

Further away from economic justice.

The experience of the Peninsula Community Legal Centre and their clients in the new Federal Circuit and Family Court of Australia, and recommendations for reform.

*“Safe and expeditious resolution of family law matters is facilitated by an accessible and easy to navigate family law system and family law services that ensure victim-survivors can obtain fair outcomes and maintain their future safety and economic security following family separation.”<sup>1</sup>*

Draft National Plan to End Violence against Women and Children, 2022-2032

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<sup>1</sup> Draft National Plan to End Violence against Women and Children 2022-2032, pg. 35, <https://engage.dss.gov.au/wp-content/uploads/2022/01/Draft-National-Plan-to-End-Violence-against-Women-and-Children-2022-32.pdf>

## About Peninsula Community Legal Centre

The Peninsula Community Legal Centre (PCLC) is an independent, not-for-profit organisation that has been providing free legal services to Melbourne's south eastern communities since 1977.

In addition to its general legal services, the Centre operates specialist programs in family violence, family law, fines, and tenancy. We also undertake community legal education, community development and public advocacy activities. Our clients overwhelmingly experience disadvantage. Our priorities include people on low income, people with disabilities, those experiencing elder abuse, family violence, homelessness, and other vulnerable groups.

Peninsula Community Legal Centre aims to provide holistic, trauma informed, early Intervention, advice, and casework services. Through providing direct legal assistance to our community for over 44 years, PCLC has extensive knowledge of the legal needs and issues of vulnerable and disadvantaged people across its large and diverse catchment in the south east of Melbourne.

Each year PCLC assists over 6,600 clients with legal assistance, including casework, representation, dispute resolution and duty lawyer services, with 44% of our clients report experiencing family violence.

## Executive Summary

In 2020/21 Peninsula Community Legal Centre (PCLC) assisted 985 clients with property matters who were married or in de-facto relationships. 82% of those clients were female and only 11% of these clients were able to receive PCLC casework assistance, including court representation and dispute resolutions services, due to limited casework resources. The clients that received support were largely funded because of a corporate donation to undertake a pilot related to small property matters for women experiencing family violence.

With early figures showing that divorce is on the rise and family violence has increased over the course of the pandemic, now is the time to invest in the supports required to resolve small property disputes, a complicated element of separation, especially where family violence is involved, and where either party does not have the means or opportunity to engage lawyers or meet the thresholds of Legal Aid.

Women cannot access relevant legal advice. The provision of Legal Aid is limited and restrictive especially for small property matters. Small property matters are increasingly not undertaken by legal firms due to costs outweighing any potential settlement, which is leaving a vulnerable cohort without options. This leaves women on their own to navigate separation and sometimes this means it is all too hard.

Peninsula Community Legal Centre reports that five women a week are turned away from their service for this support already – it is unclear what these women do next. This cohort is generally poorer, with few major assets in the partnership, often in relationships that include family violence, and in situations where the partner has controlling elements including the only knowledge and access to the family's finances and assets.

Women often cannot stay in their homes after settling the financial matters with their former partner. This causes a costly and disruptive move for women and their children. Sometimes it is not preferred or safe for women and their children to stay in their existing home, but where it is safe to do so they should be supported through an innovative trial to reduce the additional disruption of moving, the likelihood of moving into the waiting list for housing and potential of homelessness.

Government initiatives have recognised these problems and pilots are being run, however, uplift in support is required now. Governments also need to significantly uplift the amount of social housing that is available.

There are opportunities to trial innovative support for women and children to stay in their homes and lessen the disruption associated with separations associated with family violence. This relies on the Federal Government to run or expand on existing shared home equity schemes.

Family violence is not front and centre of the new Federal Circuit and Family Courts' processes, which are heavily geared towards dispute resolution. Without adequate supports already vulnerable clients are at risk of poor outcomes and being trapped in violent situations that they otherwise would leave.

Family law processes have become more complex. Initiating and responding to applications in the new Court are significantly more onerous. It is daunting the amount of information that needs to be provided and there is no provision to exempt matters from the provision of the documents without consent of the other party.

In this paper we address the relevant parts of the National Plan to End Violence against Women and Children 2022-2032 including:

- 1.2 Individuals are able to access supports that address gender inequality and other drivers of violence.
- 2.1 Services address gender inequality and other drivers of violence
- 2.2 Services are integrated and provide transition from prevention through to recovery
- 3.2 Services are delivered in a collaborative and productive way
- 3.3 The evidence base is further built and shared to enhance responses and improve prevention and recovery
- 4.3 Communities encourage help-seeking behaviours by supporting individuals to access services.

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## Recommendations

1. *Establish and fund a dedicated shared home equity scheme for women and children who have experienced family violence to stay in their own home.*
2. *Provide financial advice and other required supports to women escaping family violence to ensure they can stay in their home.*
3. *Increase the size of the small property pool definition above \$500,000 to ensure that it captures people genuinely unable to access private legal services.*
4. *Increased funding to legal assistance sector to ensure that vulnerable women can be represented throughout legal processes and finalise their separation in a cost effective and just way.*
5. *Legal assistance to follow the client across the state and federal jurisdictions.*
6. *Simplify required documentation to initiate proceedings.*
7. *A single registrar for individual cases.*
8. *Increased support for Legal Assisted Family Dispute Resolution, especially where family violence is a feature to ensure that existing power imbalances are reduced. Trauma-informed, culturally safe and person-centered support should be provided as part of these processes.*
9. *The adoption of recommendation 4 from Small Claims, Big Battles related to improved financial disclosure or further funding support to assist in developing an understanding of actual assets.*
10. *Increase funding to access the Priority Property Pool including increased funding of integrated legal, social and financial assistance to resolve small property disputes. Trauma-informed, culturally safe and person-centered support should be provided as part of these processes.*
11. *Legal Aid is funded to meet the costs of court required testing and assessments.*
12. *Urgent matters are heard by the local registry.*
13. *Resolve highlighted Commonwealth Portal and related issues, prioritizing women and children's safety regarding address for service.*

## Section 1: Present Situation

### Peninsula Community Legal Centre 2020/21 work

In 2020/21 Peninsula Community Legal Centre (PCLC) assisted 2,058 clients with family law matters and 1,923 clients with family violence assistance. PCLC assisted 985 clients with small pool property matters who were married or in de-facto relationships. PCLC is increasingly having to advise such clients that it can only provide advice, not representation, with respect to their family law financial disputes. Clients often seek support for both parenting and property issues, and to a lesser extent, with stand-alone property matters.

For clients who seek support with small pool property matters who are married or in a de-facto relationship, 82% were female. Only 11% of these clients seeking support with property matters were able to receive casework assistance, including court representation and dispute resolutions services, due to limited casework resources. The clients that received support were largely funded because of a corporate donation to undertake a pilot related to small property matters for women experiencing family violence.

The cessation of Victoria Legal Aid's combined parenting and property guideline and the relatively small monthly intake for VLA's Small Claims Property Pilot mean that many parents with either parenting and small pool property matters, or standalone small pool property matters may receive no funding for the property component of their matter.

A corporate funded pilot at PCLC engaged a part time property law specialist to conduct small pool property matters for women experiencing family violence. Through this pilot a total of 31 women have been assisted, with 28 receiving ongoing assistance, the project has resolved 8 matters to date resulting in a monetary benefit to our clients of \$1.5 million. This was made up of \$971,102 in settlement monies received, \$290,000 in superannuation entitlements and \$250,000 benefit to a client resisting the other party's settlement offer. The pilot is due to cease next month.

### Separations are Increasing

Requests for information and advice from lawyers have increased across the pandemic. Organisations like Separation Guide are reporting a 91 per cent increase in couples inquiring to family lawyers over 2021. There was a 30 per cent jump in inquiries in Victoria as lockdown ended in October. Lawyers report that they have never been busier with new clients.<sup>2</sup> Divorce rates have already increased, despite needing a 12-month period of separation, with an 8 per cent yearly increase in divorce filings across 2020/21 according to court records.<sup>3</sup> Forensic accountants also report a sharp increase in business<sup>4</sup> as clients try to understand and resolve property entitlements that are sometimes opaque or deliberately hidden. Requests for referrals to psychologists are up 78 per cent as part of seeking separations.<sup>5</sup>

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<sup>2</sup> Estcourt, D., *Family lawyers brace for influx of post-lockdown separations*, The Age, published 2/2/2022, <https://www.theage.com.au/national/victoria/family-lawyers-brace-for-influx-of-post-lockdown-separations-20211215-p59hqt.html>

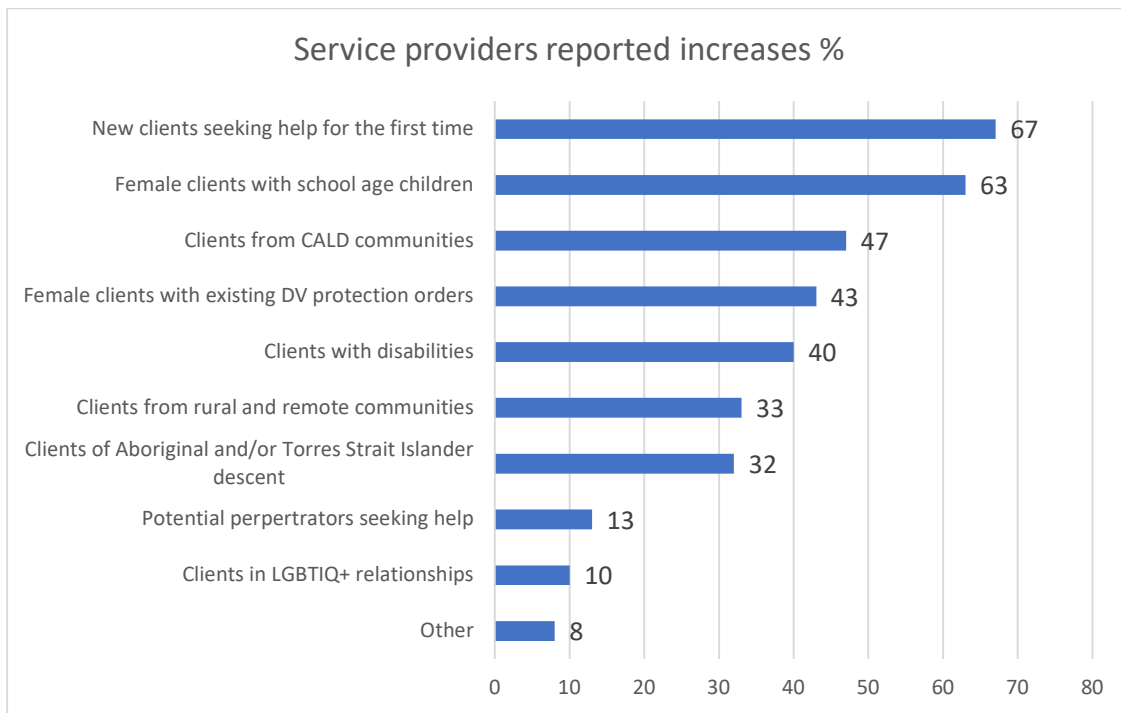
<sup>3</sup> Bitá, N., *Pandemic divorce rates rise as Covid-19 lockdowns land couples in crisis*, The Courier Mail, 3/11/2022. <https://www.couriermail.com.au/news/national/pandemic-divorce-rates-rise-as-covid19-lockdowns-land-couples-in-crisis/news-story/61422bbabc0b80953b19849c664414a5>

<sup>4</sup> Estcourt, D., *Family lawyers brace for influx of post-lockdown separations*, The Age, published 2/2/2022, <https://www.theage.com.au/national/victoria/family-lawyers-brace-for-influx-of-post-lockdown-separations-20211215-p59hqt.html>

<sup>5</sup> Ibid

### Family Violence is Increasing

It has been widely reported that there has been an increase in the occurrences and the severity of family violence across the Covid-19 period.<sup>6</sup> Some perpetrators “weaponized” Covid-19 and subsequent restrictions as part of their controlling and coercive behaviour towards victims.<sup>7</sup> There is a broad concern that underreporting of family violence has occurred due to the increased contact with perpetrators, lockdowns, perpetrator controlling behaviour, and the inability to safely contact authorities or services.<sup>8</sup> Even so, family violence reports have increased across the pandemic, both in totality and as a per cent of the population. The latest crime statistic results for Victoria indicate a 3.1 per cent increase over the last year.<sup>9</sup> The Federal Government reports that “(t)wo-thirds of women who experienced physical or sexual violence by a current or former co-habiting partner since the start of the Covid-19 pandemic reported the violence had started or escalated since the pandemic began.”<sup>10</sup>



The impact of COVID-19 Pandemic on Domestic and Family Violence Services, Australia, QUT Centre for Justice.<sup>11</sup>

<sup>6</sup> Boxall, H., Morgan A. & Brown, R. (2020). The prevalence of domestic violence among women during the COVID-19 pandemic, Statistical Bulletin no. 28 AIC: Canberra. Kerry Carrington, Christine Morley, Shane Warren, Bridget Harris, Laura Vitis, Matthew Ball, Jo Clarke and Vanessa Ryan (2020) Impact of COVID on Domestic and Family Violence Workforce and Clients: Research Report QUT Centre for Justice, QUT, Brisbane, Australia. Morgan A & Boxall H 2020. Social isolation, time spent at home, financial stress and domestic violence during the COVID-19 pandemic. Trends & issues in crime and criminal justice no. 609. Canberra: Australian Institute of Criminology.

<sup>7</sup> Kerry Carrington, Christine Morley, Shane Warren, Bridget Harris, Laura Vitis, Matthew Ball, Jo Clarke and Vanessa Ryan (2020) Impact of COVID on Domestic and Family Violence Workforce and Clients: Research Report QUT Centre for Justice, QUT, Brisbane, Australia.

<sup>8</sup> Boxall, H., Morgan A. & Brown, R. (2020). The prevalence of domestic violence among women during the COVID-19 pandemic, Statistical Bulletin no. 28 AIC: Canberra.

<sup>9</sup> Family Incidents, Crime Statistics Agency, <https://www.crimestatistics.vic.gov.au/crime-statistics/latest-victorian-crime-data/family-incidents-2>

<sup>10</sup> Federal Budget, Women’s Budget Statement, 2021-22, pg. 13, [https://budget.gov.au/2021-22/content/womens-statement/download/womens\\_budget\\_statement\\_2021-22.pdf](https://budget.gov.au/2021-22/content/womens-statement/download/womens_budget_statement_2021-22.pdf)

<sup>11</sup> Kerry Carrington, Christine Morley, Shane Warren, Bridget Harris, Laura Vitis, Matthew Ball, Jo Clarke and Vanessa Ryan (2020) Impact of COVID on Domestic and Family Violence Workforce and Clients: Research Report QUT Centre for Justice, QUT, Brisbane, Australia, pg. 36. <https://research.qut.edu.au/centre-for-justice/wp-content/uploads/sites/304/2020/11/Research-Report-Series-November-2020-COVID.pdf>



The draft National Plan to End Violence against Women and Children (National Plan) through KPMG estimates the economic impact to be in the order of “\$26 billion each year, with victims and survivors bearing approximately 50 per cent of that cost.”<sup>12</sup>

As the Federal Government acknowledges children “who witness abuse before the age of 15 are at an increased risk of experiencing intimate partner violence as an adult, either as a victim or a perpetrator.”<sup>13</sup> This means that early interventions that disrupt and end this behaviour can have multigenerational impacts.

For separations that do end up in court for family law matters, almost two-thirds involve allegations of family violence:

- 64 per cent of parties allege they have experienced family violence
- 57 per cent of parties allege a child has experienced family violence
- 39 per cent of parties allege that drug, alcohol or substance abuse has caused harm / poses a risk of harm to a child
- 44 per cent presented with four or more risk factors or complexity issues in their case (such as family violence, alcohol or drug use, mental health issues and gambling problems).<sup>14</sup>

This is demonstrative that there is a significant levels of family violence as part of separations.

### Women and Divorce

Women who are divorced are the least financially well off in our community including when considered against widows.<sup>15</sup> At retirement women typically have half the superannuation of men – reflecting the lifetime earnings of both men and women.<sup>16</sup> For women this is reflective of lower wages in lower paid roles, less time in the workforce due to child raising or other unpaid caring roles, and a higher propensity of part-time and casual work.<sup>17</sup>

The needs of women escaping family violence are often quite modest. A recent Red Cross program assisted more than 1,000 women and men leaving circumstances of family violence with support of up to \$3,000.<sup>18</sup> This program was initially set up for visa holders and has been expanded by the Federal Government to the broader community with support of \$5,000.<sup>19</sup> While the program operators acknowledge that increased support is needed, this demonstrates just how important small financial expenditure can be in leaving a violent situation and setting up a new life away from violence.

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<sup>12</sup> Draft National Plan to End Violence against Women and Children 2022-2032, pg. 15, <https://engage.dss.gov.au/wp-content/uploads/2022/01/Draft-National-Plan-to-End-Violence-against-Women-and-Children-2022-32.pdf>

<sup>13</sup> Ibid pg. 7

<sup>14</sup> Ibid, pg. 21.

<sup>15</sup> Cobb-Clark, D.A., and Hildebrand, V.A., 2011, *Portfolio Allocation in the Face of a Means-Tested Public Pension*, Review of Income & Wealth, 57 (3): 536-560, p.550.

<sup>16</sup> The Senate Economics References Committee 'A husband is not a retirement plan' Achieving economic security for women in retirement' April 2016

<sup>17</sup> The Senate Economics References Committee 'A husband is not a retirement plan' Achieving economic security for women in retirement' April 2016

<sup>18</sup> Curtis, K., *\$20m trial helps more than 1000 temporary visa holders escape domestic violence*, The Age, 10/1/2022, <https://www.theage.com.au/politics/federal/20m-trial-helps-more-than-1000-temporary-visa-holders-escape-domestic-violence-20220107-p59mmv.html>

<sup>19</sup> Senator, The Hon., Anne Ruston, *New payment to help women escape violent relationships*, Media Release, 17/10/21, <https://ministers.dss.gov.au/media-releases/7676>

The National Plan acknowledges the need for justice (and police) systems “to be equipped to provide trauma-informed, culturally safe and person-centered responses that prioritise the safety of individuals and families.”<sup>20</sup>

## Section 2: Economic Security for Vulnerable Women

### Trial Innovative Support for Women and Children

Where it is safe to do so, having women and children stay in their own home can have a significant impact on women’s lives, their financial security (ability to retain work, deal with personal debt) and their social networks and family support.<sup>21</sup> It is less disruptive and can assist women with moving on with their lives.

As the National Plan notes, “Violence against women and children is also a leading cause of homelessness for women and children.”<sup>22</sup> This report calls for, as almost all organisations have done so in the past, for increased levels of social (public and community) housing which are currently far too low to meet demand.

Housing, especially long-term housing, is difficult for women to obtain after leaving situations of domestic violence. Family violence workers indicated that 89 per cent of women “very frequently” had difficulty obtaining housing after family violence, and a further 8 per cent observed this “sometimes”.<sup>23</sup> Every family violence worker who responded to the survey indicated that a lack of available housing influenced a woman’s decision to leave a violent relationship.<sup>24</sup>

“When women remain in the home, and have few other accommodation options, but are unable to meet the rent repayments because of a sudden drop in household income, they can face significant barriers to remaining housed. We support the recommendations of the joint submission led by the Council to homeless persons and Justice Connect for the Federal and Victorian Government to increase funding to homelessness services and improve measures to prevent homelessness.”<sup>25</sup>

As the National Plan puts forward ensuring women and children escaping violence have safe and secure housing is essential including the need to “Expand options for women and children to stay safely in their own home, rather than being made to leave as a default.”<sup>26</sup>

After settling the financial matters with their former partner often women and their children need to undertake a costly and disruptive move. At this point there is not always an obvious path to finding a permanent home.

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<sup>20</sup> Draft National Plan to End Violence against Women and Children 2022-2032, pg. 32, <https://engage.dss.gov.au/wp-content/uploads/2022/01/Draft-National-Plan-to-End-Violence-against-Women-and-Children-2022-32.pdf>

<sup>21</sup> Smallwood, E. (2015) Stepping Stones: Legal barriers to economic equality after family violence, Women’s Legal Service Victoria, Melbourne, [https://www.womenslegal.org.au/files/file/Stepping%20Stones%20Report\(1\).pdf](https://www.womenslegal.org.au/files/file/Stepping%20Stones%20Report(1).pdf)

<sup>22</sup> Draft National Plan to End Violence against Women and Children 2022-2032, pg. 14, <https://engage.dss.gov.au/wp-content/uploads/2022/01/Draft-National-Plan-to-End-Violence-against-Women-and-Children-2022-32.pdf>

<sup>23</sup> Smallwood, E. (2015) Stepping Stones: Legal barriers to economic equality after family violence, Women’s Legal Service Victoria, Melbourne, [https://www.womenslegal.org.au/files/file/Stepping%20Stones%20Report\(1\).pdf](https://www.womenslegal.org.au/files/file/Stepping%20Stones%20Report(1).pdf)

<sup>24</sup> Ibid

<sup>25</sup> Ibid

<sup>26</sup> Draft National Plan to End Violence against Women and Children 2022-2032, pg. 36, <https://engage.dss.gov.au/wp-content/uploads/2022/01/Draft-National-Plan-to-End-Violence-against-Women-and-Children-2022-32.pdf>

Some transitional and non-permanent housing, sometimes with family violence services, sometimes with friends and family exists. Over extended waiting lists for public or community housing also exist. These are not always accessible or timely, and may often be out of the victim-survivors local area

Beyond increased funding for social housing, there is an opportunity to deliver on this directly for a cohort of people escaping family violence by remaining in the family home through shared equity schemes. Shared equity schemes are already operated by state governments; however, the Federal Government could target their resources or establish a standalone scheme for women and children escaping family violence.

This could provide the safe and secure housing so many people escaping family violence are looking for. It will avoid adding further pressures on other housing services. It avoids the disruption to work and schooling and existing social networks for women, which is a well-worn pathway to homelessness and poverty.

This proposed program could work in tandem or work directly with state run programs. Victoria,<sup>27</sup> Queensland (related to public housing),<sup>28</sup> Western Australia through Keystart,<sup>29</sup> and other states have similar schemes in place already, which are aimed at the general public, first home buyers or people in public housing.

This could work alongside programs like that in Victoria which removes perpetrators from the home.<sup>30</sup> Such programs exist to prioritise the needs of victims including children rather than prioritise the housing needs of perpetrators.

In addition, this scheme should be supported by free financial, legal advice and other supports to ensure that the mortgage can be supported in the long term and is a viable option. This scheme would work to achieve other government goals of increased housing ownership and decreased public housing waiting lists.

While funds would need to be dedicated to the scheme, these are not as significant as would be expected to achieve these outcomes, and such a scheme comes with budget savings.

The long-term funding arrangements for acting in shared equity schemes is backed by the bricks and mortar of the home as an asset. Commonwealth Government costs related to rent assistance and other social security payments, as well as less costs associated with additional public housing needs should diminish. Women staying in work, a government priority, would also maintain additional tax revenue.

The proposed programs for financial advice and support generally already exist, so they are just being expanded, rather than developed.

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<sup>27</sup> State Revenue Office, Home Buyer Fund, <https://www.sro.vic.gov.au/homebuyer>

<sup>28</sup> Queensland Government, Pathways Shared Equity Plan, <https://www.qld.gov.au/housing/buying-owning-home/financial-help-concessions/pathways-shared-equity-loan>

<sup>29</sup> Western Australia Department of Communities, Shared Home Ownership, <https://www.housing.wa.gov.au/sharedstart/Pages/default.aspx>

<sup>30</sup> Premier of Victoria, Daniel Andrews, *Keeping Family Violence In Sight During Coronavirus*, Media Release, 17/8/20, <https://www.premier.vic.gov.au/keeping-family-violence-sight-during-coronavirus>

These costs are minimal when compared to the disrupted lives as a result of family violence which on an annual basis is estimated to cost \$26 billion. Programs that reduce this cost and improve women's lives and their children's lives are in dire need.

#### Recommendations

*Establish and fund a dedicated shared home equity scheme for women and children who have experienced family violence to stay in their own home.*

*Provide financial advice and other required supports to women escaping family violence to ensure they can stay in their home.*

#### Small Property Pool disputes and the new Court

Property matters as part of separations are complex. Resolving what assets and debts exist and a fair division of those assets and debts, even for those with significant means and access to expert advice and support are not easy to resolve or to resolve in a timely manner.

The challenges of property and arrangements for children are compounded when family violence is an element. Control by perpetrators is often a factor and this is recognised by the Court in ongoing changes to practices associated with those who have experienced family violence and programs such as the Family Advocacy and Support Service (FASS).

For people of limited means, obtaining a fair settlement is even more important and meaningful. However, unlike those with more substantial means, there are limited opportunities to gain just outcomes, made more difficult by common perpetrator behaviour including hiding or disposing of assets, or loading up women with debt of which they are not a beneficiary. Many victim-survivors simply cannot afford to obtain economic justice.

A pilot for "small claim" property cases has been funded through the Commonwealth Government's Women's Economic Security package which is designed to improve the responsiveness of the family courts to family violence. The Priority Property Pools (PPP500) applies to cases where the value of the property pool is under \$500,000. The aim is to provide a simplified way of resolving property disputes which will minimise risk and legal costs, and best preserve the parties' assets. The purpose is to achieve a just, efficient, and timely resolution of PPP500 cases, at a cost to the parties that is reasonable and proportionate in the circumstances of the case. Simplified, less onerous documentation is required to commence proceedings.

There should be greater consideration around the value of the Priority Property Pool, especially considering the ongoing increase in property prices. The Northern Territory is the only jurisdiction that has a mean residential housing property price less than \$500,000. In NSW the mean residential property price across the entire state is \$1.12 million. The Priority Property Pool accesses all assets including superannuation of both partners and therefore reaches over \$500,000 even where those assets are effectively unable to be accessed. The low Priority Property Pool threshold should be increased to ensure that it captures people genuinely unable to access private legal support due to their limited financial situation.

Recommendation:

*Increase the size of the small property pool definition above \$500,000 to ensure that it captures people genuinely unable to access private legal services.*

#### Lack of access to financial resources

The draft National Plan states that “When women and children are not supported to recover, they are at higher risk of being unable to leave abusive relationships and could be targeted by another perpetrator.”<sup>31</sup>

The Productivity Commission in their work on access to justice noted that “Parties who experience family violence have few low-cost options for resolving their disputes and may participate in processes that are not appropriate due to limited options.”<sup>32</sup>

Lack of access to financial resources, often an element of control in family violence situations, is compounded by other barriers to gaining legal support including CALD status, disability, sexuality, or geographical location. Where finances are restricted, which is typically the case in almost all situations where there are small assets being considered there are three options: Legal aid, the private profession or self-representation.

#### Options for representation – Legal Aid

The provision of Legal Aid is limited, restrictive and unavailable to many Australians. As the Law Council of Australia noted, “(m)ore than 13 per cent of Australians live under the poverty line, while legal aid is available to just eight per cent. Many impoverished people are considered too wealthy to get basic legal help.”<sup>33</sup> They went on to note that there is a strong bias towards criminal matters and therefore a gender bias to funding males through Legal Aid, despite an acceptance that the violence towards women through family violence necessitated adequate funding and support.<sup>34</sup>

The provision of information by Legal Aid in Victoria demonstrates the demand. The top three issues on Victoria Legal Aid’s Legal Help phonenumber were: 1. Family violence (respondent), 2. Parenting arrangements and 3. Family violence (applicant). This is on a phone service that was able to answer 49 per cent of incoming calls. The rate of pickup increased to 59 per cent on the dedicated family violence phone line which received over 11,400 calls with an additional 3,791 requests for webchats.<sup>35</sup> For just these two contact points Victorian Legal Aid were receiving more than 40 contacts per day.

These figures demonstrate the strong demand for non-commercial legal support related to family violence and the large gap between those that can access it, either due to not being able to contact the service and the limited number of people that fit the criteria to be supported by Legal Aid, and those that receive Legal Aid funding. For those people who do not fit the Legal Aid criteria it is either the private profession or self-representation.

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<sup>31</sup> Ibid, pg. 38.

<sup>32</sup> Productivity Commission 2014, *Access to Justice Arrangements: Overview, Inquiry Report No. 72*, Canberra, pg. 50, <https://www.pc.gov.au/inquiries/completed/access-justice/report/access-justice-overview.pdf>

<sup>33</sup> Law Council of Australia, *Access to Justice Project*, August 2018, <https://www.lawcouncil.asn.au/justice-project/access-to-justice>

<sup>34</sup> Law Council of Australia, *Access to Justice Project*, August 2018, Pg 42-44, <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/People%20who%20Experience%20Family%20Violence%20%28Part%201%29.pdf>

<sup>35</sup> Legal Aid Victoria, *Annual Report 2020-21, Access to Justice for Victorians*, pg. 2, 11, <https://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-annual-report-2020-2021.pdf>

It should be noted that in many countries free universal access to legal aid for victims and survivors of family violence in all legal proceedings already exists including Argentina, Brazil, Finland, Ghana, Italy, South Africa and Thailand.<sup>36</sup>

## Case Study – Exhausting Legal Aid funds through process

PCLC assisted a mother who had experienced family violence to apply for a grant of legal aid for mediation to occur in relation to her parenting matter. We informed the father's solicitor of our client's application. Our client was reliant on Centrelink and legal aid, while the father had significant financial resources and was represented by senior counsel.

The father issued proceedings instead of waiting for a mediation date, despite the new requirement of the Genuine Steps Certificate. The matter was allocated a date with a Judicial Registrar shortly after issuing proceedings, which did not leave us with much time to reapply for a litigation grant of aid and prepare her Response which now requires completion of a number of additional documents.

The Judicial Registrar then adjourned the hearing to an Interim Defended Hearing before a Senior Judicial Registrar to occur within a week. This resulted in the need for us to again apply for a grant of legal aid for an interim defended hearing urgently, and, once this was approved, find counsel willing to represent her at such short notice at legal aid rates, which included the preparation of an Outline of Case, being a new requirement.

The matter was then listed again before the original Registrar for directions 2 weeks later. The number of hearings VLA funds is limited and the three hearings which have already occurred have the potential to impact our client's continued access to a grant of aid later in the proceedings. This means that the client may well be unrepresented when critical, life changing decisions are being made about her and her child's future.

### Options for representation – Private Profession

Small claims are increasingly viewed as not worthwhile to be undertaken by legal firms due to the legal costs outweighing any potential settlement. This is both where it is supported by Legal Aid, and where it is not. As noted by the Productivity Commission, "Obtaining advice and dispute resolution services at a cost that is proportionate to the value of assets in dispute is a problem for family law property disputes."<sup>37</sup>

Costs, and documentation requirements are heading in the wrong direction. Private lawyers indicate that additional costs of \$2,000 - \$2,500 are needed to be charged to initiate proceedings based on new documentation. It has been suggested that private practitioners doing Legal Aid work will receive an increased grant of 2 per cent, which is not sufficient to cover work.

<sup>36</sup> Kosanovic, J., and Melgar, F., Navigating Australia's Legal Aid maze, SBS 10/5/2021, <https://www.sbs.com.au/language/english/navigating-australia-s-legal-aid-maze>

<sup>37</sup> Productivity Commission 2014, *Access to Justice Arrangements: Overview, Inquiry Report No. 72*, Canberra, pg. 50, <https://www.pc.gov.au/inquiries/completed/access-justice/report/access-justice-overview.pdf>

### Self-representation or continue to live in a violent situation

Due to having few low-cost options for resolving disputes, the Peninsula Community Legal Centre has observed that this is causing either the non-resolution of issues, with women and children put into further potential harm, or that resolutions or participation in processes that did not ensure a safe outcome for women and children. This was similar to the conclusion of the Productivity Commission<sup>38</sup> and the Women's Legal Service.<sup>39</sup>

Self-representation can also occur as a case progresses, including as a result of "adopted litigation strategies (e.g. excessive correspondence, multiple applications, failing to attend court and failing to follow court orders) which appeared to be designed to deplete the limited funds they had available for legal representation, leading them to become self-represented." This is strongly acknowledged tactic in situations of family violence.<sup>40</sup>

All of this points to the need to better fund representation for victims of family violence, especially those with the least means or access to the means in the previous partnership.

#### Recommendation

*Increased funding to legal assistance sector to ensure that vulnerable women can be represented throughout legal processes and finalise their separation in a cost effective and just way.*

The National Plan states "It is important that we minimise systems' barriers to recovery and minimise the possibilities for re-traumatisation and harm within services and systems. Trauma-informed and person-centered practice needs to be embedded across systems and services. This involves the recognition of victim-survivors' lived experience of trauma and taking steps to prevent experiences that may lead to re-traumatisation and re-victimisation when providing care and support."<sup>41</sup>

Especially in the circumstances of family violence, there are often matters that cross jurisdictions. Legal support should follow clients to finalise their matters, not stop at one jurisdiction or as a result of another step in the legal process. This causes additional cost and a need for victims to retell their story. The effort of reapplications, and different legal support for multiple legal proceedings related to fundamentally the same matters is an exhausting element.

#### Recommendation

*Legal assistance to follow the client across the state and federal jurisdictions.*

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<sup>38</sup> Ibid, pg. 50.

<sup>39</sup> Women's Legal Service Victoria, Small Claims, Large Battles: Achieving economic equality in the family law system (2018), <https://womenslegal.org.au/files/file/WLSV%20Small%20Claims,%20Large%20Battles%20Research%20Report%202018.pdf>

<sup>40</sup> Wangmann, J., Booth, T., & Kaye, M. (2020). "No straight lines": Self-represented litigants in family law proceedings involving allegations about family violence (Research report, 24/2020). Sydney: ANROWS. <https://opus.lib.uts.edu.au/bitstream/10453/144566/2/MJ.18.01-Wangmann-RR-SelfRepresentation.pdf>

<sup>41</sup> Draft National Plan to End Violence against Women and Children 2022-2032, pg. 38, <https://engage.dss.gov.au/wp-content/uploads/2022/01/Draft-National-Plan-to-End-Violence-against-Women-and-Children-2022-32.pdf>

## Section 3: Barriers to Justice

### Family Violence at the heart of the new Court and Court Reforms.

The new reforms have missed the opportunity to make family violence front and centre of family law work. The risk is that safety concerns have not received due consideration when the process is so procedural and heavily geared toward dispute resolution.

While the Government does fund some family law services which provide free and low-cost assistance, it is not broad enough to cover all families that need this assistance. Especially as the National Plan notes “separation is a risk factor for family violence, services play a vital role in assisting vulnerable women sort out post-separation arrangements, including where financial abuse is present.”<sup>42</sup>

Victim-survivor of family violence within the justice system have a higher prevalence of all legal issues. The Law and Justice Foundation of New South Wales interviewed over 20,000 people engaged in legal processes and found victims of family violence had an average of almost ten times (20) as many legal problems to deal with compared those who were not victims of family violence.<sup>43</sup> This reinforces the need to place resources into the areas with identified need, and to make the processes simple and user friendly in the circumstances of already very complex situations.

The Court’s new emphasis on dispute resolution processes, even after Court proceedings have commenced, poses potential risks that victim-survivors will be inappropriately pressured or Court-ordered to attend family dispute resolution to negotiate with the perpetrator of family violence.

### Case Study

Recently, a matter was referred to Family Domestic Resolution Services by an Independent Children’s Lawyer. This is despite there having been very severe and prolonged family violence, there were no orders for family domestic resolution, nor did parties suggest family dispute resolution at any stage. This has caused a lot of anxiety for the client, who fears that if she refuses to engage in family dispute resolution there may be negative consequences for her.

### Complex and onerous processes limit fair resolutions

As the National Plan states “Women who leave abusive or violent relationships must have the support to transition from being controlled to being in control of their lives, whilst often managing feelings of fear, shame, and grief. We recognise that recovery is challenging particularly in circumstances where there is an ongoing contact with the perpetrator such as shared care arrangements of children, and other legal and financial connections can continue to provide avenues for abuse.”<sup>44</sup>

<sup>42</sup> Draft National Plan to End Violence against Women and Children 2022-2032, pg. 21, <https://engage.dss.gov.au/wp-content/uploads/2022/01/Draft-National-Plan-to-End-Violence-against-Women-and-Children-2022-32.pdf>

<sup>43</sup> Coumarelos, C., Quantifying the legal and broader life impacts of domestic and family violence, Justice Issues, Paper. 32, June 2019, Law and Justice Foundation of NSW, pg. 10,

[http://www.lawfoundation.net.au/ljf/site/articleIDs/61BD5751775FA93B852584090007B5B9/\\$file/JI\\_32\\_DfV\\_legal\\_needs.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/61BD5751775FA93B852584090007B5B9/$file/JI_32_DfV_legal_needs.pdf)

<sup>44</sup> Draft National Plan to End Violence against Women and Children 2022-2032, pg. 39, <https://engage.dss.gov.au/wp-content/uploads/2022/01/Draft-National-Plan-to-End-Violence-against-Women-and-Children-2022-32.pdf>



The National Plan also indicates that the “appropriate responses to forms of financial abuse, abuse of process, and technology-facilitated abuse”<sup>45</sup> are important and that these forms of abuse can be responded to through improved court processes and supports, for both perpetrator and victim.

Unfortunately, the introduction of new measures and procedures in the Federal Circuit and Family Court of Australia - [new measures and procedures relate to both property and parenting matters] is causing lawyers to report that the process has become more complex and onerous, to initiate and respond to family law applications. Simple family law matters have become more daunting with the amount of information and paperwork that needs to be provided. There is no provision to exempt matters from the provision of the documents without consent of the other party. This is a step in the wrong direction and potentially taking victim-survivors further from economic justice.

Initiating proceedings has recently increased from three documents to five documents, or six documents with a costs notice. They are longer and more detailed and therefore more time consuming and where legal support is engaged, more costly to complete. In some cases, they are duplicated.

A particular example of more onerous documentation is the new “Financial Questionnaire”. This form requires complex details under different sections of the Family Law Act and the applicant must address a four-step process:

1. Identify and value the assets, liabilities and resources of the parties;
2. Consider the contributions of the parties made throughout the relationship;
3. Consider the future needs of each party; and
4. Determine whether the proposed settlement is just and equitable.

For self-represented litigants, especially where domestic violence exists, where individuals are otherwise vulnerable due to their background or CALD status this is no easy process.

Increased costs by the private profession to parties that are not covered by Legal Aid funding may lead to a reduction of private profession lawyers doing legally aided work.

## Case Study – A Lawyers View

There are voluminous new documents to be filed with the court to issue proceedings whether related to property or parenting or both. They do not do much except increase costs. The 'parenting questionnaire' and 'financial questionnaire' don't necessarily add anything to the initial documents lodged but in and of themselves have meant in my own practice, and several others of colleagues' that I've spoken with it has increased cost to clients.

A 'parenting questionnaire' is required for a Court Dispute Resolution Conference, whether they've been filed already or not. This essentially means clients pay us to do, or look over, the same thing twice. I know that in my practice, I don't issue this unless I must. I must file a 'Genuine Steps Certificate' and try various methods of settlement beforehand even in cases where we know, in our judgement as practitioners, that it won't work and does nothing except further increase costs to the client.

<sup>45</sup> Draft National Plan to End Violence against Women and Children 2022-2032, pg 21, <https://engage.dss.gov.au/wp-content/uploads/2022/01/Draft-National-Plan-to-End-Violence-against-Women-and-Children-2022-32.pdf>

First returns being, often, before a Judicial Registrar, now because of the lack of availability of a Senior Registrar or Judge at the first return of my cases, if issues can't be heard, no agreements have been reached rendering first returns a redundant and expensive exercise. Often, further hearings are required to sort through issues that previously were often able to be sorted at the first return with a few minutes before a Judge or indeed are sorted out because the threat of a Judge's decision on the issue is sometimes enough.

Court run/led Dispute Resolution Conferences (mediations) are a great idea. But having two parts, with part one being nothing more than an 'intake session', where practitioners are required to attend if they are on the record, but in my experience we don't say anything are again nothing but a waste of the clients' costs.

Recommendation

*Simplify required documentation to initiate proceedings.*

With the merger of the courts, there is a concern about the loss of the cumulative judicial expertise in the early stages of the dispute and that matters no longer remain the responsibility of one registrar. The tailored decision making was a key initiative of the Dandenong model launched in 2008. Judges on a docket system had carriage of the file from the first return to trial.

Peninsula Community Legal Centre noted examples of two hearings in the space of a week with two different registrars on the same matter, resulting in no substantive outcome. Multiple registrars on the same matter does not add to resolving issues. Victoria Legal Aid in this example had to fund both hearings.

Recommendation

*A single registrar for individual cases.*

Legal Assisted Family Dispute Resolutions have significant benefit over those that are not legally assisted. Matters are resolved earlier and cheaper, with less reliance on an overburdened court. This is in part on the calculation that if both parties have access to legal representation, they will be guided through the system more effectively, have a better estimate of likely outcomes and for persons who had been perpetrators of domestic violence, there is a sense that they will not be able to continue some of their controlling elements over their partner.

The present limitations for Legal Aid for Family Dispute Resolution Services (FDRS) can cause a party to a dispute to ignore the process to drag out proceedings and see the matter heard in court. Ensuring legal representation is available to both parties at FDRS incentivises finalization of a relationship earlier with the knowledge that the matter is less able to be dragged out.

While the Productivity Commission encouraged mediation to be extended to property disputes, they also said the "Australian Government should consider how the law governing property division could be

clarified to promote greater certainty, fairness and reduce transaction costs.”<sup>46</sup> This will further strengthen mediation.

Mandatory mediation for property matters, and that courts take into account the participation or not by parties, should form part of the process where property matters are part of a separation.

Recommendation four of the substantial report *Small Claims, Large Battles*<sup>47</sup> covers important ground in the need for full financial disclosure as well as consequences for the non-engagement or hiding of assets, and mechanisms to more accurately discover assets. As such we support that recommendation is adopted alongside the below.

In the absence of adopting these sensible reforms, funding support should be provided to build a picture of assets, including the costs of fees and charges associated with searching for assets through banks, superannuation funds, and business and land title searches.

Recommendations:

*Increased support for Legal Assisted Family Dispute Resolution, especially where family violence is a feature to ensure that existing power imbalances are reduced. Trauma-informed, culturally safe and person-centered support should be provided as part of these processes.*

*The adoption of recommendation 4 from Small Claims, Big Battles related to improved financial disclosure or further funding support to assist in developing an understanding of actual assets.*

Two pilots have been funded by government that are important to effectively resolve property matters. The Priority Property Pools (or Small Claims Property Pilot) and the Lawyer-assisted Property Mediation Legal Aid Commission Trial.

Priority Property Pool (PPP500) relates to net property under \$500,000 including superannuation in the total property pool. Beginning in March 2020 and ended 31 December 2021 the program received \$5.9 million in funding.

The PPP500 set out to resolve eligible property settlement cases at a cost to the parties that is reasonable and proportionate. It intends to be a quicker more simplified process consisting of a 4-step registrar-led process and two step judge-led stage. The registrar phase is intended to be concluded within 90 days.<sup>48</sup>

The PPP500 is currently under review by the Australian Institute of Family Studies, with a report on the effectiveness of the program due with the Attorney-General’s Department in April 2022.

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<sup>46</sup> Productivity Commission 2014, *Access to Justice Arrangements: Overview, Inquiry Report No. 72*, Canberra, pg. 50, <https://www.pc.gov.au/inquiries/completed/access-justice/report/access-justice-overview.pdf>

<sup>47</sup> Women’s Legal Service Victoria, *Small Claims, Large Battles: Achieving economic equality in the family law system* (2018), <https://womenslegal.org.au/files/file/WLSV%20Small%20Claims,%20Large%20Battles%20Research%20Report%202018.pdf>

<sup>48</sup> Federal Circuit and Family Court of Australia, *Guide for practitioners and parties in Priority Property Pools under \$500,000 (PPP500) cases*, <https://www.fcfa.gov.au/pubs/fl/ppp500-guide>

Lawyer-assisted Property Mediation Legal Aid Commission Trial received \$10.3 million in new funding to run a two-year trial. This again dealt with small value property matters up to \$500,000. Lawyers assisted mediation to families to reach agreement without going to court. The intention was to see more women to achieve equitable property settlements and increase their financial independence.

Like the PPP500, this pilot began in March 2020 and ended 31 December 2021, with a report on the effectiveness of the program due with the Attorney-General's Department in April 2022.

Further, the Federal Government had also committed to develop electronic information sharing between Courts and the Australian Taxation Office to allow superannuation assets to be identified. This would reduce the need for costly searches for superannuation amounts and ensure fairer results.<sup>49</sup>

Recommendation:

*Increase funding to access the Priority Property Pool including increased funding of integrated legal, social and financial assistance to resolve small property disputes. Trauma-informed, culturally safe and person-centered support should be provided as part of these processes.*

#### Client Cost Issues

Client costs are also rising due to reports and assessments. The cost of family reports, psychiatric assessments, and drug testing such as hair follicle testing (HFT) is extremely costly and Legal Aid does not seem to consider HFT as warranted on more than one occasion.

However, courts make orders for them without consideration of how parties could afford financing them especially when requested repeatedly. Some Independent Childrens' Lawyers insist on HFT in preference to the usual, and more cost effective, urine drug screening. This is even when it is clear a client would not be able to afford HFT and VLA has refused to fund it. The court should consider the actual need to make orders for all types of reports with a consideration of how the people could fund them.

Recommendation:

*Legal Aid is funded to meet the costs of court required testing and assessments.*

#### Urgent Matters

Under new system matters are put in a National Case Track to be picked up by a Judicial Officer which we understand there are only three nationally. Urgent matters should be handled by the local registry.

A recent example from the Peninsula Community Legal Centre highlighted this concern. An application for a child's passport needed to be released to an accompanying adult urgently to enable a child being recovered from overseas as per a Court Order. In this case the travelling adult had left by the time the matter was picked up by the Judicial Registrar. A passport had to be couriered to the accompanying adult in the hope that it reached them before the return flight with the child.

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<sup>49</sup> Commonwealth of Australia, Department of the Prime Minister and Cabinet, Women's Economic Security Statement 2018, pg. 39-40, <https://www.pmc.gov.au/sites/default/files/publications/womens-economic-security-statement-2018.pdf>

Recommendation:

*Urgent matters are heard by the local registry.*

#### Commonwealth Portal Issues

For many people the move to online documentation to the court is convenient, however, there remains the need for others in the community to lodge documentation other than online, or in a different format, or support needs to be provided as a matter of safety.

For divorce applications, there are currently no notifications regarding family violence and there is a need to protect the address from perpetrators including the address for service.

A recent example for the Peninsula Community Legal Centre demonstrated this need. A client was completing her own divorce application, but the form would not allow her to proceed when she did not want to put her address for service. She had no one else who was prepared to assist because of the husband's history of violence.

When contacting the court, they advised they cannot give legal advice, despite this being a matter of safety and practicality. PCLC is now the address for service and are assisting with the service on the other party as he is incarcerated for serious family violence offences.

Persons experiencing or who have experienced family violence may not recognise the risk in completing the address for service section and should be supported in such circumstances with appropriate information and alternatives to their residential address.

For some individuals in family violence circumstances, there only access to online information is via their, or other persons phones. For individuals trying to access the portal via mobiles there are format and technical issues.

For Consent Order applications there is no place to file the word document for the proposed order, it must be emailed to the registry. A further issue is that there is no notification to the respondent when an Order is made unless the respondent sets up a commonwealth portal account and then contacts the court to link their case with their portal account.

In some parenting matters the person who supervises the child's contact needs to provide an undertaking to the court before starting the contact. There is no "undertaking" option in the court portal for the person to file their undertaking.

Recommendation:

*Resolve highlighted Commonwealth Portal and related issues, prioritizing women and children's safety regarding address for service.*