

Inquiry into Family, Domestic and Sexual Violence

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INTRODUCTION

The Law Institute of Victoria (**'LIV'**) is grateful for the opportunity to provide a formal submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs' Inquiry into Family, Domestic and Sexual Violence (**'the Inquiry'**).

The LIV is the peak membership body for the Victorian legal profession, representing approximately 19,000 lawyers, students and people working in the law in Victoria, interstate and overseas. Its members are legal professionals from all practice areas, and work in the courts, academia, policy, state and federal government, community legal centres and private practice.

The LIV's membership includes expert lawyers who specialise in assisting vulnerable families and children, for example, through providing frontline services for victims of family violence (**'FV'**),¹ and referrals to social support services; assisting perpetrators of FV navigate the justice system and access behavioural change programs; early resolution of family law disputes; and child protection matters. This submission has been informed by the LIV's Family Law Section, Administrative Law and Human Rights Section, Elder Law Committee and the Criminal Law Section. Whilst this submission addresses factual and legislative issues on both the state and federal level, it is largely from the Victorian perspective.

¹ The term 'family violence' throughout this submission is one of broad interpretation and includes all manner of behaviours relating to someone trying to control their partner or family members through physical assault, sexual abuse, threats, humiliation, emotional abuse, financial exploitation and/or social isolation.

Inquiry into Family, Domestic and Sexual Violence

- a) Immediate and long-term measures to prevent violence against women and their children and improve gender equality.
- b) Best practice and lessons learnt from international experience, ranging from prevention to early intervention and response, that could be considered in an Australian context.

Cross-Jurisdictional Issues

The LIV supports all levels of government ensuring that they comply with Australia's international obligations under the United Nations' Convention on the Elimination of All Forms of Discrimination Against Women ('CEDAW'). This is supported by the Australian Law Reform Commission's ('ALRC') report, which focused on closing the jurisdictional gap between federal family courts and state and territory courts. The LIV considers harmonisation is imperative to providing cross-jurisdictional coherence for the full incorporation of the CEDAW.²

While Victoria is to be commended for its progress in implementing the recommendations arising from the Royal Commission into Family Violence ('RCFV'), it has been noted that widespread implementation has not occurred across all states and territories. Victims of FV for example are particularly disadvantaged in states such as NSW where there remains an absence of strong protections from, and regulation of, direct cross-examination during civil proceedings.³ Amendments to the *Family Law Act 1975* (Cth), prevents direct cross-examination in circumstances where there is

² Dubravka Simonovic, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences on her mission to Australia: note by the Secretariat*, 38th sess, Agenda item 3, UN Doc A/HRC/38/47/Add-1-EN-PDF (17 April 2018) [22].

³ Tracey Booth, Miranda Kaye, Jane Wangmann, 'Family Violence, Cross-Examination and Self-Represented Parties in the Courtroom: The differences, gaps and deficiencies' (2019) 42(3) *UNSW Law Journal* 1141.

an allegation of FV between two parties and where one or more of the prescribed circumstances apply.⁴ However, this is restricted to family law proceedings and does not apply where an interim order is in place; although the court may itself order otherwise.

Victoria's amendments to section 70(3) of the *Family Violence Protection Act 2008* (Vic) unequivocally provides that the respondent 'must not' cross-examine the protected witness, unless the witness is an adult who consents to being cross-examined.⁵ The mandatory nature of this prohibition, reconciles Victoria Legal Aid's ('VLA') concern that the 'mere possibility that direct cross-examination could occur can [...] cause victims of violence to agree to unsafe consent orders or to abandon proceedings.'⁶

There do however remain concerns that these protections can be abrogated by way of a victim's consent to being cross-examined by the respondent. Whilst the right to cross-examination is fundamental to a fair hearing and a lynchpin of adversarial legal proceedings and victims are afforded autonomy by being allowed to opt-in;⁷ the coercive and controlling nature of FV are significant risk factors that may intimidate a victim into consenting – void of genuine consent and against their best interests. The LIV therefore recommends that all jurisdictions introduce a mandatory prohibition on respondents cross-examining the victim, and instead a cross-examination scheme be the preferred method. Such a scheme requires the court to make an order banning personal cross-examination at the trial directions stage, after which a self-represented respondent can seek a duty lawyer if they wish to proceed with cross-examining the victim.

Addressing Sexual Discrimination in the Workplace

The UN CEDAW Committee ('**CEDAW Committee**') has recommended the expansion of the Sex Discrimination Commissioner's ('**the Commissioner**') mandate to address all issues of gender equality.

⁴ *Family Law Act 1975* (Cth), s102NA, s102NB.

⁵ *Family Violence Protection Act 2008* (Vic) s 70(3)(b).

⁶ House of Representatives Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, *A Better Family Law System to Support and Protect Those Affected by Family Violence* (Report, December 2017) 134 [4.175].

⁷ Tracey Booth, Miranda Kaye, Jane Wangmann, 'Family Violence, Cross-Examination and Self-Represented Parties in the Courtroom: The differences, gaps and deficiencies' (2019) 42(3) *UNSW Law Journal* 1138.

The Commissioner, in its report on the National Inquiry into Sexual Harassment in Australian Workplaces,⁸ recommended amendment to the *Sex Discrimination Act 1984* (Cth), particularly removing the current exemptions for state public servants.⁹ The LIV endorses the conclusion that the Act should be amended to provide consistency in its application, as currently, section 13 provides that section 14 ('discrimination in employment or in superannuation') and section 28B ('employment, partnerships etc.') does not apply in relation to employment by an instrumentality of a state. The Deloitte report 'The Economic Costs of Sexual Harassment in the Workplace' conservatively estimated that the total financial cost of workplace harassment to the Australian economy is \$3.8 billion.¹⁰ It would therefore be beneficial to place a positive duty on an employer to not permit sexual harassment in their workplace and take effective measures to reduce and prevent it from occurring.

The LIV endorses the Commissioners' recommendations that amendment is needed to ensure that a person who causes, instructs, induces, aids or permits another person to do an unlawful act, will be taken to have also committed the act.¹¹ Amendments to section 13 and section 105 of the *Sex Discrimination Act 1984* (Cth) would provide strong protections to embed cultural change within workplaces, by minimising the exemptions to state public servants and placing a positive duty upon employers to signal the need for effective workplace policies to be put in place to protect against sexual discrimination.

Intimate Partner Violence

The UN Special Rapporteur's report on violence against women, noted that sexual violence within intimate partner relationships have low levels of reporting and the risks and needs of sexual violence

⁸ Australian Human Rights Commission, 'Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces' (Report, 29 January 2020) <<https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020>>

⁹ Ibid 488.

¹⁰ Deloitte Access Economics, *The Economic Costs of Sexual Harassment in the Workplace* (Final Report, February 2019) 5.

¹¹ *Sex Discrimination Act 1984* (Cth) s105 ('liability of persons involved in unlawful acts').

survivors go ‘unrecognised [...] overlooked or disregarded’.¹² The LIV acknowledges the prominence of intimate partner violence (‘IPV’) as a leading contributor to illness, disability and premature death for women aged between 18 – 44 years of age.¹³ Almost 40 per cent of women continued to experience violence from their partner while temporarily separated.¹⁴ While it is necessary in certain situations to incarcerate persistent violent offenders, the LIV urges that evidence-based strict enforcement of community-based sentences,¹⁵ as well as focused deterrence, play an important role in preventing the reoccurrence of violence and abuse.¹⁶

¹² Dubravka Simonovic, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences on her mission to Australia: note/ by the Secretariat*, 38th sess, Agenda item 3, UN Doc A/HRC/38/47/Add-1-EN-PDF (17 April 2018) [37].

¹³ ANROWS, ‘Examination of the burden of disease of intimate partner violence against women in 2011’ (Final Report, 2016) < <https://www.anrows.org.au/publication/examination-of-the-burden-of-disease-of-intimate-partner-violence-against-women-in-2011-final-report/>>.

¹⁴ Australian Bureau of Statistics, ‘Personal Safety Survey’ (2017) <<https://www.abs.gov.au/ausstats/abs@.nsf/mf/4906.0>>.

¹⁵ David Kennedy, Mark Kleiman, Anthony Braga, ‘Beyond deterrence: Strategies of focus and fairness’ in N Tilley & A Sidebottom (eds), *Handbook of crime prevention and community safety*. Oxfordshire: (Routledge, 2017) 157–182.

¹⁶ Harley Boxall, Anthony Morgan, ‘Repeat domestic and family violence among young people’, *Trends & issues in Crime and Criminal Justice* (2020) 591 *Australian Institute of Criminology*.

- c) **The level and impact of coordination, accountability for, and access to services and policy responses across the Commonwealth, state and territory governments, local governments, non-government and community organisations, and business.**
- d) **The way that health, housing, access to services, including legal services, and women’s economic independence impact on the ability of women to escape domestic violence.**

Housing, Homelessness and FV

The Victorian RCFV identified the link between the cumulative effect of FV, its contribution to economic insecurity, lack of employment, insecure housing and ultimately, poverty and homelessness.¹⁷ The UNHCR Special Rapporteur recognises FV’s role as a leading cause of women’s homelessness, in particular where the survivor is removed from home, rather than the perpetrator.¹⁸ The CEDAW Committee has recommended that Australia ‘prevent homelessness resulting from domestic violence and ensure that women who are victims of domestic violence and their children, are provided with ongoing accommodation and integrated support.’¹⁹ The lack of accessibility to services results in many survivors being forced to self-represent, despite the complexity of their legal issues; which often crossover areas of family and migration law.

¹⁷ State of Victoria, Royal Commission into Family Violence, Reports and recommendations, Parl Paper No 132 (2014-16) 37.

¹⁸ Council of the Australian Governments (COAG), Advisory Panel on Reducing Violence against Women and their Children: Final Report (2016)
<<https://www.coag.gov.au/sites/default/files/communique/COAGAdvisoryPanelonReducingViolenceagainstWomenandtheirChildren-FinalReport.pdf>>

¹⁹ UN Committee on the Elimination and All Forms of Discrimination against Women, *Concluding Observations of the Committee on the Elimination of Discrimination against Women*, 46th Sess, UN Doc CEDAW/C/AUL/CO/7 (30 July 2010) [29].

As noted in the report by the Council of Australian Governments ('COAG'):²⁰

'A woman's journey in the court system generally begins in the state family violence courts. This family violence state system gives the immediate response to the crisis.'

Data from the Australian Institute of Health and Welfare ('AIHW') found that homelessness resulting from FV could be prevented in nearly nine out of ten cases.²¹ In line with primary prevention rationales, the LIV supports the establishment of Specialist Family Violence Courts ('SFVC') in Victoria, which assist families who have complex needs such as the combination of FV, mental health and substance abuse. In taking a holistic approach of not simply punishing offending but addressing its root causes, our members are reporting marked improvements for their clients; both complainants and perpetrators. The LIV recommends that this specialist approach to addressing FV would serve as an effective model for expansion and implementation nationally.

The LIV suggests that this approach to integrated therapeutic responses, involving child protection, family law and FV legal services is an effective method for addressing broader issues underpinning the incidence of FV, by providing collaborative 'wrap around' care that promotes community-based, family-centred services and support.²² By directing further funds and attention to primary prevention, this will reduce the pressures on community-supported services that are already struggling to meet the demands of its clients. Accordingly, this will result in serving the best interests of families with complex needs, who require a focus on primary intervention and systemically targeting families that are assessed as being 'at risk' of FV and child protection and/or justice involvement.

²⁰ Council of the Australian Governments (COAG), Advisory Panel on Reducing Violence against Women and their Children: Final Report (2016) <<https://www.coag.gov.au/sites/default/files/communique/COAGAdvisoryPanelonReducingViolenceagainstWomenandtheirChildren-FinalReport.pdf>>

²¹ Australian Institute of Health and Welfare, Specialist Homelessness Services annual report 2017-18, (AIHW, 2018) 1.

²² Family and Relationships Services Australia, *Strengthening Prevention and Early Intervention Services for Families into the Future* (Report, March 2017) 15 <<https://nla.gov.au/nla.obj-504850850/view>>.

LIV members report that the impact of COVID-19 has resulted in an increase in victims contacting community legal centres for assistance, as financial stresses are further exacerbating FV. These stress factors are further compounded by the precarity of rental markets, and a high demand placed on government and social housing, with low-income households competing in a shrinking market of affordable rental properties.²³ The LIV anticipates that the shortage of affordable rental housing amidst COVID-19, alongside the rise in FV reports, will increase the projections for social housing needs in Victoria from the current estimates of over 30,000 additional dwelling's will be needed in the next 20 year; if Victoria is to maintain long-term social housing at the current rate of 3.5 per cent.²⁴

The impact of COVID-19 on the Australian economy has been significant and has resulted in the need for considerable deficit spending to stimulate the economy. The LIV believes this is an ideal opportunity for state and federal governments to significantly invest in public housing development. In the long-term, the development of public housing will address the significant issue of homelessness, particularly of FV victims; with evidence indicating social housing reduces the risk of homelessness by 65 per cent.²⁵ The construction industry is Australia's third biggest industry, employing over 1.15 million Australians.²⁶ And stimulates a number of other industries such as providers of raw materials and household goods. In the short-term, construction industry investment at both the state and federal level through social housing development will stimulate the economy. Whilst in the long-term, it will reduce the risk of homelessness for the vulnerable, which is linked to improved health outcomes

²³ Nilmini Fernando, 'Financial 'Teachable Moments' for women affected by family violence', *Wire* (1 November 2018) 77.

²⁴ State Government Victoria, 'Victoria's Social Housing Supply Requirements to 2036' (May 2017) <<https://www.vic.gov.au/sites/default/files/2019-06/Victorias-social-housing-supply-requirements-to-2036.pdf>>.

²⁵ David Prentice & Rosanna Scutella, 'What are the impacts of living in social', (2018) housing? Infrastructure Victoria

²⁶ Australian Government, 'Australian Jobs - Industry Outlook', (2020, Web Page). <<https://australianjobs.employment.gov.au/jobs-future/industry-outlook>>.

that further reduce the burden on the public health system and stable housing improves productivity.²⁷

Baseline Funding to Meet the Demand for Legal Aid

The additional funding provided by the state government to assist for frontline services, such as the Victorian Aboriginal Legal Services (**'VALS'**) and Community Legal Centres (**'CLC'**) operate amidst the COVID-19 pandemic, is to be commended.²⁸

In addition to a considerable number of vital services, these frontline services offer free advice to FV victims. Members have reported that it is often the case that Respondents for a FVIO will also have multiple matters in both the criminal and family law systems. Where criminal law matters are on foot, the provision of services from organisations such as Victoria Legal Aid (**'VLA'**), is essential for the provision of advice that can facilitate just outcomes for both an AFM and Respondent. For example, members report that when looking at mitigating circumstances to reduce the culpability/sentence, it is common to ask for a community corrections order that involves wraparound services such as anger management for FV perpetrators and for FVIO to be put in place to ensure that the Respondent is separated from the AFM/s to prevent further offending.

As such, the LIV notes that whilst VLA has made the decision to reduce the number of duty lawyer services due to the absence of sufficient funding, they have chosen to prioritise the Family Advocacy and Support Services (**'FASS'**), an essential integrated service and measure for early intervention, prevention and referrals to social support services. Notably, a report evaluating the FASS noted that while it is an effective and important program, 'it cannot itself address the systemic factors impacting the experience of family law clients with family violence matters.'²⁹ The priority placed on providing

²⁷ Richard Denniss, Matt Grudnoff & David Richardson, 'Design Principles for Fiscal Policy in a Pandemic How to create jobs in the short term and lasting benefits in the long term', The Australia Institute (April 2020).

²⁸ Victoria Legal Aid, 'Extra funding for legal assistance pandemic response welcomed (9 May 2020) <http://www.legalaid.vic.gov.au/about-us/news/extra-funding-for-legal-assistance-pandemic-response-welcomed>.

²⁹ Inside Policy, *An Evaluation of the Family Advocacy and Support Services* (Final Report, 18 October 2018) 6.

this essential support to meet the growing demands of FV victims and providing support for persons who have a risk or history of FV amidst COVID-19,³⁰ has required VLA to limit eligibility for other services, including for child protection grants of assistance and family law duty lawyer support. As VLA are continuing to confront additional challenges due to the deferral of case and by prioritising the delivery of their FASS, the LIV wishes to raise the urgent need for increased additional baseline funding for VLA.³¹ It is essential for VLA to be supported as they confront financial sustainability challenges, to ensure that further limits to their services are not required moving forward.

Court Network Funding

In March 2020, the Court Network, a volunteer program designed to assist FV victims in the Family Court and Federal Circuit Court, had its services defunded after \$130,000 was cut from VLA and funding assistance was rejected by the federal government.

FV issues are generally state funded, while the Family Court and Federal Circuit Court are generally federally funded. This distinction is why the federal government refused funding and why the state government believe, as the Court Network operates in federal courts, it should not be responsible for paying.

A 2013 KPMG report found that the program provided a benefit of \$3.20 for every \$1 funded in Victoria.³² LIV members have reported that a number of their clients, many of whom are isolated as a result of FV, found great utility and support from the program. These volunteers, who are carefully trained, were tasked with keeping an eye on people who were distressed or unsure; particularly those who were on their own. They would provide them with comfort, accompany them to court, provide practical court information and link victims in with essential services.

The Commonwealth's share of legal assistance funding had declined over the past two decades and at the time of the Court Network's funding being withdraw, was less than 30 per cent of overall government legal assistance funding in Victoria. The LIV is however pleased that since June 2020, the

³⁰ Victoria Legal Aid, 'Reducing duty lawyers services' (9 June 2020)

<https://www.legalaid.vic.gov.au/about-us/news/changes-to-family-law-duty-lawyer-services>.

³¹ Victoria Legal Aid 'Changes to legal aid from 1 July 2020' (23 June 2020)

<https://www.legalaid.vic.gov.au/about-us/news/changes-to-legal-aid-from-1-july-2020>.

³² Court Network, 'Court Network Submission to the Department of Justice and Regulation Access To Justice Review', (February 2016), 6 <https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/4814/8609/4199/Submission_35_-_Court_Network.pdf>.

Commonwealth Government committed to increased funding as part of the National Legal Partnership Agreement 2020-2025 ('NLAP').

However, as the NLAP did not address Court Network funding, the LIV calls on the Commonwealth Government to reinstate the funding for this vital service to proceed in the federal jurisdiction of the Family Court and the Federal Circuit Court.

e) All forms of violence against women, including, but not limited to, coercive control and technology-facilitated abuse.

Elder Abuse and FV

Research shows that older women aged 55 and over are the fastest growing cohort of homeless people, with a rise of over 30 per cent between 2011 to 2016.³³ Due to a lack of financial resources and assets, many have been unable to sustain their housing.³⁴ The Australian Human Rights Commission reports that often 'older women are [often] experiencing homelessness for the first time at this later stage in life.'³⁵

Women face many disadvantages when it comes to financial security and retirement savings. This may be due to disproportionate representation in part-time and casual employment, gender pay gaps, and spending time out of the workforce for unpaid care responsibilities. Currently, the superannuation gender gap is 47 per cent.³⁶ A recent study by Rice Warner revealed that the retirement balances of men aged between 35 and 60 are on average, 42 per cent higher than women of the same age.³⁷

³³ Australian Human Rights Commission, 'Older Women's Risk of Homelessness: Background Paper' (April 2019) 6.

³⁴ Ibid 10-11.

³⁵ Ibid.

³⁶ The Senate Economics References Committee, (2016), *A Husband is Not a Retirement Plan – Achieving Economic Security for Women in Retirement*, Canberra, 35.

³⁷ Rice Warner, 'Ready Reckoner: Gender Gap Analysis (Newsletter, March 2019) < [https://clarety-wis.s3.amazonaws.com/userimages/Ltr%20Ready%20Reckoner_%20Gender%20Gap%20Analysis%20\(Sandra%20Buckley\)%20050419.pdf](https://clarety-wis.s3.amazonaws.com/userimages/Ltr%20Ready%20Reckoner_%20Gender%20Gap%20Analysis%20(Sandra%20Buckley)%20050419.pdf)>; John Collett, 'Study shows retirement savings gender gap is 42 per cent', *The Sydney Morning Herald* (Sydney, 21 April 2019).

Therefore, increasing the economic security of older women is vital in curbing predispositions to homelessness.

Older women are a particularly vulnerable cohort with regards to FV. They are less likely to report violence as a result of financial dependence on their partner, fear of isolation and risk of estrangement from their children and/or grandchildren, feelings of shame and a general lack of knowledge about available services and the law. FV extending to circumstances commonly described as ‘elder abuse’ is pervasive and often involves physical, emotional and financial abuse.

The LIV has recommended FV competency training be required for all legal practitioners, both currently practising and prior to admission. This is particularly relevant to practitioners working in the fields of criminal law, wills, estates and elder law to ensure they understand how FV intersects with those areas and how they can inform and assist their clients.³⁸ It is especially important to enhance the ability of entry-level legal practitioners working across all areas of the law, to recognise and effectively respond to clients impacted by FV. This is particularly important given the complexity of issues involved in challenging family dynamics encountered in practice.

Members of the LIV Elder Law Section report that there is a general lack of awareness of the controlling, manipulative and intimidator nature FV can take as a common form of elder abuse. As such, some practitioners may not be equipped to identify and appropriately act in the best interests of a client who is subject to elder abuse.

In terms of elder abuse, statistics show that financial abuse is identified as the fastest growing type of abuse.³⁹ Elder financial abuse can give rise to causes of action under contract, property, equity and family law. In relation to intervention orders, misidentifying an elderly person as the perpetrator of FV may result in homelessness and/or loss of financial and/or economic support. This in turn may lead to a loss of access to adequate health services, and increased risk of mental health issues due to isolation and/or neglect. Women’s Legal Service Victoria have reported that in their experience, it is

³⁸ LIV, Submission to the Council of Attorneys-General Family Violence Working Group, *Options for Improving the Family Violence Competency of Legal Practitioners* (25 September 2019) recommendation 1 (e).

³⁹ House of Representatives Standing Committee on Legal and Constitutional Affairs, ‘Older people and the law’ (Parliamentary report, September 2007) 15 (Submission No. 67, p. 7).

rare that a FV intervention order (**'FVIO'**) or other forms of intervention orders (**'IVOs'**) is applied on the grounds of economic abuse.⁴⁰

It is hoped that the implementation of the RCFV recommendation for specialist elder abuse police units, consists of adequate training to recognise economic and financial abuse, in addition to physical violence.⁴¹ Once identified, IVOS should be established to protect the older family member and their assets. This would align with the ALRC, who stated that these specialist units will better achieve improvements in criminal justice responses.⁴²

⁴⁰ Women's Legal Service Victoria, 'Submission: Economic Abuse and Economic Recovery of Family Violence Victims – Royal Commission into Family Violence' (June 2015) 9.

⁴¹ Royal Commission into Family Violence (Report, 2016) recommendation 155.

⁴² Australian Law Reform Commission, 'Elder Abuse – A National Legal Response: Final Report (Report, May 2017) 369.

f) The adequacy of the qualitative and quantitative evidence base around the prevalence of domestic and family violence and how to overcome limitations in the collection of nationally consistent and timely qualitative and quantitative data including, but not limited to, court, police, hospitalisation and housing.

Self-represented Litigants in FV Matters

The Crime Statistics Agency has collated the volume of FVIO applications, and the gender of the applications, which is a useful dataset for informing resourcing, policy and legislative responses.⁴³ However, the Victorian Magistrates' Court, which has the highest volume of cases in Victoria, 'has no data on the overall number of cases where parties are self-represented'.⁴⁴ Amendments to the *Family Law Act 1975* (Cth) provide the Magistrates' Court with jurisdiction to decide FV related matters, such as whether to revive, change or suspend a parenting order for a limited time as part of the intervention order.⁴⁵ Improving data retention practices, inclusive of whether a party is self-represented in a FV matter, is crucial to evaluating the effectiveness of state Magistrates' Courts in exercising family law jurisdiction, and addressing the vulnerabilities that arise from issues of equality of arms.

Remote FVIO Applications

The COVID-19 pandemic has resulted in a significant backlog of matters in the Victorian Magistrates' Court. To address the inability for matters to proceed as normal in Court, emergency legislation allows for interim IVOs to be automatically extended to expire in three months rather than the previous default of 28 days.⁴⁶ The LIV is concerned that these automatic extensions will affect a Respondent's ability to have meaningful contact with their children, where their interim IVO contains no exceptions.

⁴³ Crime Statistics Agency 'Magistrates' Court: Family Violence Data Dashboard (1 July 2014 – 30 June 2019) <<https://www.crimestatistics.vic.gov.au/family-violence-data-portal/family-violence-data-dashboard/magistrates-court>>.

⁴⁴ Department of Justice and Regulation, *Access to Justice Review: Volume 2 Report and Recommendations* (August 2016) 472.

⁴⁵ Magistrates' Court of Victoria, 'Family Law' (22 May 2019) <<https://www.mcv.vic.gov.au/family-matters/family-law>>.

⁴⁶ *COVID-19 Omnibus (Emergency Measures) Act 2020*, s 36, 41; *Family Violence Protection Act 2008*, s207B; *Personal Safety Intervention Orders Act 2010*, s181B.

Additionally, this situation fosters considerable stress and fear upon AFMs, where they do not know when the matter will be resolved, or when a final order can be obtained.

The LIV recognises that remote appearances may promote the safety of AFMs by avoiding potential face-to-face contact with the Respondent, before and after a hearing; and alleviate stresses associated with giving evidence.⁴⁷ However, the LIV urges an evidence-based approach to the processes of hearing FV matters remotely to ensure they are providing reparative and restorative justice for victims of FV. Consideration is needed as to whether there is a possibility that participation via audio-visual link ('AVL') could make an AFM feel more marginalised in the process, inconsistent with the aims of restorative justice. The LIV supports the proposal of the Law Council of Australia, that an AFM could attend the Court in person, whilst the Respondent attends remotely.⁴⁸ The LIV supports the AFM having the decision whether they attend in person at Court or via AVL.

Integration of FV Information Sharing

The LIV has welcomed the Family Violence Information Sharing Scheme, which provides that prescribed organisations, including the Children's Court of Victoria, Correction's Victoria, the Department of Health and Human Services ('DHHS'), the Magistrate's Court of Victoria and Victoria Police can share information to assess and manage the risk of family violence.⁴⁹ The LIV suggests that an effective national response to FV requires greater information sharing across and between jurisdictions, particularly as state Magistrates' Courts are increasingly empowered to exercise family law jurisdiction, in particular in the ability for state FV proceedings to affect family law parenting orders. In Victoria, this was facilitated through amendment to the *Family Violence Protection Amendment (Information Sharing) Act 2017*, which removed the word 'imminent' from the *Privacy and Data Protection Act 2014* and the *Health Records Act 2001*, in recognition of the RCFV's recommendation that many FV cases will not meet this threshold, despite posing a serious risk to the

⁴⁷ Mandy Burton, 'Specialist Domestic Violence Courts for Child Arrangement Cases: Safer Courtrooms and Safer Outcomes?' (2018) 40(4) *Journal of Social Welfare and Family Law* 537.

⁴⁸ Law Council of Australia, *The Justice Project* (Final Report, August 2018) 78 ('Pt.2 'Courts and Tribunals').

⁴⁹ *Family Violence Protection Act 2008*, Part 5A.

affected family members ('AFM'). A prime example of effective information sharing is the implementation of the National Domestic Violence Order Scheme,⁵⁰ aiming to better protect FV victims and their families by no longer restricting FVIOs to state and territory borders through interagency coordination and cooperation. In line with this risk-management rationale, the LIV suggests greater integration and information sharing across state and territory agencies, such as between police, courts, child welfare and health authorities would improve the overall effectiveness of responses to domestic and FV, consistent with Queensland's Special Domestic and FV Taskforce's findings in 2015.⁵¹

h) The experiences of all women, including Aboriginal and Torres Strait Islander women, rural women, culturally and linguistically diverse women, LGBTQI women, women with a disability, and women on temporary visa

The LIV recognises that cultural responsiveness is critical in developing responses that meet the needs of women and their children. This is because victims in the most disadvantaged communities are significantly more likely to experience repeat FV, based on studies of both officially reported and self-reported violence.⁵² As such, the LIV seeks to engage the following important issues underpinning the lack of adequate responses to the following disadvantaged groups, recommending an integrated response that accounts for their specific vulnerabilities in reporting, escaping and addressing issues of FV and sexual violence.

⁵⁰ Attorney-General's Department, 'National Domestic Violence Order Scheme' (Webpage, 25 November 2017) <<https://www.ag.gov.au/families-and-marriage/families/family-violence/national-domestic-violence-order-scheme>>.

⁵¹ Domestic and Family Violence Taskforce, 'Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland (Report, 2015) 32.

⁵² Fitzgerald R & Graham T 2016. *Assessing the risk of domestic violence recidivism*. Crime and Justice Bulletin no. 189. Sydney: NSW Bureau of Crime Statistics and Research; Rahman S 2018. *Assessing the risk of repeat intimate partner assault*. Crime and Justice Bulletin no. 220. Sydney: NSW Bureau of Crime Statistics and Research

LGBTIQ Women

LGBTIQ women and individuals in Australia experience unique forms of FV, however the current lack of statistical data on the prevalence of FV in an LGBTIQ context presents a barrier to addressing the issue.⁵³ The RCFV noted that despite the need for more information, existing research suggests rates of FV in LGBTIQ relationships mimic that in the general population,⁵⁴ and a recent survey identified that 13.4 per cent of LGBTIQ adults in Victoria had experienced FV compared with 5.1 per cent of the broader population of Victoria.⁵⁵ Reporting on data by OurWatch, With Respect found that cisgender lesbian women more commonly experience FV than cisgender gay men, and that violence from other family members may be more prevalent in younger transgender and LGBTIQ communities.⁵⁶ This may occur through young people being excluded from the family home on the basis of their LGBTIQ status or other unique forms of abuse, such as threats from family to 'out' them.⁵⁷

LGBTIQ women and individuals experience multiple barriers to receiving support and reporting violence. With Respect identifies that invisibility of LGBTIQ FV leads to a lack of recognition by mainstream service providers, due to the dominant understanding of FV as a cisgender male perpetrator and cisgender female victim.⁵⁸ LGBTIQ people may also feel invisible in the FV system due

⁵³ Australian Human Rights Commission, *Resilient Individuals: Sexual Orientation, Gender Identity & Intersex Rights* (National Consultation Report, 2015) 79.

⁵⁴ *Royal Commission into Family Violence* (Summary and Recommendations, March 2016) 35 <<http://rcfv.archive.royalcommission.vic.gov.au/MediaLibraries/RCFamilyViolence/Reports/Final/RCFV-Summary.pdf>>.

⁵⁵ Victorian Government, 'Victorian Agency for Health Information 2020. Findings from the 2017 Victorian Population Health Survey' *Health. VIC* (Survey, 2017), <<https://www2.health.vic.gov.au/public-health/population-health-systems/health-status-of-victorians/survey-data-and-reports/victorian-population-health-survey/victorian-population-health-survey-2017>>.

⁵⁶ With Respect, 'Family Violence & LGBTIQ' *With Respect* (Article, 2020) <<https://www.withrespect.org.au/professionals/about/family-violence-lgbtqi-communities>>.

⁵⁷ *Royal Commission into Family Violence* (Summary and Recommendations, March 2016) 35 <<http://rcfv.archive.royalcommission.vic.gov.au/MediaLibraries/RCFamilyViolence/Reports/Final/RCFV-Summary.pdf>>.

⁵⁸ With Respect, 'Family Violence & LGBTIQ' *With Respect* (Article, 2020) <<https://www.withrespect.org.au/professionals/about/family-violence-lgbtqi-communities>>.

to a low level of awareness among police, in the courts and the community generally.⁵⁹ Finally, individuals may not seek help for fear of homophobia, transphobia, discrimination, or that their experience may not be validated or believed. To combat barriers of accessibility and invisibility, the LIV reiterates the recommendations made in the LGBTIQ Legal Needs Analysis, notably the need for increased funding and other support for legal service providers, advocacy organisations, health and support services and community groups to continue and expand existing specialist or targeted LGBTIQ services in response to local legal need.⁶⁰

Indigenous Women and Children

The UN CEDAW Committee expressed concerns about findings that Indigenous women and girls face the highest level of violence, ‘especially at home where Indigenous women are 35 times as likely to be hospitalised as a result of FV-related assaults as non-indigenous females.’⁶¹ The report of the Special Rapporteur on Violence against women highlighted studies, which indicated that 90 per cent of violence is not disclosed or reported by Indigenous women.⁶²

With 28 per cent of the Australian Indigenous population reporting FV as the main reason for homelessness,⁶³ survivors of FV, often women and children, are commonly forced to decide between homelessness or continuing to experience FV to stay in the family home. The Australian Housing and

⁵⁹ *Royal Commission into Family Violence* (Summary and Recommendations, March 2016) 35 <<http://rcfv.archive.royalcommission.vic.gov.au/MediaLibraries/RCFamilyViolence/Reports/Final/RCFV-Summary.pdf>>.

⁶⁰ LGBTIQ Legal Service, *LGBTIQ Legal Needs Analysis: Reflections on legal need and future planning from our two-year pilot program* (Report, 17 July 2020) 44 (*‘LGBTIQ Legal Needs Analysis’*) <<https://lgbtiqlegal.org.au/wp-content/uploads/2020/07/LGBTIQ-Legal-Needs-Analysis.pdf>>.

⁶¹ UN Committee on the Elimination and All Forms of Discrimination against Women, *Concluding Observations of the Committee on the Elimination of Discrimination against Women*, 46th Sess, UN Doc CEDAW/C/AUL/CO/7 (30 July 2010) [40].

⁶² UN General Assembly, *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences on her Mission to Australia*, 38th Sess, Agenda Item 3, UN Doc A/HRC/38/47/Add.1 (17 April 2018) [43].

⁶³ AIHW, *Aboriginal and Torres Strait Islander People: A Focus Report on Housing and Homelessness* (Report, 29 March 2019) 54 <<https://www.aihw.gov.au/reports/housing-assistance/indigenous-people-focus-housing-homelessness/contents/at-a-glance>>.

Urban Research Institute ('AHURI')'s report found that Indigenous women have very few housing pathways after experiencing FV.⁶⁴ While FVIOs are commonly used to exclude males or perpetrators from the family home, often ATSI males faced with no viable alternative other than homelessness, will choose to violate the FVIO and return to the family home.⁶⁵ The LIV suggests that this may be an ineffective policy for ATSI families experiencing complex needs.⁶⁶ Reportedly, the consensus among service providers was that sending ATSI men to jail for breaching an FVIO was only exacerbating problems for women and children, including risk of homelessness, child protection involvement and child removal.

The RCFV noted that ATSI persons are less likely to report FV than non-ATSI persons, for a range of reasons including 'fear about the consequences of disclosure [in particular child removal], distrust of government agencies and service providers, historical and cultural factors and a lack of access to support services.'⁶⁷ Facilitating access to culturally safe FV services, support networks, allied social and health services and programs, may promote improved engagement from ATSI communities. The LIV supports the work of the VALS in providing FV Client Support Officers to support ATSI clients through family or civil law matters, with the provision of appropriate referrals to access local support programs and emergency relief monies.⁶⁸ The LIV seeks to emphasise the importance of the services provided by VALS to fill the gap in the lack of culturally appropriate legal services, and considers that the removal of the service *Balit Ngulu* – a service for Aboriginal children with attendant therapeutic support – due to the absence of funding from state and federal governments, requires reconsideration of the

⁶⁴ Kyllie Cripps and Daphne Habibis, 'Improving housing and service responses to domestic and family violence for Indigenous individuals and families' (AHURI Final Report No. 320, Australian Housing and Urban Research Institute Limited, August 2019) 1.

⁶⁵ *Ibid* 24.

⁶⁶ Law Institute of Victoria, 'Submission to the Inquiry into Homelessness in Victoria' (16 March 2020) 331, recommendation 37

<https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Homelessness_in_Victoria/Submissions/S331 - Law Institute of Victoria Redacted.pdf>.

⁶⁷ Royal Commission into Family Violence (Report and Recommendations, March 2016) Vol V, 28.

⁶⁸ Victorian Aboriginal Legal Service, 'Submission to the Sentencing Act Reform Project' (April 2020) <<https://vals.org.au/assets/2020/04/Sentencing-Act-Reform-Project-VALS-submission-2020.pdf>>.

commitments in the Aboriginal Justice Agreement,⁶⁹ in seeking to increase culturally appropriate legal services and promote the interests of ATSI children.

Women with Disabilities

In Australia, women with disabilities experience high levels of FV and sexual assault, and have high levels of unmet needs in terms of access to community support services for FV and sexual assault.⁷⁰ The responsibility of the Commonwealth Government to address violence against women and girls with disabilities is explicitly delineated in a number of the human rights treaties it has ratified, particularly the Convention on the Rights of Persons with Disabilities ('CRPD').⁷¹ Article 16 of the CRPD (Freedom from exploitation, violence and abuse) requires states (at all levels) to ensure that people with disabilities are not subject to any form of exploitation, violence or abuse; requires states to protect women, children and older people with disabilities from gender and age aggravated exploitation, violence and abuse; requires states to institute measures to ensure the detection, investigation and prosecution of exploitation, abuse and neglect of people with disabilities and to promote the physical and psychological recovery and social reintegration of victims.⁷² The LIV is concerned that during separation, parental disability has been misconceived and argued as having a negative impact on parenting capacity,⁷³ which may affect the orders made under the *Family Law Act*

⁶⁹ Victorian Aboriginal Justice Agreement, *Burra Lotjpa Dunguludja - The Aboriginal Justice Agreement Phase 4* (3 July 2020) <https://www.aboriginaljustice.vic.gov.au/the-agreement/the-aboriginal-justice-agreement-phase-4>.

⁷⁰ Women with Disabilities Australia (WWDA), Submission to the Preparation Phase of the UN Analytical Study on Violence against Women and Girls with Disabilities (A/HRC/RES/17/11) (December 2011) 4.

⁷¹ UN General Assembly, Convention on the Rights of Persons with Disabilities, 24 January 2007, A/RES/61/106.

⁷² Women with Disabilities Australia (WWDA), Submission to the Preparation Phase of the UN Analytical Study on Violence against Women and Girls with Disabilities (A/HRC/RES/17/11) (December 2011) 5.

⁷³ Australian Women Against Violence Alliance, *2018 CEDAW Shadow Report—Violence Against Women: A non-governmental perspective on Australia's implementation of CEDAW*, 70th sess, 13

1975 (Cth). Often, even in situations of FV, children are removed from a mother with a manageable disability and placed into the care of an abusive father.

A narrow interpretation of FV as spousal and/or intimate partner violence risks overlooking other forms of violence, and to this end the LIV recommends the development of consistent definitions of FV that encompasses a broader range of acts that constitute FV to include gendered disability violence and/or a policy framework in the next *National Action Plan to Reduce Violence against Women and their Children*. This should address abuse in the disability sector and afford a coordinated and integrated approach to addressing FV committed against women with disabilities and their children.

Family Violence and Citizenship

Non-citizen survivors of FV face increasing barriers by virtue of their culturally and linguistically diverse ('CALD') background, both in access to legal avenues and the FV system. Quite often CALD women and children live under complete dependence on the perpetrator of the violence. The shame and stigma associated with FV, particularly for women from refugee and migrant backgrounds, is a major hurdle to seeking assistance and ending the abusive relationship.⁷⁴ A consistent finding from the RCFV and other recent reports is that men utilise women's temporary visa status and financial dependence to invoke a fear of deportation as a means of control and coercion.⁷⁵

Women on temporary visas face significant barriers in accessing long-term public housing, are often unable to access Centrelink payments and have limited working rights and entitlements.⁷⁶ Given their

<https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/AUS/INT_CEDAW_NGO_AUS_31440_E.pdf>.

⁷⁴ Mission Australia, 'Out of the shadows, Domestic and Family Violence: A Leading Cause of Homelessness in Australia' (2019) <<https://www.missionaustralia.com.au/newsletters/winter-newsletter-2019/out-of-the-shadows>>.

⁷⁵ *Royal Commission into Family Violence, Reports and recommendations* (Parl Paper No 132, 2014-16) 104.

⁷⁶ Marie Segrave 'Temporary migration and family violence: An analysis of victimisation, vulnerability and support', *Melbourne: School of Social Sciences, Monash University* (2017) <<https://intouch.org.au/wp-content/uploads/2018/11/Temporary-Migration-and-family-violence-Report-2017-reduced.pdf>> 21-22.

dependence and vulnerability, they are more likely to stay with, or return to, a violent partner.⁷⁷ Moreover, their access to temporary crisis accommodation services is restricted as providers may 'have to refuse to accommodate women because there is no certain pathway beyond the refuge'.⁷⁸

The LIV recommends improving funding and access to crisis accommodation for non-citizens who are victims of FV. Such accommodation should be accessible to women without income or means to pay and who do not have permanent rights to remain in Australia. Additionally, women on temporary visas who are fleeing FV should be entitled to access Centrelink and Medicare.

The *Migration Regulations 1994* (Cth) contain special provisions relating to FV, allowing people on certain visa categories,⁷⁹ to apply for permanent residency in Australia if they or a member of their family unit have experienced FV from an intimate partner.⁸⁰ Access to this provision requires satisfying the Department of Home Affairs ('**the Department**') that there was a genuine relationship between the sponsor and applicant and that FV must have occurred whilst the spousal or de facto relationship existed.⁸¹ As it is defined, the FV provisions are too narrow to encompass the important consideration that perpetrators of FV can include any family member, including non-sponsors.⁸² LIV members advise that individuals who experience family violence are often dependent visa holders

⁷⁷ Ibid 22.

⁷⁸ Ibid 20.

⁷⁹ This includes permanent partner visa applicants, temporary partner visa applicants who have married their Australian partner that hold or who have held a prospective marriage visa; and family unit members of distinguished talent visa holders.

⁸⁰ National Advocacy Group on Women on Temporary Visas Experiencing Violence, *Path to Nowhere: Women on Temporary Visas Experiencing Violence and Their Children* (2018) 17 <https://www.homelessnessnsw.org.au/sites/homelessnessnsw/files/2018-12/Path%20to%20Nowhere_0.pdf>.

⁸¹ Migration Regulation 1994 (Cth) Regulation 1.23; Marie Segrave 'Temporary migration and family violence: An analysis of victimisation, vulnerability and support', *Melbourne: School of Social Sciences, Monash University* (2017) 13 <<https://intouch.org.au/wp-content/uploads/2018/11/Temporary-Migration-and-family-violence-Report-2017-reduced.pdf>>.

⁸² Sione Pemberton, *Proposal for reforms to visas for women facing domestic violence* (9 December 2019) Hammond Taylor <<https://hammondttaylor.com.au/proposal-for-reforms-to-visas-for-women-facing-domestic-violence/>>.

on their partners' student, or employer sponsored visas and are therefore unable to apply through the FV provisions. As a result of this, they must decide between remaining in the violent relationship or face deportation. The LIV recommends expanding the visa categories under the FV provisions of the Migration Regulations to include all temporary visas.

Additionally, the LIV proposes that a new subclass 'family violence visa' be created for individuals who are on dependent temporary visas and their relationships breaks down due to FV. Members report that if a dependant visa holder's relationship breaks down with the main visa holder, they are at risk of having their visa cancelled as they are no longer a 'member of the family unit'. Therefore, in order to support individuals leaving abusive relationships, the LIV submits that a 'family violence visa' which gives survivors a 6-9 months visa with work rights, Medicare and welfare is beneficial for survivors to consider that their independent visa options. Furthermore, it allows an individual time to plan for their family's protection. Dependent visa holders who experience FV are typically in a vulnerable position and this visa would allow individuals to ensure the security they need to rebuild their lives.

The LIV considers it imperative to prevent consequential visa cancellations where a victim of FV has their visa cancelled due to the FV perpetrated against them. This would incentivise greater FV reporting by removing the fear for AFMs that they could have their visa cancelled where criminal charges are brought against the perpetrator, with whom they rely on for their visa status. The amendments to the threshold for visa cancellations on character grounds and the proposal to broaden the scope of visa cancellation processes through designating offences,⁸³ creates an untenable scenario where cases of FV that result in the cancellation of the perpetrator's visa would subsequently cancel the visas for the dependent AFM and their children. It creates a perverse situation where those seeking protection from FV face graver consequences by doing so than if there were to say nothing.

⁸³ *Migration Act 1954 (Cth)* s51; see also *Migration Amendment (Strengthening the Character Test) Bill 2019*.

Protection Visas

Members report that those who do not have access to the FV provisions in the Migration Regulations, are often advised to lodge applications for protection as their only option. This requires an onerous demonstration that the applicant is a refugee and is owed complementary protection,⁸⁴ due to the risk of suffering significant harm if Australia were to deport them.⁸⁵ A protection claim may involve alleging their ex-partner or family members have committed FV against them or the fact that the individual may be persecuted if they return to their home country as a divorced woman. While protection claims are an alternative, members report that women who are victims of FV and apply for a protection visa can wait up to five years for the Department to decide on an outcome; at which point there is a low success rate. This is a considerable burden to place on vulnerable individuals.

The LIV suggests that the Department review processing times for protection visa applicants who are experiencing FV in order to ensure that claims are processed at the time the risks are present. Where protection visa applicants are waiting for a resolution as to their immigration status, the LIV considers it appropriate to include FV as a ground for eligibility by amendment to the criteria for access to Status Resolution Support Services. This would provide greater stability for FV victims who are subject to prolonged uncertainty for themselves and their children.

LIV members have observed that women who are dependent on their ex-partner's visa who subsequently apply for a protection visa independently, are generally issued with a bridging visa which does not come into effect until their former visa expires. In the interim, if their ex-partner's visa is cancelled by the Department due to the ex-partner's non-compliance with the visa conditions (unrelated to FV), then the victim's visa is also consequentially cancelled, making them unlawful non-citizens.

Currently, it is the Department's policy not to cancel an individual's visa if they are dependent on their ex-partner's visa and can show their relationship broke down due to FV. The LIV suggests that this

⁸⁴ *Migration Act 1954* (Cth) s 36.

⁸⁵ *Migration Act 1954* (Cth) s 36(2) (aa).

should extend to ensure that women's visas are not consequentially cancelled simply because their ex-partner has not complied with the visa requirements, in situations where women can show that they are victims of FV.

The LIV also urges the Department create an exception to the current requirement that a residential address is required to lodge a valid protection visa, in order to capture growing number of AFMs in crisis accommodation,⁸⁶

Case Study

Khem,⁸⁷ arrived from England and has been living in Australia with her three children, who are all Australian citizens by birth. She was abused and subjected to sustained family violence by her partner. Khem engaged social services and the police to try to protect herself and her children. She also sought assistance from family violence services but was left unaware of her immigration options. When Khem engaged an immigration lawyer, she thought she would have no options but to leave her children and return to England, further explaining this as a reason why she did not report the abuse earlier. To her shock, the lawyer advised her that she could apply through the family violence provisions of the Migration Regulations. The lawyer was appalled that the services she was in contact with did not pick up on her circumstances sooner and refer her to either a legal centre or immigration agent for advice, which they ought to have done. After applying, she was successfully granted a permanent partner visa and was able to access support services due to her new visa status.

The above case study demonstrates the need for greater awareness of the FV provisions so that individuals who arrive in Australia are provided with access to safety and protection where required. Members report that the absence of knowledge regarding eligibility, even in the case study above

⁸⁶ Law Institute of Victoria, 'Submission to the Inquiry into Homelessness in Victoria' (16 March 2020) 22-24 [7.3] - [7.5].

⁸⁷ Client names are omitted for confidentiality.

involving an English speaker, result in clients often being unaware of their rights under the FV provisions.

The LIV recommends that the Department better inform persons on temporary visas upon arrival, to ensure that individuals who are experiencing FV are aware of their options. It is also important that this information is translated into different languages and the individual is provided with printed information about the various forms of FV (including economic abuse) that are protected in Australia; as well as their rights under Australian law, to ensure greater awareness amongst CALD individuals.

Culturally Informed Services

The LIV recognises that women from CALD backgrounds often experience FV in a ‘combination of factors including social isolation, limited English proficiency, trauma, gender roles, and traditional roles and patriarchal beliefs’.⁸⁸ An added complexity is that CALD migrant women are often made to feel indebted that they are being sponsored by their partner. This gives rise to women feeling obliged to accept their partner’s abuse. It is therefore important that CALD migrant women have access to culturally informed services that can assist women in accessing safe shelter and legal help especially given their insecure immigration status.

Our members have informed us of situations where women have been understandably fearful to speak to their lawyers about FV as often their partner or a family member is present. The LIV notes an example where a client who was accessing legal services for a partner visa was fearful of speaking to the lawyer as her father-in-law was present. The client asked for the lawyer’s mobile number so she could speak to the lawyer in private. The lawyer explained the services she could access and relevant FV provisions. The client explained that she was torn about how to proceed as she felt a sense of duty to her husband’s family who had been very good to her since she arrived in Australia. Examples such as these are very common, and women often find it difficult to weigh up the considerations such as

⁸⁸ Kaur, J and Atkin, N, ‘Nexus between Domestic Violence and Child Protection: Multidimensional Forms of Oppression Impacting Migrant and refugee Women in Australia’ *Australian Social Work* (2018) 71(2) 238-248, 240.

their cultural and community values view leaving a marriage, albeit a violent one, as being unacceptable. This is exacerbated for communities that are fearful of police and authorities due to their trauma from their home countries. It is important that service providers are culturally informed of the complexities of an individual's decisions such as the client referred to above.

The Northern Community Legal Centre ('NCLC') is a prime example of developing culturally informed services that are responsive to migrant individuals experiencing FV. The LIV supports the NCLC's project *Abused and Abandoned: Family Violence in the Australian Indian Community*, which has commenced with financial support from the Victorian Legal Services Board.⁸⁹ The NCLC identified there was significant demand within their catchment area for Indian women experiencing FV and concerned how speaking out would impact their immigration status.

The LIV supports the Inquiry exploring the NCLC model for an effective means of responding to highly vulnerable victims of FV who also have complex immigration issues. The receptiveness of the program has demonstrated that there is a real need for culturally informed FV support. Moreover, the NCLC recognised that to effectively respond to these women's legal matters, they needed to ensure that women were also connected to an immigration lawyer in addition to a FV lawyer to provide holistic wrap-around legal support. Women who presented to NCLC often instructed that they had been subjected to coercive control and threats by their partner to cancel their visa. The NCLC also highlighted the importance of service providers such as Victoria Police being culturally informed when responding to FV incidents. They have been engaging with relevant stakeholders to identify gaps in cultural knowledge to report on and also inform their own practices.

⁸⁹ Northern Community Legal Centre, 'Abused and Abandoned: Family Violence in the Australian Indian Community' (21 November 2019) <<https://www.northernclc.org.au/projects>>; see also SBS Punjabi, 'Abused and Abandoned: Project to Tackle Family Violence in Melbourne's Indian Community' (10 December 2019) <<https://www.sbs.com.au/language/english/abused-and-abandoned-project-to-tackle-family-violence-in-melbourne-s-indian-community>>.

i) The impact of natural disasters and other significant events such as COVID-19, including health requirements such as staying at home, on the prevalence of domestic violence and provision of support services.

COVID-19

The COVID-19 pandemic has highlighted the promotion of and need for specialist FV services to work collaboratively with health, justice and other support services, to ensure timely and widely accessible responses to FV. This is particularly important for complex needs families experiencing FV, who potentially may face a greater risk due to isolation during the COVID-19 pandemic and may not otherwise be able to access adequate face-to-face assistance and support.

During the COVID-19 pandemic there has been a call for:

- Changes to the FV response system in modes of service delivery (i.e. online and phone rather than face-to-face);
- Continuity of service provision;
- Collaborative inter-sector partnerships and referrals;
- Working in partnership with local stakeholders;
- Domestic Violence Victoria working in collaboration with the Victorian Government and specialist FV services, to systematically develop state-wide guidelines for continuity of service delivery con.

Further measures that have been promoted and observed during COVID-19 that are potentially useful to continue, may include:

- Workforce training during COVID-19 isolation, to enhance FV risk identification, screening and assessment;
- Reliable information dissemination to individual clients and families experiencing FV to enable individuals and families to navigate integrated the FV service provision;
- Accessibility to information on FV services and allied support for communities at risk of FV;
- Information sharing and FV referrals to specialist support services—for instance, Family Violence Information Sharing Scheme;⁹⁰

⁹⁰ Victorian Government, 'Family Violence Information Sharing Scheme', (Web Page) <<https://www.vic.gov.au/family-violence-information-sharing-scheme>>

- Promoting contact between children out of home care and their birth families during COVID-19 restrictions by supporting families with virtual visits and video conferencing;
- Encouraging contact between out of home care young children and their birth families during COVID-19 restrictions, by facilitating safe in-person contact practices and reducing the long-term harm of establishing a disconnect of the parent-child relationship.

j) The views and experiences of frontline services, advocacy groups and others throughout this unprecedented time.

Refer to 'Baseline Funding to Meet the Demand for Legal Aid' and 'Court Network' on page 10 and 11 above for further.

CONCLUSION

The LIV welcomes any further opportunity to provide feedback and be consulted on any proposed changes in the family law jurisdiction. Please contact Family Law Section Policy Lawyer Maurice Stuckey at mstuckey@liv.asn.au, should you have any comments, questions or queries regarding this submission.

Yours sincerely,



Sam Pandya

President

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