



Community driven justice.

Fitzroy Legal Service Comments on the Draft National Plan to End Violence Against Women and Children

25 February 2022

Fitzroy Legal Service acknowledges that we work on the land of the Kulin Nations. We pay our respects to the Traditional Custodians of the land, and Elders past and present.

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1 About Fitzroy Legal Service

Fitzroy Legal Service ('FLS') was established in 1972 and is one of the oldest community legal centres in Australia. In 2019 we merged with the Darebin Community Legal Centre and now operate from three offices across Fitzroy, Reservoir and the Neighbourhood Justice Centre in Collingwood.

We also deliver legal services through a range of outreaches including alcohol and other drug services, needle and syringe programs and the Medically Supervised Injecting Room, specialist youth, mental health and LGBTIQ services, a state-wide prison advice line. FLS also provides duty lawyer services at the Neighbourhood Justice Centre in Collingwood and the Heidelberg Magistrates Court.

FLS provides criminal, family, family violence and generalist legal services to socially and economically disadvantaged clients. Our focus is on people who are stigmatised and criminalised due to poverty, homelessness, childhood abuse, family violence, trauma, drug use, psycho-social disability, contact with the criminal justice system and incarceration.

FLS also operates a free legal advice service on weekday evenings, which provides legal advice and limited representation regarding a range of issues including employment, tenancy, debts and infringements.

2 About this submission

FLS welcomes the opportunity to provide feedback on the draft National Plan to End Violence Against Women and Children 2022-2032 (the draft National Plan). The draft National Plan covers a range of forms of violence against women and children and the spectrum of responses, from early intervention to recovery. FLS' expertise is derived from its experience as a provider of free and affordable legal services to members of the community, many of whom have experienced family violence and other forms of gender-based violence.

In the 2020-2021 financial year, over 60 per cent of files opened at FLS involved providing legal advice and representation to people involved in family violence intervention order proceedings. A smaller proportion of files related to family law proceedings. In addition, many women and young people who access our criminal law and generalist legal practice have also experienced gender-based violence, including family violence. In accordance with this expertise, this submission focuses on violence against women and children in the form of family violence.

Where relevant, we also make comments about ways to improve gender equality and reduce violence against women in the legal profession. These comments are grounded in FLS' experience as a woman-dominated organisation in a woman-dominated sector (the community legal sector) that is a subset of a profession in which senior and decision-making roles remain dominated by men.

This submission is structured as follows:

- Overarching comments
 - the Commonwealth as a leader of targeted, specific and coordinated action
 - a meaningful plan for children, including Aboriginal children
 - comprehensive data collection, monitoring and evaluation
- Primary prevention
- Response
 - Policing
 - Family violence legal processes
 - Coercive control
 - Family violence and family law.

This submission is not a comprehensive analysis of the draft National Plan. Rather, it focuses on a range of related issues that are prevalent in our practice.

3 Overarching comments

3.1 The Commonwealth as a leader of targeted, specific and coordinated action

The Draft National Plan signals a widening of focus from family violence to all violence against women and children, across state and national jurisdictions. Generally speaking, FLS supports the Foundation Principles and National Pillars identified in the draft National Plan and considers primary prevention and early intervention crucial pillars which coincide with the response mechanisms available through legal services and systems.

Though this is a welcome, albeit not ambitious, approach, the draft National Plan does not articulate how coordination between jurisdictions will occur, nor does it adequately specify actions that are necessary to achieve the vision of the plan. Throughout this submission we draw on FLS' expertise representing victim survivors of violence in a range of legal proceedings to make recommendations about more specific interventions to which the draft National Plan should commit.

In addition, we agree with the comment made in Respect Victoria's submission that the draft National Plan sometimes interchanges language and terminology throughout, and would benefit from greater clarity regarding its parameters.¹ Respect Victoria's submission recommends the language in the draft National Plan be aligned with the recently updated *Change the Story: A shared framework for the primary prevention of violence against women in Australia*.

Recommendation

That the draft National Plan be revised to include:

- ***specific reference to the agency, jurisdiction or sector responsible for leading or coordinating specific, targeted actions aimed at achieving the vision of the draft National Plan***
- ***consistent language and terminology throughout, aligned with the recently updated Change the Story guide.***

3.2 A dedicated National Plan for Aboriginal women and children

We note that the draft National Plan recognises that '[p]utting Aboriginal and Torres Strait Islander peoples at the forefront of the National Plan is critical for seeing real change'.² In this regard, we support recent calls by Change the Record to establish a dedicated National Safety Plan to end violence against Aboriginal and Torres Strait Islander women – by and for First Nations women. This demand echoes calls made by advocates, commissioners, specialist Aboriginal and Torres Strait Islander family violence prevention legal services, victim survivors and community leaders.³

Similarly, the draft National Plan acknowledges that Aboriginal children are more likely to be victim survivors of violence than their non-Aboriginal counterparts. Like Aboriginal and Torres Strait Islander women, Aboriginal and Torres Strait Islander children deserve the development of a separate plan that is led by community, based on principles of self-determination and responds to specific needs and experiences of Aboriginal and Torres Strait Islander children.

Recommendations:

That, in keeping with calls made by Aboriginal and Torres Strait Islander community members, the Commonwealth government establish a dedicated National Plan to eliminate violence against Aboriginal and Torres Strait Islander Women.

¹ Respect Victoria, *Response to the draft National Plan to End Violence Against Women and Children 2022-32* (11 February 2022) online < <https://www.respectvictoria.vic.gov.au/our-submissions> > 1

² Draft National Plan, 26.

³ Change the Record, *Open letter - A First Nations National Safety Plan to Eliminate Violence against Aboriginal and Torres Strait Islander Women* (October 2021) online <<https://www.changetherecord.org.au/change-the-record/posts/open-letter>>

That the development of any National Plan deal separately and specifically with the needs and experiences of Aboriginal and Torres Strait Islander children and young people who experience violence, in a way that is based on principles of self-determination.

3.3 A meaningful plan for children

The title of the draft National Plan differs from its predecessor, which was named the National Plan to reduce Violence against Women and ***Their*** Children (2010-2020) (emphasis added). If the omission of the word 'their' in the title of the draft National Plan is intentional, it follows that this plan should address violence against children as separate to violence against women, and with that should contain specific, and targeted actions to address the multifaceted types of violence perpetrated against children that are not limited to family or domestic violence matters. There is specific reference in the draft National Plan that acknowledges children and young people as "victim survivors of violence in their own right." This has become popular terminology, but it risks being merely rhetorical in the absence of a targeted and cohesive response for children and young people, being included in this plan. As a starting point, the draft National Plan should elevate the needs and experiences of children as one of the foundation principles.

We welcome references throughout the plan to the significant impacts of violence against children, including the impact of children and young people being subject to, exposed to or witnessing violence. As the draft National Plan acknowledges, these experiences adversely affect children and young people's health, wellbeing, education, employment, relationships and housing security. However, the draft National Plan appears to focus on violence against children and young people in a family violence context, albeit a limited one, without an equivalent focus on other forms of violence against them.

In addition, there is insufficient detail on how different types of violence (i.e., family violence, sexual abuse, neglect, abuse perpetrated by a stranger) impacts upon children and young people, and it is particularly silent on what an intersectional approach would look like for children and young people with disabilities, of migrant backgrounds, and who are from the LBGTIQA+ community.

While there is reference to the draft National Plan operating concurrently with *Safe & Supported: The National Framework for Protecting Australia's Children 2021-2031* and *Child Sexual Abuse – National Strategy to Prevent and Respond to Child Sexual Abuse 2021-2030*, the draft National Plan would benefit from greater clarity about how it interacts with these other foundation documents and its scope with respect to children. The focus on family violence is mirrored in the data measures table, which reference children exposed to domestic violence but not other forms of violence against children.

The Plan acknowledges that women and girls are more at risk of violence and that girls and younger women can experience gender-based violence in the same way as adult women. It does not however, explicitly state the drivers of violence against children and younger women. There is also no reference of the impact of the pandemic upon violence against children and young people.

The draft National Plan recommends a 'comprehensive and coordinated crisis response',⁴ but the elements articulated do not specifically reference children or young people. We consider that such a response must specifically include child-focused integrated services, of which legal services are a necessary component.

We strongly support the reference in the draft National Plan to ensuring safe housing options are available for children and young people experiencing violence. This commitment must be accompanied by appropriate financial investment.

In addition, the following aspects of the draft National Plan would benefit from more specific description of what interventions or responses are contemplated:

- "Appropriate interventions for children at different ages and stages are needed to disrupt the cycles of violence, address existing trauma and stop harmful behaviours from escalating now and into their adult relationships. This includes working with children and young people that use violence against parents and other family members".⁵ This should specify that 'appropriate interventions' for children and young people should overwhelmingly focus on

⁴ Draft National Plan, 35.

⁵ Draft National Plan, 32-33.

programs and services, and that interventions that risk criminalising a child or young person should not be considered appropriate. This would be consistent with the position of the Victorian Royal Commission into Family Violence that '[rather than a criminal justice approach, a therapeutic approach is required]'.⁶

- The importance of building the evidence base about the causes, experiences, presentation and approaches to effectively rehabilitate children and young people who use violence. This should detail what agency, sector or jurisdiction would be responsible for coordinating this evidence base.

We also note there is limited reference to the specific needs of children and young people in Pillar Four: Recovery, beyond two dot points. This part of the draft National Plan would be significantly enhanced by more detailed articulation of children and young people's recovery needs.

Recommendations:

That the draft National Plan be revised to:

- **clearly articulate its scope with respect to children and young people, in acknowledgment that children's needs are distinct from their primary carers, or those who use violence against them**
- **include as a foundation principle that children have a right to live free from violence and abuse**
- **separately address the drivers of violence against children and young people**
- **separately address the experiences and needs of children and young people who experience violence in each section of the draft National Plan in a context that is broader than family violence**
- **outline more specific and targeted responses and interventions for children and young people, including legal services**
- **provide more detail with respect to specific and targeted recovery initiatives for children and young people, across all forms of violence and with particular reference to intersectionality**
- **ensure data collection, monitoring and evaluation with respect to children and young people is appropriately targeted and comprehensive**

4 Pillar One: Primary prevention

4.1 Increase financial security

We strongly support the draft National Plan's understanding of prevention as working 'to change the underlying social drivers of violence against women and children. It recognises that where there is structural inequality – for example, where systems create barriers to financial independence for women – it sends a message that women are of lower social value and worthy of less respect'.⁷

As a provider of free and affordable legal services to communities who experience significant economic disadvantage, we see daily how profound financial insecurity drives and compounds women's risk of experiencing violence. As the draft National Plan rightly acknowledges, the COVID-19 pandemic created or exacerbated 'existing drivers [of violence] and vulnerabilities to increase the overall risks of domestic and family violence'.⁸ Recent research by ANROWS confirmed that 'consistent with other Australian and international research, there was clear evidence that the acute economic stressors associated with the COVID-19 pandemic were associated with both the onset and escalation of [intimate partner violence]'.⁹

⁶ Victoria, Royal Commission into Family Violence, *Report and recommendations* (2016), ch 23, 167.

⁷ Draft National Plan, 29.

⁸ Draft National Plan, 18.

⁹ Anthony Morgan and Hayley Boxall, *Economic insecurity and intimate partner violence in Australia during the COVID-19 pandemic* (January 2022) ANROWS Research Report, Issue 2, 8; see summary online at < <https://www.anrows.org.au/publication/economic-insecurity-and-intimate-partner-violence-in-australia-during-the-covid-19-pandemic/>>

It is well-established that the key streams of social security in Australia – JobSeeker, Youth Allowance, Austudy, Abstudy and the Parenting Payment – have not seen a sustained real increase in over a quarter of a century.¹⁰ The economic impacts of the COVID-19 pandemic saw twice as many people accessing JobSeeker and Youth Allowance.¹¹ We also witnessed the positive impacts of the Commonwealth government’s decision to introduce the Coronavirus Supplement, which significantly increased payments for people receiving JobSeeker, Youth Allowance and the Parenting Payment. Social security payments are back to pre-COVID-19 levels. People receiving these benefits – many of whom access our service – are again unable to pay their rent, buy fresh food or cover their medical expenses. In other words, women and children are forced to live well below the poverty line.

Genuine commitment to primary prevention demands that the Commonwealth government commit to an increase to the social security net in Australia. Without this, many women and children will be forced to remain in unsafe situations and at risk of further gender-based violence.

Recommendation:

That as part of preventing violence against women and children, the draft National Plan be revised to include a specific commitment to substantially and permanently increase the level of Australia’s social security payments.

4.2 Workplace safety

There are a number of references throughout the draft National Plan to sexual harassment and harassment in workplace settings. For example, the plan acknowledges that women can experience different types of violence in different settings, including harassment in the workplace, and that workplace sexual harassment is a particularly concerning trend that has affected 2 in 5 women in the last five years.¹² The draft National Plan also refers to the Roadmap for Respect, which sets out ‘the Government’s long-term commitment to building safe and respectful workplaces’.

The draft National Plan itself would benefit from more specific actions in each of the pillars to target this very common form of violence. The current version of the draft National Plan references workplace sexual harassment only in Pillar Two – the need for early intervention initiatives ‘in workplaces to reduce, prevent and respond appropriately to sexual harassment and violence’,¹³ and less concretely in Pillar 4 – recovery services being tailored to victim survivors of sexual harassment outside of family structures (presumably including workplaces).

Recent Victorian-based research and initiatives relating specifically to the legal workforce would be worth incorporating in the draft National Plan. A 2019 survey commissioned by the Victorian Legal Services Board found that just over 60 per cent of women working in the law had experienced sexual harassment, compared with just under 40 per cent of women in the general workforce.¹⁴ In February 2022, the Law Institute of Victoria launched Advocates for Change, a group focused on eliminating sexual harassment in the legal profession. A document launched by that group includes a series of specific measures to tackle widespread sexual harassment in the legal profession.¹⁵ These measures build on recommendations made in a 2020 review into sexual harassment in Victorian courts, which was commissioned by then Victorian Attorney-General Jill Hennessy MP and conducted by former Victorian Equal Opportunity and Human Rights Commissioner.¹⁶ Both documents call for the need for a range of measure to address workplace sexual harassment, such as promoting positive workplace

¹⁰ ACOSS, *Raise the Rate for Good* FAQ (January 2021) 1 online < <https://raisetherate.org.au/wp-content/uploads/2021/02/Raise-The-Rate-for-Good-FAQ-Feb-2021.pdf> > .

¹¹ Ibid.

¹² Draft National Plan, 10.

¹³ Draft National Plan, 32.

¹⁴ Victorian Legal Services Board, *Sexual Harassment in the Victorian Legal Sector – 2019 study of legal professionals and legal entities: Report of findings* (2019) vii.

¹⁵ Advocates for Change, *Sexual Harassment in the Legal Profession: What can we do about it?* (February 2022) online < <https://liv.asn.au/download.aspx?DocumentVersionKey=cfdb8525-688d-4185-9190-c05575d12a7b> >.

¹⁶ Helen Szoke AO, *Preventing and Addressing Sexual Harassment in Victorian Courts and VCAT: Report and Recommendations* (March 2021) online < <https://www.shreview.courts.vic.gov.au/about-the-review/> > .

cultures, clear, well-publicised and victim survivor-centric processes for making complaints as well as improving awareness about appropriate behaviour and providing targeted training.

Recommendation

That the draft National Plan be revised to include more detail about the actions necessary to reduce or eliminate sexual harassment in workplaces.

5 Pillar Three: Response

In all Australian jurisdictions including Victoria, policing and ‘justice’ processes (that is, family violence intervention order systems and criminal legal systems) comprise a significant part of the response to family violence. While we acknowledge that such systems are the responsibility of state governments, the draft National Plan points out that the scale of the issue of violence against women makes it a national issue.¹⁷ The draft National Plan goes on to say that ‘[f]rontline response services are delivered by states and territories and local government and are supported at Commonwealth level with national programs and investment’.¹⁸

We consider that the draft National Plan would benefit from articulating a clear role for the Commonwealth government in coordinating and leading the development of best practice approaches to policing and family violence intervention order systems. We have set out below factors to consider when developing these best practice approaches.

5.1 Policing

Police form a significant part of Australia’s response to family violence and violence against women and children more broadly. In Victoria, family violence call-outs make up a substantial proportion of police work. According to the Crime Statistics Agency one in five offences attended by Victoria Police in the year ending 31 March 2021 were family-violence related, marking a 20 per cent increase in recorded family-violence related incidents over the last 5 years.¹⁹

FLS’ experience, which is supported by contemporary research, shows that police responses to family violence remain inconsistent. In our experience, this leaves many victim survivors feeling distrustful and disillusioned, and hesitant to contact police in the future. Moreover, vesting police with such a key role in responding to family violence poses significant challenges for victim survivors who have limited English proficiency, are from a migrant background or are Aboriginal and or Torres Strait Islander, to report to police due to issues arising from systemic racism, distrust of authority, fear of reprisal in relation to child protection, and failure by police to use interpreters or engage in culturally safe practices.

There is also growing evidence to suggest that police attendance at family violence incidents can result in people being misidentified as the ‘primary aggressor’ and listed as a respondent in the application for a family violence intervention order, or otherwise wrongly or unnecessarily criminalised and sometimes incarcerated.²⁰ Not only does misidentification by police drive subsequent criminalisation and incarceration, it can also lead to children being removed from their parents and homelessness.

It is well-established that accurate risk assessment is complex and challenging, particularly in ‘situationally ambiguous circumstances’, which can arise when there are, for example, conflicting

¹⁷ Draft National Plan, 21.

¹⁸ Draft National Plan, 35.

¹⁹ Crime Statistics Agency, ‘Family Incidents’ 31 March 2021, online <<https://www.crimestatistics.vic.gov.au/crime-statistics/latest-victorian-crime-data/family-incidents-2>>

²⁰ See for example Madeleine Ulbrick and Marianne Jago, ‘“Officer she’s psychotic and I need protection”: Police misidentification of the ‘primary aggressor’ in family violence incidents in Victoria’, Police Paper 1, Women’s Legal Service Victoria (July 2018) 1.

descriptions of what happened, or gaps in the narrative due to substance, trauma or disability, indications of injuries to both parties, language barriers and police officer prejudice.²¹

We note a number of references in the draft National Plan to training for police. In our experience, training is not enough. Given the highly complex nature of family violence incidents and the importance of appropriate assessment - including assessment of patterns of coercive and controlling behaviour beyond the incident in isolation – we recommend the draft National Plan specify the need for investment in alternative services and co-responder models in which police are accompanied by properly trained specialist family violence workers when attending family violence incidents. This would in turn:

- reduce the family-violence related workload of police,
- improve the accuracy of risk assessment thereby improving the safety of victims,
- improve the quality of service delivery to victim-survivors and perpetrators, and
- reduce the criminalisation and incarceration of victim survivors of family violence that flows from misidentification.²²

The Centre for Innovative Justice examined multidisciplinary response models in a 2016 report for the Southern Melbourne Integrated Family Violence Partnership.²³ That report canvassed various co-responder models internationally and in Australia, including Victoria, and recommended in that particular location police call-outs for family violence be co-triaged with Victoria Police, specialist family violence services, other support services and Integrated Family Services. The report proposed that such an approach would reduce the need for police attendance at family violence incidents, better divert families out of crisis and improve families' willingness to seek help from and build relationships with services.²⁴ The Centre for Innovative Justice emphasised that the appropriateness of particular co-responder models depends on the needs and circumstances of families and communities in individual locations.

Recommendation

That the draft National Plan include more specific actions about how to improve police responses to and assessment of family violence, including calling on state governments to fund community-based support services to develop and deliver family violence call-out services as part of co-responder models alongside Victoria Police in necessary circumstances. This should be complemented by an extensive public awareness campaign about the availability of these services

For victim survivors whose experiences of family violence are prosecuted by police, our experience is that information sharing with the victim survivor, their support workers or their lawyer entirely depends on the capacity of the local police station and the police officer responsible for taking the complaint (known in Victoria as the 'informant'). In practice, many victim survivors are unable to access important information about the progress and outcome of criminal proceedings against the perpetrator, such as the dates reports were made to police, what reports have resulted in a prosecution and which reports relate to which criminal charges. To address this, we recommend investment in dedicated family violence liaison workers to support police responses to family violence.

Recommendation:

That the draft National Plan specify that, in addition to training, police responses should be supported by dedicated family violence liaison officers at police stations, to ensure better communication with victim survivors with proceedings before the criminal courts

²¹ No to Violence, *Predominant Aggressor Identification and Victim Misidentification*, Discussion Paper (November 2019) 5.

²² See generally Heather Nancarrow, et al. *Accurately identifying the "person most in need of protection" in domestic and family violence law*, ANROWS Research report, Issue 23 (November 2020) 31.

²³ Centre for Innovative Justice, *Multidisciplinary Response Models: Report to the Southern Melbourne Integrated Family Violence Partnership* (September 2016) 9-15.

²⁴ Centre for Innovative Justice, *Multidisciplinary Response Models: Report to the Southern Melbourne Integrated Family Violence Partnership* (September 2016) 44.

5.2 Intervention order legal processes

As noted above, the family violence intervention order process is one of the primary mechanisms by which victim survivors of family violence can seek safety. While this process works well for some, many experience significant retraumatisation, distress and risks to their safety while navigating the intervention order system. In addition, there is a disparity of legal and social support available for victim survivors of other forms of gendered violence. For these reasons, we strongly support recognition in the draft National Plan of the need to '[i]mprove alternative civil justice and non-criminal pathways for holding perpetrators to account'.²⁵

Based on our significant practice experience, we recommend that the draft National Plan include more detail about the need to improve intervention order processes by:

- establishing alternatives to intervention orders proceedings
- minimising situations where victim survivors have to repeatedly return to court to extend an order
- ensuring equitable access to legal and support services for victim survivors of other forms of gendered violence.

5.2.1 *Alternatives to intervention orders*

In Victoria, police attending family violence incidents have limited options. In most cases, they can either commence family violence intervention order proceedings or do nothing. This blunt response can place many victim survivors at risk: it may not be safe for a victim survivor to leave a relationship or an intervention order could further aggravate an already dangerous home situation.

Many of our clients contact police seeking assistance for what is perceived as the drivers of the violent behaviour, such as drug and alcohol misuse or mental health issues. They do not want an intervention order to be taken out. If an order is pursued by police, this in turn generates mistrust of police. Moreover, once an application for an intervention order has been made, Victorian Magistrates are limited to making an intervention order and attaching a condition for a respondent to attend a men's behavioural change program (for which there are long wait lists). Many victim survivors of family violence want different outcomes – they want the court to order counselling, or drug treatment and support.

As part of its role in leading Australia-wide reforms, the draft National Plan provides an opportunity to be explicit about the need to expand the options available to Magistrates dealing with family violence incidents to include options to order drug and alcohol counselling and/or engagement with a mental health practitioner. This must be accompanied by corresponding investment in programs and services.

5.2.2 *Reducing extension applications in appropriate circumstances*

Another way in which civil justice and non-criminal pathways could be improved is by limiting the circumstances in which victim survivors must repeatedly return to court to seek extensions of family violence intervention orders. In Victoria, final intervention orders tend to be made for periods of 1, 2, 5 or 10 years and in very exceptional cases, for an indefinite period. Our practice experience suggests that most victim survivors must apply for an extension of a family violence intervention order prior to the final intervention order expiring, and some victim survivors are returning to court at regular intervals for extended periods of time. In doing so they are placed in a position where they continually encounter the court system, and the perpetrator of violence against them. In general, cases involving related criminal charges cannot be settled until the criminal matters are finalised. In these instances, proceedings can be on foot for years. This places an unreasonable burden on victim survivors as they are unable to move on and live free from violence.

5.2.3 *Legal services for victim survivors of other forms of gendered violence*

As noted throughout this submission, a significant proportion of FLS' practice involves providing legal representation to victim survivors of family violence. In Victoria, acts of gendered violence, such as

²⁵ Draft National Plan, 37.

sexual assault and stalking, perpetrated outside the family context are subject to a separate legal framework called the Personal Safety Intervention Order ('PSIO') framework. There is very limited legal assistance available for women and children whose experiences of violence fall within this framework. This can mean that an unrepresented victim survivor of gendered violence may need to confront the perpetrator in court in order to progress their application for a PSIO. There are also significantly fewer non-legal support services available to victim survivors of gendered violence that falls outside the family violence framework.

Recommendation:

That the draft National Plan make explicit that improving civil justice and non-criminal pathways for holding perpetrators to account should include:

- ***giving Magistrates power to make a wider range of orders to address the drivers of family violence in a manner tailored to the individual needs of the case***
- ***ensuring adequate funding for court-ordered programs and services***
- ***limiting the need for victim survivors to apply for extensions of family violence intervention orders in certain cases***
- ***ensuring that funding for legal assistance and other support services for women and children who are victim survivors of gendered violence outside the family violence context is equivalent to that available to victim survivors of family violence.***

5.3 Coercive control

The draft National Plan includes a number of references to coercive control, noting that the Commonwealth government 'is co-designing national principles to develop a common understanding of coercive control, while some states and territories are progressing legislative reform to recognise coercive control through their criminal justice systems'.²⁶

We note the recent publication by the Victorian Aboriginal Legal Service (VALS): *Addressing Coercive Control Without Criminalisation: Avoiding a Blunt Tool that Fails Victim-Survivors*. This report acknowledges coercive control as a complex, dangerous and pernicious form of abuse and strongly recommends against the criminalisation of coercive control in Victoria.²⁷ Far more important than criminalising coercive control is genuine and sustained investment in housing and other support services, including specialist family violence services.

Drawing on the expertise of Aboriginal women as research, advocates and victim survivors, the report highlights how the criminalisation of coercive control would not guarantee the safety of Aboriginal women and would in some circumstances places victim survivors, particularly Aboriginal women, at risk of further violence. This is unacceptable, given Aboriginal women's disproportionate experience of both violence and criminalisation. The process of developing national principles about coercive control must put the voices and experiences of Aboriginal and Torres Strait Islander women at the forefront.

Recommendation:

That the Commonwealth government prioritise:

- ***the views and experiences of Aboriginal women in developing any national principles about coercive control***
- ***investing in support services, including housing, to ensure women experiencing coercive control can safely leave a dangerous situation.***

5.4 Family law

The relevance of the family law system in responding to family violence is acknowledged in the draft National Plan, which states that:

²⁶ Draft National Plan, 17.

²⁷ Victorian Aboriginal Legal Service, *Addressing Coercive Control Without Criminalisation: Avoiding Blunt Tools that Fail Victim-Survivors* (VALS Policy Paper, November 2021) online <<https://www.vals.org.au/publications/>>.

'A comprehensive and coordinated crisis response system is one that achieves the following:...

- *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'.*

It is noteworthy that the focus areas then listed in the draft National Plan contain no reference to the family law system, nor do they explicitly reference any of the recent major review of Australia's family law system undertaken by the Australian Law Reform Commission: *Family Law for the Future – An Inquiry into the Family Law System*.²⁸

This is particularly concerning given that a significant proportion of our family law clients experience family violence. This is in keeping with statistics presented in the draft National Plan that indicate that, of the small proportion of matters that require court determination, 64 per cent involve allegations of family violence and 57 per cent allege a child has been exposed to family violence. While these statistics relate to the small proportion of family law matters – just 3 per cent – that end up before the family law courts, our practice experience suggests that family violence is a factor in many family law cases that involve a negotiated outcome.

Indeed, as the draft National Plan points out, recent reforms to Australia's family law system have sought to promote negotiation of family law matters by agreement and resolution by consent. We note that while s 60I of the Family Law Act 1974 (Cth) (FLA) exempts parties from attending compulsory pre-court mediation, this legislative protection alone is not enough. In our experience, the move towards out of court negotiations has not been accompanied by investment in legal and other supports to help victim survivors of family violence and their children negotiate with the perpetrator of family violence after the initiation of court proceedings. Private legal representation is often very costly, and legal aid assistance tends to be limited to court proceedings. For victim survivors of family violence whose family law matter does not proceed to court, this can mean a lack of representation and considerable inequity in negotiating power, not to mention the fear, distress and trauma associated with direct engagement with the perpetrator. Negotiating a separation can be overwhelming, even more so in circumstances where English is a second language or for recent immigrants, where there is a lack of understanding of the laws in Australia.

In addition, there are far too few low-cost or government-funded supervision centres resulting in lengthy waitlists. Faced with long wait lists, families wanting to ensure children can maintain a meaningful relationship with both parents, will either dispense with supervision or ask a family member to conduct a 'supervised visit'. Without structured supervision of child contact visits, women and children risk exposure to family violence, given that supervised contact is often used as a way to manage the risk of violence.

Recommendation

That the draft National Plan be revised to:

- ***include specific reference to the family law system as relevant to responding to violence against women***
- ***ensure adequate funding of legal services to enable representation for victim survivors of family violence before attending court, during mediation and any related negotiations***
- ***ensure adequate funding of supervised contact centres.***

²⁸ Australian Law Reform Commission, *Family Law for the Future – An Inquiry into the Family Law System* (2019, Report 135) online < <https://www.alrc.gov.au/inquiry/review-of-the-family-law-system/>>