drug use gets worse and his propensity for violence increases.

After a particularly bad bout of drinking, it happens. Peter hits Gemma, knocking her unconscious. He also does considerable damage to the rental property. Neighbours hearing the shouting and then screams of children have called the police, who arrive and arrest Peter, however, Gemma is still unconscious by this time and needs to be hospitalised. An ambulance is called, and the Department of Communities informed. Because the DOC can't get in touch with any of Gemma's family or friends who are in a position to look after the children, they are placed with the paternal grandparents.

When Gemma regains consciousness, she is injured and traumatised. Her husband is in jail - though for how long she does not know, it's entirely dependent on the charges and on whether his lawyer can successfully argue for bail. Her children have been taken into care and are now the subject of an application for Child Protection, and they are with Peter's family, who have never liked Gemma and believe she 'goaded' him into what happened. Already, they intend keeping the children.

Gemma finds in due course that she's also lost her job. Her landlord has instituted an eviction order, and while the police were investigating the property damage, they found quite a large quantity of cannabis. The conclusion is drawn that Gemma was instrumental in the property damage and also part responsible for the cannabis - so Gemma faces criminal charges, in addition to co-responsibility for some other debts that her husband has incurred.

There are a number of points to be made from this scenario:

- It illustrates the complexity of FDV situations.
- If Gemma had received adequate legal support in the first place, she could have made plans and perhaps avoided this situation.
- The lack of effective legal support now will leave Gemma in need of considerable assistance, both legal and otherwise, and require the application of a great many more resources.
- There's a need for an interagency approach, both in terms of the types of legal assistance required and associated non legal support.
- Without adequate legal supports, Gemma's situation is likely to get a great deal worse.

## Education

We also believe that this types of situation illustrate the need for all workers across government to be educated as to the complexity and implications of FDV. In 2014 the Law Reform Commission of WA carried out an extensive consultation process that resulted in a Final Report in 2014 (Law Reform Report)<sup>4</sup>. The Law Reform Report “made a number of recommendations in relation to the benefits of separate FDV legislation, several of which have since been put into place.

Among other broad observations, the Law Reform Report concluded on page 19 that *“one of the key themes...is the lack of awareness and understanding of the nature and dynamics of FDV and resulting inconsistency in decision making and approaches of professionals working in the justice system. This includes lawyers, courts and responses by the WA Police.”* The report went on to recommend that the WA Police are provided with comprehensive and ongoing FDV training.<sup>5</sup>

We suggest that further work needs to be done in relation to the reforms suggested in the WA Law Reform Commission report. We agree with the Safe Systems submission on page 16 that the police have a particularly important role, and that FDV should be a critical component of police core business.

Whilst we applaud the appointment of senior officers to specialist FDV positons, we do not at present believe that the police on the ground view FDV as core business, and in fact we have at WLSWA and Djinda Service experienced a number of instances where police would appear to have taken the side of the perpetrator, or otherwise acted inappropriately. It is not uncommon for victims to be co-charged with criminal offences, as was illustrated in our scenario case. Adequate legal supports to this effect should also include avenues for victims to discuss concerns they may have about police behaviour with senior officers and regulatory bodies.

The inclusion of FDV information and services within the police and across all agencies who are likely to come across women who are victims of or at risk of FDV is also a crucial element in making it easier for people in crisis to identify, access and understand the service system. Victims are unlikely to do this of their own initiatives without positive support.

**Recommendation 6:** That the WA Government implement fully Recommendation 11 of the Law Reform Commission Report.

**Recommendation 7:** that resources be provided that include advice regarding the actions of police and other public officers.

## Long term supports

There are victims who ‘thrive’ after FDV, but they are a lot less likely to do this unless there are adequate long term support systems. This includes as we have said legal services and opportunity for their adequate application.

We agree that long term support needs to include:

- The means to connect with family and community
- Recognition of women as primary care givers of children

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<sup>4</sup> [https://www.lrc.justice.wa.gov.au/files/p104\\_fdv\\_finalreport.pdf](https://www.lrc.justice.wa.gov.au/files/p104_fdv_finalreport.pdf)

<sup>5</sup> Supra, Recommendation 11

- Provision of stable housing
- The means to overcome financial hardship, including adequate employment and superannuation, and an opportunity for sustainable economic participation
- Ongoing emotional and mental health support

Provision of long term support is also crucial to any prevention strategy, as without the means for stability the likelihood of victims returning to their abusive relationship or entering into another will remain high.

## Housing

Internationally and in Australia, FDV is recognised as a key driver of homelessness among women.<sup>6</sup> Homelessness is not only a result of FDV, but can render women vulnerable to relationships that may place them at risk of FDV. The Commonwealth Government released a white paper in 2008 entitled *The Road Home; a national approach to ending homelessness*,<sup>7</sup> which identified FDV as one of the key drivers of homelessness. *The Road Home* set out a range of strategies to support people who have experienced FDV, including one initiative that supported individuals to stay safely in their own homes.

More than a decade later FDV is still the most common reason provided by people seeking support from specialist homelessness services in Australia.<sup>8</sup> This represented a nine percent increase in the number of individuals requesting assistance for FDV compared to the previous year.<sup>9</sup> In 2017/18 in WA, FDV was the most common reason for seeking assistance from specialist homelessness services, and proportionally this was higher in WA (43%) than nationally (39%). The number of refuges for women (and children) affected by FDV in WA also attests to the magnitude of this issue – the most recently available data indicates that there are at least 41 refuges in metropolitan, rural and remote WA at present.<sup>10</sup>

The relationship between FDV and homelessness is complex and intertwined. While not all women who experience FDV are at risk of homelessness or become homeless, those who have to physically leave their place of residence and who have fewer or less access to resources (such as income or housing) and who are often isolated from support networks are more likely to require assistance. When a woman leaves a FDV situation they can be burdened with a complex tangle of legal issues, as we have seen in our case scenarios. These include issues of family law, child support, child protection, debt, injuries compensation, criminal proceedings, tenancy, business and employment issues.

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<sup>6</sup> Australian Institute of Health and Welfare. Specialist Homelessness Services Annual Report 2017-18. 2019. See: <https://www.aihw.gov.au/reports/homelessness-services/specialist-homelessness-services-2017-18/contents/contents>

See also: Council to Homeless Persons. Fact Sheet: Family violence and homelessness <http://chp.org.au/homelessness/>

<sup>7</sup> Commonwealth of Australia. The road home: a national approach to reducing homelessness. Department of Families, Housing, Community Services and Indigenous Affairs (Australia); 2008.

<sup>8</sup> See reference #6 re 2017-2018

<sup>9</sup> See reference #6

<sup>10</sup> Women's Council for Domestic & Family Violence Services (WA). Rural and Remote Women's Refuges. 2019 [16 April 2019]. See: [http://www.womenscouncil.com.au/help\\_trashed/rural-remote-refuges/](http://www.womenscouncil.com.au/help_trashed/rural-remote-refuges/) and Women's Council for Domestic & Family Violence Services (WA). Metropolitan Refuges. 2019 [16 April 2019]: <http://www.womenscouncil.com.au/womens-refuges/>

This miasma of legal and financial issues further contributes to risk of homelessness. It requires particular targeted coordinated legal and support services for resolution to provide a foundation for safe secure housing and a fresh start. An example of where one program seeks to intervene in such a multi-pronged approach is the Safe as Houses Program (**SASH**) run jointly by three CLC's: Tenancy WA, WLSWA and Street Law WA.

It is notable that SASH drew upon the experiences of the Stepping Stones program provided by Women's Legal Service Victoria (WLSV),<sup>11</sup> which is an example of a similar holistic service which includes legal assistance and advice, financial services and counselling and a social worker to ensure clients have access to appropriate services (including housing) and feel supported and safe through the legal process.

We provide examples in the following pages of where SASH has been able to provide assistance to prevent and remedy homelessness.

**Recommendation 8:** That the WA Government provide urgent and immediate funding for continuation of the SASH program, or initiative with the same positive attributes and outcomes.

### Safe as Houses (SASH)

Funded by the WA Government, Safe as Houses (SASH) is a pilot program that commenced in early 2017 and supports women who are homeless as a result of FDV or are at risk of homelessness. The SASH program is a collaboration between three community legal centres: Tenancy WA, Women's Legal Service WA and Street Law Centre WA.

The program involves a wide variety of other stakeholders, ranging from community-based outreach centres, community services organisations, family support agencies and refuges for people who have experienced FDV. The SASH program aims to provide a wraparound case management approach and legal assistance to support clients' to address their complex legal, financial and social issues and therefore their capacity to obtain or maintain stable accommodation.

The program has three key focus areas:

- Preventing homelessness (assistance with legal, social and other issues)
- Keeping women and children safe (Legal protection and assistance with obtaining stable, secure housing)
- Health and wellbeing

To date, 133 clients have been supported by SASH. The positive impact of SASH was recognised when they were announced as a finalist in the Human Rights Awards' Law Award in October 2018.

*Unfortunately, the SASH program is not funded beyond 30 September 2019.*

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<sup>11</sup> See: <https://www.womenslegal.org.au/stepping-stones.html>

### Case study 1

#### Background

Transitional housing tenant Claire, a single mother with three dependent children was living in public housing when the Department of Child Protection and Family Services (DCPFS) removed the children from her care due to FDV and other issues. Whilst Claire was temporarily not residing in the house, the public housing authority reported the house was being damaged. They suggested she surrender the property to avoid any further damage, then invoiced Claire \$10,000 for the extensive property damage. This resulted in a debt and an inability to be housed within the public housing system. Claire relied on Centrelink benefits to care for herself and her children.

DOC returned the children to Claire but the case remained open due to outstanding criminal matters and housing concerns. Anglicare provided temporary transitional accommodation, and DOC have since closed the case. But Claire was left with outstanding ambulance debt, a criminal injuries compensation claim and license suspension. Her vehicle was also impounded.

#### What was SASH able to do to resolve the issues?

SASH assisted Claire to move from the transitional housing into a long-term tenancy with the Housing Authority, which involved a lengthy negotiation with both Housing and Anglicare to assist Claire in a smooth transition. SASH gave legal advice and assistance with regard to the criminal matters; stealing and traffic charges, extraordinary drivers license, resolving fines and infringements and impounding of vehicle as well as referrals for family support programs and school based assistance and victim notification registration and victim support service assistance. Emergency relief provided school supplies, paid school fees, food vouchers, uniforms, transport cards, phone credit and car seats. SASH referred Claire to Safe at Home for assistance in improving the security at the property.

### Case Study 2

A client had a shared equity loan with Keystart. Street Law picked up the issue early on, then referred it to WLSWA to negotiate with Keystart. The other party involved said he would get an early release of his superannuation to pay out the mortgage debt but then didn't follow through. The client then decided to give up the home to Keystart. After she gave up the home, she was assisted by Tenancy WA who ensured she was on the priority housing list.

The client presented to SASH with multiple legal and non-legal issues, and was at serious risk of homelessness due to mortgage default, as the perpetrator of the FDV had failed to meet mortgage repayments, and the house was about to be repossessed. She was assisted with family property law advice by one of the partner agencies, whilst another assisted with negotiations with the mortgagor. During this process the client was supported by the SASH program coordinator and when it became clear that she would have to surrender the property the program coordinator provided assistance with relocating to stable accommodation.

SASH has undergone continual improvement through policy and procedure review, with an evaluation conducted in April 2019. The evaluation (report as yet unpublished) has found the integrated service model of SASH to have filled a critical void that existed for women who needed both legal and other support to leave a violent relationship, remain safe and try to establish a new start that includes secure stable housing.

The SASH evaluation did also conclude that addressing FDV and homelessness requires “wide-ranging societal and legal reforms at a broader level.” We agree with the conclusion in the Safe Systems submission that there is often “little that services can do to provide a pathway from crisis into stable, secure and long-term accommodation” and that without secure housing, women remain at risk and in need of intensive resources from the entire crisis response system. We agree that provision of long term housing is a crucial element of response, and suggest that in this respect, the quantum of available social housing requires serious consideration. We understand from our enquiries that that priority transfer to public housing (moving from one Housing Authority property to another) on the grounds of DV can take anywhere up to 18 months (or more in the case of one SASH client). Priority waitlist (where the victim does not already have social housing) can take anywhere from 6-18 months (some SASH clients on this list have currently waited over a year).

Given the lack of alternatives for long term accommodation, this is unacceptable. We understand that the current WA Government’s current Homelessness Strategy<sup>12</sup> is looking at a range of options, but to none of them would there appear to be attached any firm logistics and in fact priority seems to be directed to making more beds available in refuges<sup>13</sup>. We would encourage the WA Government to take a close look at the UK Guide to Local Authorities: *Improving Access to Social Housing for Victims of Domestic Abuse in Refuges or Other Types of Temporary Accommodation*<sup>14</sup> (**Guide**) which recognises long term, secure housing - not temporary accommodation - as a paramount need. The Guide aims to assist local authorities to apply allocation legislation in order to enable victims of FDV to move from refuges to social housing as soon as is practicable, thus freeing up refuge and other temporary accommodation for those in need. The Guide points out at item 31 that:

*“Since refuges are generally intended to provide accommodation for a short to medium period only, those who have fled domestic abuse and are currently living in refuges should usually be considered as homeless, as it would not be reasonable to expect them to continue to occupy that accommodation on a long term basis.”*

**Recommendation 9:** That the WA Government urgently review the quantum of social housing set aside for victims of FDV and work to ensure that the need for long term secure housing is met.

### **Goal 3: Ensure perpetrators are held to account and supported to change their behaviour**

We agree with the Safe Systems coalition in relation to perpetrator accountability, and agree that prevention strategies must include promoting, valuing and supporting the development of behaviours conducive to respectful relationships. Suggestions as to the precise nature of these

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<sup>12</sup> <https://www.communities.wa.gov.au/media/1302/strategy-on-homelessness-webpage-faqs.pdf>

<sup>13</sup> See <https://www.communities.wa.gov.au/media/1746/homelessness-strategy-directions-paper.pdf> at page 30

<sup>14</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/753667/Improving\\_access\\_to\\_social\\_housing\\_for\\_victims\\_of\\_domestic\\_abuse.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/753667/Improving_access_to_social_housing_for_victims_of_domestic_abuse.pdf)



measures are not our area of expertise, and we strongly recommend that the most expert advice available should be sought in relation to prevention of perpetrating behaviour and early intervention of perpetrators.

We support studies which show that the safe approach is for perpetrator accountability to pervade all aspects of any preventative or response system. This includes, most importantly, the provision of accurate legal advice to perpetrators, which should direct an awareness of consequences and encourage accountability. This in turn encourages an examination of causative behaviours, important to both prevention and response.

We would also recommend that programs legislated for actually have infrastructure to support them. It is notable that compulsory perpetrator programs were made available under FDV legislation in 2018, however, our understanding is that in many places (particularly in remote regions) there simply are not the programs available in order for the legislation to be carried out. This is tragic, given the importance of the programs clearly identified by the legislators during the considerable research that was carried out prior to enactment of the legislation.

**Recommendation 10:** That through the strategy it be imperative that legislative reforms include business planning that will provide infrastructure to support such reforms.

**Goal 4: Create an inclusive and responsive service system that prioritises safety, is risk informed and collaborative.**

We suggest that the Safe as Houses program as detailed above provides an illustration of the success of a collaborative arrangement, as well as emphasising the importance of accurate legal information, advice and representation in relation to any collaborative response.

Otherwise, we agree with the Safe Systems Coalition regarding the importance of:

- Congruence between the key areas of focus: prevention, victim safety, perpetrator accountability and response/service.
- Well constructed governance arrangements.
- Improved communication between departments.
- Application of specialist knowledge.
- An effective monitoring, with an outcomes evaluation based approach.

We would further suggest that from the outset, approaches based on the assessment of return on social investment would help to ensure that measures adopted and funded have the best chance of long term and lasting success.

### **The Courts**

A theme of this submission has been the counterproductive need for stories to be retold by FDV victims on numerous occasions, increasing the stress for victims and the strain on already stretched resources. WLSWA continues to support any examination of the court system that would potentially minimise this within a litigation context. We note those recommendations arising from the Law Reform Commission Report that pertain to greater integration specialist family violence

courts of court procedures, and suggest that these be revisited.<sup>15</sup> We note also the close relationship between children in out of home care and FDV, and recommendations from the 2017 review of the *Children and Community Services Act 2004 (WA)* that pertain to greater integration between the Family Court and Children's Court.<sup>16</sup>

We further express our disappointment in the recent reduction of Family Violence Service staff in the Perth metro area, who give court support services to family violence victims in the Magistrates Courts, providing victims with information, advocacy, support and referral to other services. These workers often have an important support relationship with legal services where lawyers can't be present on the day of court or where immediate advice is required. It is important that the service is properly resourced, alongside adequate legal services.

**Recommendation 11:** that all family Violence Court Services in WA be properly resourced.

### **Further comments**

#### **Need for specialist women's services**

In outlining the strong role of legal services in any FDV strategy there needs also to be an awareness of the importance of specialist women's services and programs run by women for women. They are vital to ensure women can access support and advice in a safe space, informed by principles of gender equality in FDV and trauma informed practice.

This is particularly relevant to legal services, where a relationship of empathy and trust with clients can be crucial to success. It is notable that staff of WLSWA have a deep understanding of the nature and dynamics of violence and impact of trauma, the need for domestic and family violence screening and safety planning as well as ongoing risk assessment. We particularly emphasise goals of empowerment, with client centred approaches. This provides a safe service for women who have experienced FDV and for whom disclosing such histories is a sensitive and difficult process to go through and for which a specialist and gendered response is required.

Our principal areas of legal service work are family violence (family violence intervention orders), family law, child protection and criminal injuries compensation. With a concentration of expertise in these areas and constant practice, WLSWA - in common with women's legal services in other states and territories - are able to assist with complex legal matters with a recognition that family violence must be taken into account as a fundamental element. With specialist knowledge of the way the legal system can discriminate against women, staff at WLSWA can also identify and challenge underlying gender bias, recognising and responding to issues of discrimination and whilst achieving the best possible result through client advocacy in the Courts.

We have through our case scenarios illustrated the complexity of FDV matters and the skill and sensitivity required in their resolution, and believe there may have been very different outcomes in many cases without specialist women's legal services representation. This is particularly so where our legal work involves:

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<sup>15</sup> [https://www.lrc.justice.wa.gov.au/files/p104\\_fdv\\_finalreport.pdf](https://www.lrc.justice.wa.gov.au/files/p104_fdv_finalreport.pdf) at page 155

<sup>16</sup>

<https://www.dcp.wa.gov.au/ccsactreview/Documents/Statutory%20Review%20of%20the%20Children%20and%20Community%20Services%20Act%202004.pdf> at page 84.

- representing women who are ineligible for legal aid but unable to afford private representation;
- representing Aboriginal women in a culturally secure and appropriate manner;
- representing CALD women whose matters may require considerable understanding of factors specific to practices and common acceptances in other countries and the effects of displacement/migration issues;
- assisting women whose children have been taken into care by DOC in attending Signs of Safety meetings and other measures ancillary to court proceedings;
- challenges to court-required psychological reports or other documents that did not adequately consider the nature and dynamics of family violence or adequately address culture;
- bringing to the attention of family and/or children's court how family violence perpetrated by men a partner or family member can particularly impact on parenting capacity;
- emphasising the need for perpetrator accountability; and
- representing women who have had no contact orders made by the court to ensure the safety of their children and themselves.

There are other gender specific services in WA who also provide excellent and appropriate services to women, such the Women's Community Health Network WA, some members of which we work with closely and who also recognise the importance of women's services.<sup>17</sup>

The Consultation Paper rightfully points out on page 5 that "most frequently FDV is perpetrated by men against their intimate partners and children" and provides a number of useful statistics to support this fact. Given this, we strongly recommend that the WA Government place an emphasis and ensure funding availability on specialist women's services as part of the Ten Year Strategy. This should include specialist women's legal services such as WLSWA and partnerships between legal and other services (such as SASH).

**Recommendation 12:** That the WA Government recognise the importance of and need for gender specific services for women, particularly legal services, and provide sufficient funding for the continuation and growth of such services and partnerships in order to adequately meet needs.

### **Elder abuse**

We note that the strategy contains little if no reference to elder abuse. In 2018 we provided a submission to the Western Australian Parliamentary Inquiry into Elder Abuse. As part of that submission, we emphasised that both elder abuse and family violence are gendered by nature with the overwhelming number of victims being female and the overwhelming number of perpetrators male.

In particular, we noted the submission by Senior Rights Victoria (SRV) to the Victorian Royal Commission into Family Violence, which:

- draws many parallels between the definitions of elder abuse used by The World Health Organisation (WHO) and Australian Network for the Prevention of Elder Abuse (ANPEA) and

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<sup>17</sup> <http://www.wchnwa.org.au/services/>

to the definition of family violence as used in Victoria for the intervention orders (equivalent in WA are violence restraining orders)<sup>18</sup>.

- Identifies many of the behaviours considered as elder abuse as falling into the definition of family violence used for the protection orders; and
- considers that elder abuse that occurs within families should be situated squarely within the family violence framework.

That most perpetrators of elder abuse are closely related to the victim was also identified in the Final Report of the Select Committee.<sup>19</sup> Given the significant overlap between family violence and elder abuse, the consequence is that any response to those at risk of elder abuse must be wide enough to incorporate both abuse that occurs outside of a family relationship *and* FDV. We maintain now that this should work conversely, and that any FDV strategy *must* be wide enough to incorporate elder abuse.

**Recommendation 13:** That the Ten Year Strategy adequately include elder abuse as part of the response.

## Conclusion

FDV in WA is complex in terms of both causes and effects, requiring consideration of a great many factors pertaining to recognition and prevention, early intervention and both short and long term responses. At all stages, it is essential that both victims and perpetrators received legal advice. To not do so can cause a great many more problems and greater requirement for resources later on, and this even extends in an intergenerational context.

Any FDV strategy must incorporate a wide range of legal assistance services as a core and integral part of early intervention and response. These should be wherever possible work in collaboration with other non-legal services and be properly funded and resourced to provide effective advice, protection and long term recovery. Homelessness is a particularly serious facet of FDV and requires adequate attention.

We particularly emphasise as part of the ten Year Strategy the need for specialist services for women, especially Aboriginal and CALD women who have particular historical, cultural and individual needs. Finally, education and training of all those involved in any strategy is, we believe, crucial to success.

This concludes our submission. Please do not hesitate to contact the writer for further information. WLSWA is happy to provide this, or to participate in any further aspects of this review.



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<sup>18</sup> See page 12 <http://www.rcfv.com.au/getattachment/932E26C4-5B30-4D2D-8F4C-26529FAFADEE/Seniors-Rights-Victoria>

<sup>19</sup> See Executive Summary at page 5  
[http://www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/5D4DB8F8EB0A444848258307000F6874/\\$file/el.eld.180830.rpf.000.xx.web.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/5D4DB8F8EB0A444848258307000F6874/$file/el.eld.180830.rpf.000.xx.web.pdf)