Towards a Safer Future
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NSW Women's Refuge Movement Submission to the ALRC Family Violence Inquiry
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Thank you for the opportunity to respond to the Discussion paper *Family Violence: Improving Legal Frameworks*. Unfortunately the NSW WRM does not have the resources available to be able to respond to all of the proposals and questions set out in the discussion paper. We have endeavoured however to respond to some specific proposals and questions, based on the experiences of our member refuges and the women and children they support together with the experiences of the women we support through the Women's Refuge Movement Women's Family Law Support Service at the Family Law Court's Goulburn Street Registry.

About the NSW Women's Refuge Movement

The NSW Women's Refuge Movement has been operating for over 30 years and is incorporated as the NSW Women's Refuge Movement Working Party Inc (WRM WP Inc). This is a non-profit state-wide representative body of specialist domestic violence services. Member women and children's services aim to respond to community needs by providing a continuum of services to women and children who are homeless or at imminent risk of homelessness particularly when this is due to domestic and family violence.

The WRM WP Inc:

- Provides a supportive network and forum for refuge workers to discuss and promote best practice and exchange skills and knowledge;
- Undertakes projects to facilitate the work and effective operation of member refuges;
- Develops and provides resources and information about women and children's homelessness, domestic violence and related matters for refuge workers, the sector and the community;
- Advises and informs Government about issues relating to domestic violence and sexual abuse, women and children's homelessness, and the needs of women and children as clients of SAAP and other services; and
- Works with government and community groups to improve responses to women and children escaping domestic violence, sexual assault and other forms of abuse.

Section 4: A Common Interpretative Framework

ALRC proposals

Proposal 4–1 (a) State and territory family violence legislation should contain the same definition of family violence covering physical and non-physical violence, including conduct the subject of Proposals 4–3 to 4–5 and 4–7 to 4–10 below. The definition of family violence in the *Family Violence Protection Act 2008* (Vic) should be referred to as a model.

OR

(b) The definitions of family violence in state and territory family violence legislation should recognise the same types of physical and non-physical violence, including conduct the subject of Proposals 4–3 to 4–5 and 4–7 to 4–10 below. The definition of family violence in the *Family Violence Protection Act 2008* (Vic) should be referred to as a model.

Proposal 4–2 The *Crimes (Domestic and Personal Violence) Act 2007* (NSW) should be amended to include a definition of 'domestic violence', in addition to the current definition of 'domestic violence offence'.

Proposal 4–3 State and territory family violence legislation should expressly recognise sexual assault in the definition of family violence to the extent that it does not already do so.

Proposal 4–4 State and territory family violence legislation should expressly recognise economic abuse in the definition of family violence to the extent that it does not already do so.

Proposal 4–5 State and territory family violence legislation should include specific examples of emotional or psychological abuse or intimidation or harassment that illustrate acts of violence against certain vulnerable groups including: Indigenous persons; those from a culturally and linguistically diverse background; the aged; those with a disability; and those from the gay, lesbian, bisexual and transgender community.

Proposal 4–9 The *Crimes (Domestic and Personal Violence) Act 2007* (NSW), *Domestic Violence and Protection Orders Act 2008* (Qld), *Restraining Orders Act 1997* (WA), and *Domestic and Family Violence Act 2007* (NT) should be amended to ensure that their definitions of family violence capture harm or injury to an animal irrespective of whether that animal is technically the property of the victim.

The NSW WRM is supportive of many of the Commission's proposals in Section 4. Developing a shared understanding of what constitutes domestic and family violence within and across jurisdictions is an important component for the development of integrated systems and responses. To this end, the NSW WRM agrees that the Victorian definition of domestic and family violence could be useful in this regard. In relation to options in proposal 4.1 the WRM shares the concern of the commission that 4-1 (a) maybe difficult to negotiate between all State and Territories and may result in a weaker definition being adopted, therefore we support (b) as this will improve consistency and provide a framework to guide each State and Territory. We also support the proposal that the NSW Domestic and Family Violence legislation include a definition of domestic and family violence in addition to the current definition of what constitutes a 'domestic violence offence'.

Proposal 4–10

"State and territory family violence legislation should include in the definition of family violence exposure of children to family violence as a category of violence in its own right."

Children who witness and/or experience domestic and family violence are also impacted by this and have very specific needs. Workers in the NSW Women's Refuge Movement were among the first in NSW to identify this. Child focused workers in refuges reflects the commitment to recognising children as clients in their own right. The WRM therefore supports this proposal in principle, however we do hold concerns that the inclusion of this in definitions of domestic and family violence within family violence legislation may have negative consequences if changes in practices don't occur across child protection services and the courts.

It has been the WRM's experience that child protection responses to domestic and family violence are more often than not geared towards holding the mother/non-offending care giver responsible for the safety of their child/children instead of interventions that hold the perpetrator accountable and provide support to the children and the non-offending care giver (usually the mother) to reduce the risk of further violence.

It is therefore imperative that a shift in both policy and practice across a range of systems occurs to ensure that:

> *The responsibility to protect the child/ren should not continue to be burdened on the mother or the child, who are the victims. Instead police, courts and child protection agencies should focus on enforcing laws to make the perpetrator fully accountable. Currently the burden of protection in Australia is overly reliant on the victims. If the police, courts and the child protection agency have not exercised all of the powers available to them to protect the child and the child/ren still remains at risk, 'failing to protect' and 'neglect' should not be applied to the mother under the Child Protection Act. Instead, enforcement of the laws should be directed to making the perpetrator accountable and protection for the victims increased.*[1]

Currently in NSW under the *Crimes (Domestic and Personal Violence) Act*, a court must include children as a protected person on the AVO of the care giver; unless the court is given good reasons for not doing so[2]. The NSW WRM advocated for this change and viewed the change as positive, believing it would increase protection of both women and children and positively impact on the outcomes of women and children who are seeking safe living arrangements through family law courts. Whilst still supportive of this component of the NSW legislation it is

[1] Catherine Gander –Churchill Fellow, 2006, *Report to the Winston Churchill Memorial Trust of Australia*, pp.7-8
[2] NSW Parliament, *Crimes (Domestic and Personal Violence) Act 2007 No 80*, Part 9, Section 38,No.2

disappointing to note that this provision is not being consistently applied and some magistrates are just not willing to place children on ADVO's.

Perhaps the inclusion of exposure of children to family violence as a category of violence in its own right within family violence legislation, would provide further impetus for courts to include children on protection orders; as they should already be doing. This could be further assisted however, through changes in practices and further education of magistrates.

In our submission to the *NSW Wood Special Commission of Inquiry into Child Protective Services* and previous correspondence to the Department of Community Services (now known as Community Services within the broader Department of Human Services) we recommended in cases where Community Services intervene because of domestic violence that:

> A template be developed that is to be completed by child protection caseworkers that outlines the women and children's experience of domestic and family violence and recommends the inclusion of children as protected persons on protection orders.

Indeed this process could be shared across a range of Government agencies. This process could also assist Magistrates, where cross applications for protection orders are being made.

Consistency between the definition of domestic and family violence with State and Territory Laws and the Family Law Act

ALRC proposals

Proposal 4–17
The definition of family violence in the *Family Law Act 1975* (Cth) should be expanded to include specific reference to certain physical and non-physical violence—including conduct the subject of Proposals 4–3 to 4–5 and 4–7 to 4–10 above—with the definition contained in the *Family Violence Protection Act 2008* (Vic) being used as a model.

Proposal 4–18 T
he definition of 'family violence' in the *Family Law Act 1975* (Cth) should be amended by removing the semi-objective test of reasonableness.

Proposal 4–23
The *Family Law Act 1975* (Cth) should be amended to include a provision that explains the nature, features and dynamics of family violence.

In our submission to the Chisholm Family Courts Violence Inquiry we recommended that Family Law Act:

Current definitions for Family Violence and Child Abuse within the Family Law Act be removed, and national definitions for Domestic Violence and Child Abuse be established to reflect that:

- Violence and abuse are not only physical actions, but a range of other behaviours that also impact on victims in a range of forms that may not be physically apparent and can be just as incapacitating as physical violence;
- Children witnessing violence or abuse of a parent, both directly and indirectly, be recognised as a form of child abuse under the Family Law Act's definition of Child Abuse;
- Domestic Violence often goes unreported, and together with other forms of non-physical violence, results in a lack of documented evidence.

As stated in our submission to the Family Courts Family Violence Inquiry, the current definitions of Family Violence and Child Abuse within the Family Law Act (Section 4) do not take into account the past 30 years of learning with regards to violence and abuse within families.

We, therefore seek to reiterate some of the points made in our previous submission to the Chisholm Family Courts Violence Review, included below[3]:

[3] NSW Women's Refuge Movement Working Party Inc, 2009, Submission to the Family Law Court Family Law Review.

The vague definition makes reference to "conduct" that affects/may affect a person's "well-being or safety", with no further detail over what constitutes "conduct" or "well-being" and "safety". In being so ill-defined it is possible for the Court to interpret family violence as only including physical action that can or does result in physical harm. This does not take into account the myriad of non-physical behaviours that can lead to emotional and psychological harm, which can be just as damaging and incapacitating in the long-term as physical violence, if not more so in many cases.

The Act's definition for child abuse also reflects this serious fault, by referring only to assault on a child and/or a person involving a child in sexual activity. Again, there is no acknowledgement within this definition that child abuse can take many others forms including neglect, emotional and psychological harm caused directly by the perpetrator's behaviour or in witnessing violence to a parent (directly or indirectly).

One of the biggest roadblocks to appropriate disclosure is the lack of clarity around what constitutes acceptable evidence and reasonable grounds for establishing a risk of violence and abuse. In addition, the terminology used in the definition relating to family violence may in fact facilitate the undermining of acceptable evidence.

One of the difficulties that women, legal representatives and the law in general faces, is the degree of vagueness around certain concepts such as "reasonable" that leaves litigants confused and unsure as to what the Court requires, also leaving such concepts open to broad interpretation by Magistrates and legal representatives.

The Family Law Act (Part I Section 4) provides a definition of family violence and guide for assessing risk of harm that emphasises "reasonable" in establishing grounds for fear for a family member's personal wellbeing or safety. The definition also requires that the grounds for fear can only be established if a "reasonable person" in the same *particular* circumstances would also fear for their own physical wellbeing or safety.

Further still, women may face having concerns determined as 'unreasonable' by the Court by being assessed as an 'unreasonable' person. The NSW WRM points out that many women will live in an abusive relationship for a number of years, as evidenced by the experience of women and children in our NSW refuges. The relationship may be characterised by infrequent incidences of physical violence, which are even

documented within the state system. However, within this relationship, a woman can be continually controlled, undermined and intimidated by their abusive partner with threats (direct or implied) of physical violence that are a real possibility within the context and the history of the relationship.

Women from long standing abusive relationships in general often have great difficulty articulating their own case[4]. In addition to risks associated with being identified by the Court as making an unreasonable claim, a woman may again be dissuaded from disclosing or asserting that the threat of harm is real when unsure of what constitutes reasonable. Legal representatives, Court Report writers, and magistrates may also interpret the definitions of evidence and "reasonable" narrowly and with prejudice, impacting on other means of disclosure to the court.

The NSW WRM therefore supports the proposals (4-17,4-18 & 4-23) by the ALRC to amend definition of Family Violence in a manner that is consistent with the Victorian definition, and to remove the test of 'reasonableness'.

[4] Law Institute Victoria's Media Release, "Family violence and Family Law – the government misses the point", July 24, 2009, http://www.liv.asn.au/media/releases/20090724_familylaw.html 6/10/09

Section 6 – Protection Orders and the Criminal law

Question 6–7
In practice, are the conditions which judicial officers attach to protection orders under state and territory family violence legislation sufficiently tailored to the circumstances of particular cases?

The NSW WRM does not believe that many judicial officers take the time to tailor the ADVO to meet individual needs. For example, this is often evident in Aboriginal communities. As discussed above, many magistrates are failing to include children on protection orders, or provide reasons why they have not been included. During our last State Conference, it was reported by one refuge in a regional area that two magistrates in neighbouring towns have widely inconsistent practices; where one magistrate regularly rejects applications after requiring excessive amounts of information from the victim, which can cause further stress and fear to the victim, and the other magistrate will rubber stamp all applications. The view from other members in the room indicated that this inconsistency was common across NSW.

Further to this, some of our member refuges have reported that chamber magistrates are sending women to NSW Police instead of hearing private applications for protection orders. Feedback from our members further suggests that this problem is compounded by some police officers not making applications for ADVO's. The reason for this reluctance by some police officers is unknown, perhaps they believe that if no 'domestic violence offence' has been committed then they not obliged to act. However the WRM is aware that there are sometimes other drivers behind the reluctance; Our members have reported that some police have refused to apply for ADVO's for women who are on spousal visas, as the officer has considered the disclosure of violence as a tactic to get permanent residency. Similar considerations are applied to women seeking ADVO's when they are likely to enter into Family Law Court processes.

It is of grave concern to the WRM that women and children's access to protective measures appears to hinge on the individual magistrate and/or police response.

Exclusion Orders

Question 6-10
Should state and territory family violence legislation include an express presumption that the protection of victims is best served by their remaining in the home in circumstances where they share a residence with the persons who have used violence against them?

The WRM would caution against state domestic and family violence legislation should including an express presumption that the protection of victims is best served by their remaining in the home where they share a residence with the persons who have used violence against them. The WRM has a clear policy on the use of Staying Home Leaving Violence options, this is detailed below:

"The NSW Women's Refuge Movement supports the rights of women and children not to become homeless as a result of domestic violence and their right to choose to remain in their home and have the perpetrator of violence removed. We support the ongoing development of SHLV programs in NSW as one component of a range of responses that should be available to women and children who are at risk of homelessness due to domestic and family violence.
Further to this the NSW WRM specifically supports the use of SHLV models when;

- Thorough risk assessment is undertaken and women are informed of the options available.
- It is the woman's choice to remain in the home.
- The SHLV programs are supported by an integrated justice and human service system.
- They are implemented as part of a suite of options available to women and children, without being the only option."

A blanket presumption that the protection of victims is best served by them remaining in the home is ill conceived as there are numerous factors that need to be considered before determining whether this is the best option available. Factors that need to be considered are the ongoing safety risks to the victim/s; and what safety strategies can be implemented to minimise these risks. Ultimately the decision to remain in the home or leave should be the right of the woman to choose.

Proposal 6–7
State and territory family violence legislation should require judicial officers considering the making of protection orders to consider whether or not to make an exclusion order—that is, an order excluding a person against whom a protection order is made from premises shared with the victim, even if the person has a legal or equitable interest in such premises.

Proposal 6–9
State and territory family violence legislation should require a court to give reasons for declining to make an exclusion order—that is, an order excluding the person against whom a protection order is made from premises in which he or she has a legal or equitable interest—where such order has been sought.

The NSW WRM supports the above proposals to require judicial officers to consider making an exclusion orders and to provide reasons for deciding not to make an exclusion order.

The experiences reported by our member refuges indicate that many judicial officers are often not inclined to make exclusion orders. Indeed one refuge has recently informed us that one magistrate didn't even know what an exclusion order was.

Increased legislative direction and education of judicial officers would both be useful in this regard.

Section 8 Family Violence Legislation and Parenting Orders

Below we have again drawn our submission to the Family Law Courts Family Violence Inquiry[5]:

> It is the position of the NSW WRM that there are many serious problems with the current Family Law system, and that current legislation, practice and procedures do not sufficiently address the safety of women and children nor ensure the best possible outcomes. The current system allows for, if not enables, the continued abuse of women and children who are already dealing with the impacts and effects associated with domestic violence and abuse. This abuse is occurring not only at the hands of perpetrators, but also through the court system itself.
>
> The NSW WRM has argued for many years that the Family Law Reforms of 2006 further weakened protection for women and children experiencing family violence and other abuse when caught up in the Family Law system.
>
> The Family Law Amendment (Shared Parental Responsibility) Act 2006 brought about substantial changes to how arrangements for children are dealt with in relationship breakdowns. The primacy given to the child/ren having contact with both parents throughout the Act has raised expectations in the community that "shared parenting" is the norm, and that contact is favoured over safety.
>
> Requiring victims of violence to counter a presumption of shared responsibility may further discourage women from leaving violent relationships, for fear of their safety and that of their children.
>
> Furthermore, the "friendly parent" consideration is another barrier to women disclosing abuse and domestic violence, as they may risk being seen as "non-cooperative" and not prepared to facilitate contact with the other party.
>
> In addition to significant concerns that the WRM has about the apparent preference of parental contact over women and children's safety, numerous

[5] NSW Women's Refuge Movement Working Party Inc, 2009, Submission to the Family Law Court Family Law Review.

other concerns exist about Family Law Court processes and procedures. These include:

- The absence of an effective screening system from the first point of contact with client services staff;
- The lack of cohesion between federal police, state police and court security;
- Poorly conceived and worded Federal legislation together with a lack of cohesion and consistency between Federal and State/Territory laws, practices and procedures; *and*
- No presumption that domestic violence is likely to be present in the majority cases before the Family Law Courts.

The Women's Family Law Support Service

In recognition of the significant disadvantages faced by women and their children who have experienced family violence or child abuse in family law processes, the NSW WRM established, in partnership with the Family Law Court's Sydney Registry, the Women's Family Law Support Service (WFLSS). The WFLSS enables a holistic response for women by facilitating communication and coordination between the client, solicitor, court staff and other organizations. It aims to ensure that the diverse and often complex needs of women are met and that the court system is more accessible.

Since the WFLSS commenced operations in late 2007 until February this year the service had support 539 women on 676 occasions. The majority of these women had disclosed domestic and family violence to the service and 78% were involved in parenting matters before the Family Law Court. In only 43% of cases where domestic and family violence was identified did the woman have an ADVO in place, however as you can see from the case studies that follow, this is no guarantee that the Family Law Court will prioritise safety over contact.

Proposal 8-1

State and territory child protection laws should be amended to require a child protection agency that advises a parent to seek a protection order under state or territory family violence legislation for the purpose of protecting the child to provide written advice to this effect to ensure that a federal family court does not construe the parent's action as a failure to 'facilitate, and encourage, a close and continuing relationship between the child and the other parent' pursuant to s 60CC(3)(c) of the *Family Law Act 1975* (Cth)

The NSW WRM supports this proposal if legislative amendments are not made as recommended by the Family Law Council and Professor Chisholm. Indeed the WRM has made recommendations to this effect in the past. Such legislative amendments to Child Protection legislation could be supported by the introduction of a template form for Child protection agencies similar to the one recommended earlier in this submission.

Protection order proceedings under family violence laws

Proposal 8 - 3

State and territory family violence legislation should provide mechanisms for courts exercising jurisdiction under such legislation to be informed about existing parenting orders or pending proceedings for such orders. This could be achieved by:

(a) imposing a legally enforceable obligation on parties to proceedings for a protection order to inform the court about any such parenting orders or proceedings;

(b) requiring courts making protection orders to inquire as to any such parenting orders or proceedings; or

(c) both of the above.

Proposal 8-4

Application forms for protection orders in all states and territories, including applications for variation of protection orders, should clearly seek information about existing parenting orders or pending proceedings for such orders.

The NSW WRM would support proposal 8-3 (b) as it places the onus on the Court to find out about pre-existing parenting orders and not on the victim. Further to this, the WRM supports proposal 8-4 as it would assist the courts in implementing 8-3 (b).

Proposal 8- 7

State and territory courts hearing protection order proceedings should not significantly lower the standard of protection afforded by a protection order for the purpose of facilitating consistency with a current parenting order. This could be achieved by:

(a) a prohibition to this effect in state and territory family violence legislation; or

(b) guidance in relevant state and territory bench books.

Proposal 8- 8

Family violence legislation should refer to the powers under s 68R of the *Family Law Act 1975* (Cth) to revive, vary, discharge or suspend a parenting order to give effect to a family violence protection order by:

(a) referring to the powers—the South Australian model; or

(b) requiring the court to revive, vary, discharge or suspend an inconsistent parenting order to the extent that it is inconsistent with a family violence protection order—the Victorian model.

The WRM wishes to point out that in many cases proposal 8-3 would only improve women and children's safety if proposal 8-7 and 8-8(b) were accepted and implemented by the courts. Implementation of these proposals would hopefully see an end to situations where magistrates

fail to provide protection orders or lower the standard of orders on the basis of parenting orders or related proceedings, instead of dealing with and focussing on the protection request at hand.

Further to this we would recommend that both (a) and (b) of proposal 8-7 were implemented to improve the likelihood of consistent application of the law.

Proposal 8-5 The 'additional consideration' in s 60CC(3)(k) of the *Family Law Act 1975* (Cth), which directs a court to consider only final or contested protection orders when determining the best interests of a child in making a parenting order, should be:

(a) repealed, and reliance placed instead on the general criterion of family violence contained in s 60CC(3)(j);

OR

(b) amended to provide that any family violence, including evidence of such violence given in any protection order proceeding—including proceedings in which final or interim protection orders are made either by consent or after a contested hearing—is an additional consideration when determining the best interests of a child.

The WRM supports proposal 8-5 (b) as we have been seeing increasing instances where male perpetrators are being advised to NOT contest ADVOs when they are involved in Family Court proceedings or believe that there is a likelihood of proceedings taking place. By not contesting the ADVO, the perpetrator ensures that such information remains inadmissible evidence for the Court.

Also of concern is the ability for the Court to ignore extensive evidence and not be required to consider any risk of violence or abuse in making parenting and contact orders as is amply demonstrated in the case studies below:

Case Study One

A father was awarded contact with his two daughters (aged 9 and 8 years), after not having had any contact with them for 2 years while living only a street away. The father had re-partnered and had two teenaged boys. After several disclosures by the girls of inappropriate

touching by the boys, DoCS and Police involvement, the Court told the father to supervise more rigorously at a contravention hearing. However the disclosures increased in severity, DoCS and the Police continued to become involved, and a Joint Investigative Response Team organised medical examination of the older girl confirmed evidence consistent with penetration. A final hearing saw the medical evidence being dismissed as unreliable, and the mother labelled as being delusional by the Court appointed psychiatrist for believing her children. Four other psychiatric and two mental health reports submitted to the court contradicted the Court appointed psychiatrist's report. The hearing resulted in the father now having full parental responsibility and the mother being allowed 2 hours supervised contact per month with her girls. At present, the mother is appealing the decision, but the case is hampered by Court files missing documents and photographs.

Also of great concern is that allegations of family violence and abuse that are not supported by documented evidence available through a State/Territory authority, face a particularly difficult battle in being admissible to the court. Domestic and family violence is an underreported crime, and many women even seek to hide the cause of injuries from health and education systems. Therefore, many instances of violence and abuse are not accompanied by corresponding reports made within state systems which can be submitted as documented evidence. In these instances, it is only the word of the victim that violence and abuse has occurred.

The current, extremely limited interpretation of admissible evidence does not reflect the reality of violence and abuse within families and the limited disclosure to State/Territory systems – after years of violence and abuse, women often have very limited or no documented evidence. Under these circumstances, legislation and practice does not provide for the admission and consideration of a written affidavit that violence or abuse has taken place and/or remains a threat, which is then also corroborated by the testimony of witness (such as family and community members), psychological assessments by professionals experienced in domestic violence, and various other forms of non-State/Territory documented evidence (such as poor health and clear neglect of children).

The word of a woman making an allegation of violence and abuse without documented evidence is treated with disbelief, without providing opportunities for corroboration by other means. This indicates that, despite all the research to date and experience of legal practitioners showing that false allegations of violence and abuse are not widespread, and therefore aligning with research that shows domestic violence is an underreported crime, the Court and legal representative still responds to such allegations with a presumption that they are false[6].

[6] Examples of research: Bron T, Frederico M, Hewitt L, and Sheehan R, 2000, "Revealing the existence of child abuse in the context of marital breakdown and custody and access disputes" , Child Abuse and Neglect, V.21, No.6, pp.849-859 as cited in Laing L, "Australian Domestic Violence Clearing House Topic Paper: Domestic Violence and family law", 2003; Bron T, Frederico M, Hewitt L, and Sheehan R, 2001, "Resolving Family Violence to Children", Monash University as cited in Laing L," Australian Domestic Violence Clearing House Topic Paper: Domestic Violence and family law", 2003

The shortcomings of the Family Law Court is demonstrated by the following statement from a WFLSS client during an evaluation of the WFLSS:

"In my affidavit I had 10 different physical assaults against me. His first wife got in the witness box and stated that she left him because of domestic violence. His son to this marriage does not see him because of his violence. Yet the three of us were not believed. I was labelled as having a histrionic personality, highly emotional and dramatic. A few months before my hearing, this judge gave a father full responsibility for his two children and the father killed both children and then himself."

The NSW WRM considers that the Family Law Act should indeed be further strengthened beyond what is proposed 8-5. The New Zealand *Care of the Children Act*, may be a useful consideration in this regard. We would consider useful particular parts of section 61 that requires the Court to consider:

> "whether a child will be safe if a violent party provides day-to-day care for, or has contact (other than supervised contact) with, the child, the court must, so far as is practicable, have regard to the following matters:
>
> (a) the nature and seriousness of the violence used:
> (b) how recently the violence occurred:
> (c) the frequency of the violence:
> (d) the likelihood of further violence occurring:
> (e) the physical or emotional harm caused to the child by the violence:
> (f) whether the other party to the proceedings—
>
> (ii) consents to the violent party providing day-to-day care for, or having contact (other than supervised contact) with, the child:
>
> (h) any steps taken by the violent party to prevent further violence occurring:
> (i) all other matters the court considers relevant"[7]

Inclusion of such provisions in the Family Law Act may have resulted in a different outcome for the case below.

Case Study Two

In another case that is not an unusual circumstance to the service involved a mother who had already spent significant amount of money on legal representation in trying to achieve a safe outcome for herself and the children. The mother reported that she and the children had suffered many years of abuse. In the most recent incident of violence the father assaulted their child. The police took out an ADVO on behalf of the child and charged the father with assault.

[7] New Zealand Parliament, *Care of Children Act 2004 No 90 (as at 18 May 2009)*, http://www.legislation.govt.nz/act/public/2004/0090/latest/DLM317233.html

The child suffered internal damage as a result of the assault. The woman reported this abuse and represented herself in the Family Law proceedings. However the State police and courts' position to protect the child was overturned and the mother was ordered to continue to facilitate contact between the children and the father. The ADVO was viewed by the court as added protection for the children's contact with the father rather than a reason to limit or supervise contact. The mother is now facing the additional cost of engaging another lawyer in an attempt to continue to support and protect her children. The court has now asked for a 'family report' which will cost a further $2500. The mother continues to struggle to pay off the debt from the associated legal costs.

The case above is instructive when considering the Commission's question about whether s68P of the Family Law Act which requires the court to specify any inconsistency between family law orders and family violence protection orders is working in practice. In the case above, the Court deemed that the protection order provided a further reason to facilitate contact with the abusive father as it was perceived the protection order provided additional protection. In this case the Family Law Court's decision was completely contrary to the action taken by NSW Police and the decision of the state court, placing those children at an immediate and high risk of further harm. Family Violence Protection Orders should not be considered as a tool to aid in the facilitation of contact between a perpetrator of violence and victims.

The WRM therefore questions whether there is any value of s68 P at all if it only requires the Family Law Court to declare inconsistencies but does not compel the Court to address these inconsistencies in a manner that improves the safety of women and children.

Child Protection and Domestic and Family Violence

The NSW WRM notes that reforms through *Keep Them Safe: A Shared Approach To Child Wellbeing* have gone some way to improving child protection responses in NSW, however these reforms in our opinion and as recommended in our submission to the Wood Special Commission of Inquiry could have been further strengthened by the further development of policies, practices and programs that seek to ensure that[8]:

- The role and responsibility of holding the perpetrator accountable be the responsibility of Child protection authorities, police and the judicial system and never reliant on or burdened on the mother and children who are the victims;
- The terms and categories of 'failure to protect", and 'neglect', under the Child Protection Act, should not be applied to mothers who are escaping domestic violence where the state has not exercised all of its powers to stop the abuser, or the abuser has not been deterred by those powers.
- Child protection responses should not work in an adversarial role with the mother or act as a deterrent to calling for assistance.

[8] NSW Women's Refuge Movement Working Party, 2008, Submission to Wood Special Commission of Inquiry into Child Protective Services.

- All work with women who have been through a domestic violence relationship needs to take into account, that it is highly likely that parenting skills have been compromised as a strategy to placate the perpetrator. For example, being overly disciplinary to please the perpetrator and protect the children, or being overly permissive to make up to the children for the perpetrators behaviour.
- Many women and children who have experienced domestic violence suffer from mental health issues, particularly depression, self harm, attempted suicide and anxiety disorders. From the outset, any intervention post-disclosure of a child living with domestic violence should acknowledge the effects the violence has had on the protective parent's ability to parent within the adversity of navigating violent circumstances and trauma experienced as a result of this.
- Interventions, whether crisis protection or therapeutic, should support and nurture the relationship between the protective parent and the child.
- If Parenting Orders are already in place, the Child Protection worker is to advise the woman that the Local Court has the power to vary revise, discharge or suspend a Parenting Order while making and AVO, and should liaise with the Police in this regard.
- When Child Protection workers assess children to be at risk of harm and they advise the mother to leave the relationship, they should inform the mother of the option of taking out an AVO and support her to do so.

In our view such cultural and practice changes would have a significant positive impact on the safety and wellbeing of women and children experiencing domestic and family violence. The WRM also recommended previously that implementation of such changes could be assisted through:

> The 'Blitz audit' of services entrusted to protect children and their protective parent, post domestic violence disclosure, be replicated in NSW to improve cohesive service response, by identifying systemic failure to fully provide protection to the victims and barriers to holding the perpetrator accountable. The 'Blitz Audit' was undertaken in Perth and involved a review of all case files, from one particular case from a range of key agencies to assess the ability of the broader service system itself to protect women and children and as well as holding perpetrators accountable for their actions.

Child Protection and Family Law

It is the experience of the WRM that Community Services are often very reluctant to get involved in Family Law proceedings. Our member refuge's experiences are further supported by evidence provided by Community Services to a 2006 NSW Parliamentary Inquiry into the impact of the Family Law reforms, where a senior Community Services staff member reported that he would have concerns about Community Services assisting women to prove family violence as this would lead to increase in workload of Community Services staff[9].

[9] NSW Parliament, Legislative Council Standing Committee on Law and Justice, 2006, *Impact on the Family Law Amendment (Shared Parental Responsibility Act2006,* p.34

The WRM in previous inquiries has recommended that:

> The Family Law Court, when a case comes before it and Child Protection agencies have been involved, require a full report from the Department of Community Services, outlining the reason for Child Protection involvement, so that vital information is provided to the Family Law Court when making decision as to the best interest of the child.

The WRM reiterates this recommendation.

Integrated Responses and Best Practice

The NSW WRM acknowledges that the NSW Government has taken significant steps in improving its response to domestic and family violence, through the *Crimes (Domestic and Personal Violence) Act 2007*, the establishment of the Premiers Council, continued support of specialist domestic and family violence services and most recently the release of the NSW Domestic and Family Violence Action Plan. There are many good practice examples of responding to domestic and family violence across a range of service providers and regions. In many cases these responses are hindered due to resource limitations and a lack of integration. A significant amount of work remains to be done to ensure improved responses to domestic and family violence and to reduce the incidences of domestic and family violence. Key to this will be the development of a strong integrated service system.

The current lack of integration between and within justice and human service agencies presents ongoing challenges to women's refuges and the women and children they support. The NSW WRM has welcomed the release of the NSW Domestic and Family Violence Action Plan. The Plan contains many good actions and approaches and will hopefully assist in the ongoing development of an integrated service system. The NSW WRM is encouraged by the governance structure for the plan, which will see NGO involvement at local and regional level to assist the implementation of the plan[10]. The WRM is also supportive of the ongoing operation of the NSW Premier's Council on Preventing Violence Against Women. The Council was initially established to assist with the development of the Action Plan. It is not known whether the Council will remain in place throughout the life of the plan.

We believe that involving specialist NGO domestic and family violence services in governance structures is critical to achieving an integrated service system. Women's refuges, as individual services and as part of the WRM over the last 30 years, are often the first to know where service systems are failing and to take action to address these gaps and shortcomings. The Government has not yet fully utilised the knowledge and expertise that women's refuges employ to improve integration of services.

[10] NSW Department of Premier and Cabinet, 2010, Stop The Violence End the Silence: NSW Domestic and Family Violence Action Plan, NSW Government, pp.72-3

The NSW WRM acknowledges that the NSW Government has, in the main, engaged in discussion and dialogue with peaks and sought to work together. However we believe that the NSW response should take into account the lessons learnt from other jurisdictions where the development of integrated systems is more advanced. In Victoria, a review of coordination mechanisms highlighted the importance of having both Government and non-Government leadership across all levels of coordination mechanisms[11]. The rationale for this was that it would further strengthen links between statewide and regional coordination, strengthen cross sector collaboration and improve the monitoring of statewide implementation[12].

Victim support

Proposal 19–2 State and territory governments should, to the extent feasible, make victim support workers and lawyers available at family violence-related court proceedings, and ensure access to victim support workers at the time the police are called out to family violence incidents.

Proposal 19–3 The Australian Government should ensure that court support services for victims of family violence are available nationally in federal family courts.

The NSW Women's Refuge Movement supports the expansion of support services to targeted to women and children who have experienced domestic violence and family violence and /or child abuse who are engaged in family law proceedings. The NSW WRM indeed saw a need for this support to women and established the Women's Family Law Support Service in partnership with the Goulburn Street Registry. Dr Lesley Laing from Sydney University has been undertaking an evaluation of the service. The interim findings of this evaluation have been overwhelmingly positive. As Dr Laing notes,

"This service makes the Family Law system more accessible to a vulnerable group of women through the provision of support, advocacy, information and referrals. For women who have experienced abuse and violence, the cost of the reduction in distress as they negotiate multiple, complex systems to rebuild their lives, is incalculable"[13].

Further to this Dr Laing notes
"*The WFLSS also benefits the Family Court in potentially reducing the length of proceedings and the number of distressed litigants.*[14]"

[11] 2008, Family Violence Leadership and Coordination Mechanisms Discussion Paper, sourced from: www.gwhealth.asn.au/**violence**/documents/fvrs-irg-discussionpaper.pdf, *p.1*

[12] Ibid, p.2
[13] Laing, L., 2009 Interim Report on the Evaluation of the Women's Family Law Support Service,p.11
[14] Ibid,