

31 January 2020

Submission prepared by **safe steps** for the Joint Select Committee Inquiry into Australia's Family Law System

Thank you for the invitation to make a submission to the current Joint Select Committee Inquiry into Australia's Family Law System. **safe steps** has a long and proud history of advocating for policy reform in regard to family law. Our submissions are directly informed by the lived experiences of women and children impacted by family violence¹ and seek to ensure that the safety of victim-survivors are at the heart of all relevant policy reforms.

safe steps was one of over 100 peak family violence bodies which was signatory to the Australian Women Against Violence Alliance (AWAVA) joint letter dated 18 October 2019, raising strong concerns in regard to the current Inquiry.² These concerns included the politicised origins of the Inquiry; the apparent prioritisation of fathers with grievances in regard to family law over evidence or the safety and dignity of victim-survivors of family violence, including children; and the lack of progress towards implementing the comprehensive and evidence-based recommendations of the 2018 Australian Law Reform Commission Inquiry. It is our view that the resources earmarked for the current Inquiry would better directed towards implementing the existing Law Reform Commission recommendations, with a focus on prioritising children's safety, or toward support services and crisis accommodation for victim-survivors, demand for which continues to grow.

Despite these concerns, in the interest of improving outcomes for victim-survivors of family violence, and in order to share our expertise as Victoria's family violence crisis response service, **safe steps** has prepared this brief submission.

About safe steps

safe steps Family Violence Response Centre is Victoria's statewide crisis response service for women, young people and children experiencing family violence. Established over 40 years ago, and one of the first specialist services of its kind, **safe steps** continues to grow and evolve in response to the needs of those we support. Our ultimate goal is the elimination of family violence.

safe steps provides a comprehensive range of support services to enable women and children to live free from violence, including a 24/7 crisis response phonenumber, access to crisis accommodation and specialist supported accommodation. **safe steps** also provides a range of complementary specialist

¹ **safe steps** is an LGBTIQ+ friendly organisation. Trans, non-binary or intersex individual who identify as female or transfeminine, and are experiencing family violence can access all of our services for women. As such, when the terms 'woman' or 'women' are used in this document they are intended to include diverse identities.

² Australian Women Against Violence Alliance (October 2019) 'Joint Statement – Make family law safe: stop putting victim-survivors of family violence and child abuse in harm's way'. Accessible: https://awava.org.au/2019/10/18/media-release/joint-statement-make-family-law-safe?doing_wp_cron=1572320878.5255789756774902343750 AWAVA joint statement

supports for victim-survivors such as court support and safe housing for pets. **safe steps** is also a key partner of Medibank in the delivery of specialist trauma counselling via the national phoneline 1800RESPECT, responding to more than 1,000 phone calls per month.

In 2018-19 our Crisis Response Team provided more than 8,000 women and children with direct assistance. In the same period, we provided 42,375 emergency bed nights to women and children escaping family violence crisis. Our specialist trauma counselling phoneline responds to more than 1,000 calls per month.

Family violence and family law

‘All violence is wrong, regardless of the sex of the victim or perpetrator. But there are distinct gendered patterns in the perpetration and impact of violence.’³ The overwhelming majority of acts of domestic violence and sexual assault are perpetrated by men against women, and this violence is likely to have more severe impacts on female than male victims.⁴

Family violence is characterised by a perpetrator’s desire to dominate and control intimate partners and other family members. Perpetrators of violence often target those who they believe have less power in society, and who may therefore be more dependent on the perpetrator, and less able to leave. Forms of discrimination such as racism, ableism, ageism and homophobia intersect with gender inequality, intensifying the inequality and relative lack of power experienced by many women and children. This is reflected in the higher rates of violence experienced by groups of women and points to the need for holistic specialist support for all victim-survivors in the family law system, including children.

‘Recognising the gendered patterns of violence doesn’t negate the experiences of male victims. But it does point to the need for an approach that looks honestly at what the research is telling us, and addresses the gendered dynamics of violence’.⁵

Women are significantly more likely than men to experience violence by a partner; more likely than men to experience sexual assault; and more likely than men to be killed by an intimate partner.⁶ Intimate partner violence often occurs when women are pregnant, and children often witness and are impacted by family violence.⁷ On average, one woman a week is murdered by her current or former partner.⁸

Both women and men are more likely to experience violence perpetrated by men, with around 95% of all victims of violence in Australia reporting a male perpetrator.⁹ However, Australian women are:

³ Our Watch (2019) Facts and Figures. Available: <https://www.ourwatch.org.au/Understanding-Violence/Facts-and-figures>

⁴ Diemer, K. 2015. ABS Personal Safety Survey: Additional analysis on relationship and sex of perpetrator. Documents and working papers. Research on violence against women and children, University of Melbourne.

⁵ Our Watch (2019) Facts and Figures. Available: <https://www.ourwatch.org.au/Understanding-Violence/Facts-and-figures>

⁶ Australia’s National Research Organisation for Women’s Safety. (2018). Violence against women: Accurate use of key statistics (ANROWS Insights 05/2018). Sydney, NSW: ANROWS

⁷ Australia’s National Research Organisation for Women’s Safety. (2018). Violence against women: Accurate use of key statistics (ANROWS Insights 05/2018). Sydney, NSW: ANROWS

⁸ [Australian Institute of Criminology \(AIC\) 2017](#). The 2017 National Homicide Monitoring Program report by the AIC showed that over a 2-year period from 2012/13 to 2013/14, there were 99 female victims of intimate partner homicide. Women continue to be over-represented as victims of intimate partner homicide, accounting for 79% of all intimate partner homicides.

⁹ Diemer, K. 2015. ABS Personal Safety Survey: Additional analysis on relationship and sex of perpetrator. Documents and working papers. Research on violence against women and children, University of Melbourne.

- nearly three times more likely than men to experience violence from an intimate partner¹⁰
- almost four times more likely than men to be hospitalised after being assaulted by their spouse or partner¹¹
- more than twice as likely as men to have experienced fear or anxiety due to violence from a former partner¹²
- eight times more likely to experience sexual violence by a partner than men¹³
- twice as likely than men to have experienced an episode of stalking since the age of 15.¹⁴

Domestic or family violence against women is the single largest driver of homelessness for women,¹⁵ a common factor in child protection notifications,¹⁶ and results in a police call-out on average once every two minutes across the country.¹⁷

Exposure to violence against their mothers or other caregivers causes profound harm to children, with potential impacts on attitudes to relationships and violence, as well as behavioural, cognitive and emotional functioning, social development.¹⁸ More than two-thirds (68%) of mothers who had children in their care when they experienced violence from their previous partner said their children had seen or heard the violence.¹⁹ Crucially, recent separation is an evidence-based high-risk factor associated with greater likelihood and/or severity of family violence.²⁰

The work of **safe steps**’ includes referring women who have experienced family violence and are involved in current Magistrates or Family Court proceedings to legal and social support services via the Family Advocacy and Support Service (FASS). FASS connects victim-survivors with a specialist **safe steps** social worker who can accompany them and ensure they are safe while at court, as well as offering family violence safety planning and emotional support.

*A **safe steps** FASS worker was providing support to a woman while attending Court in regard to child custody in the context of family violence. Her husband had subjected her to years of physical violence which had resulted in her being hospitalised with broken bones on several*

¹⁰ [ABS 2017](#). Personal Safety, Australia, 2016, ABS cat. no. 4906.0. Canberra: ABS.

¹¹ [Australian Institute of Health and Welfare \(AIHW\) 2018](#). Family, domestic and sexual violence in Australia 2018. Cat. no FDV 2. Canberra: AIHW.

¹² [ABS 2017](#). Personal Safety, Australia, 2016, ABS cat. no. 4906.0. Canberra: ABS.

¹³ Bureau of Statistics’ (ABS) 2016 Personal Safety Survey (PSS). <https://www.abs.gov.au/ausstats/abs@.nsf/mf/4906.0>

¹⁴ Bureau of Statistics’ (ABS) 2016 Personal Safety Survey (PSS). <https://www.abs.gov.au/ausstats/abs@.nsf/mf/4906.0>

¹⁵ [AIHW 2017](#). Specialist homelessness services annual report 2016-17. Cat. no. WEB 217. Canberra: AIHW. Overall, 40% of clients seeking Specialist Homelessness Services were experiencing domestic and family violence, with 91% of these being female.

¹⁶ [AIHW 2018](#). Child Protection Australia 2016-2017. Cat. no. CWS 63. Canberra: AIHW. Children exposed to family violence are classified as experiencing ‘emotional abuse’, which while a broader category, is the most commonly substantiated type of harm (46%) in child protection notifications across Australia.

¹⁷ Police across Australia deal with over 264,000 domestic violence matters each year (or one every two minutes) – calculated for police data sourced across all states and territories, collated at [ABC News](#).

¹⁸ Frederick, J. and Goddard, C. (2007) Exploring the relationship between poverty, childhood adversity and child abuse from the perspective of adulthood, *Child Abuse Review*, 16, pp. 323–341; and Humphreys, C. and Houghton, C. (2008) The research evidence on children and young people experiencing domestic abuse, in Humphreys, C., Houghton, C. and Ellis, J., *Literature review: Better outcomes for children and young people affected by domestic abuse – Directions for good practice*, Scottish Government, Edinburgh. Several jurisdictions now recognise this harm as a form of family violence in and of itself.

¹⁹ [ABS 2017](#). Personal Safety, Australia, 2016, ABS cat. no. 4906.0. Canberra: ABS.

²⁰ The Family Violence Multi-Agency Risk Assessment and Management Framework (MARAM). Available: <https://www.vic.gov.au/maram-practice-guides-and-resources#the-family-violence-multiagency-risk-assessment-and-management-framework> P 26.

occasions. Their child was in his mother's care and the father had made an application for full parenting rights.

The mother advised the Judge that she wanted to fully relinquish her parenting rights in favour of the child's father. However, aware of the father's history of violence, the Judge was not willing to give him full custody and advised the mother that if she relinquished the child an urgent notification would be made to DHHS and the child would be removed from the care of both parents.

*At this point the Judge asked the **safe steps** FASS worker to intervene and have a private consultation with the mother. During this time the mother explained that she had been experiencing prolonged harassment and threats from her husband's family overseas as a tactic to coerce her into giving up custody of their child.*

*When this information was presented to the court it resulted in the Judge making an order that the harassment of the mother cease, and that the mother would retain full custody of the child, as the protective parent. The mother was overwhelmed by this positive outcome and expressed her deep gratitude for **safe steps**' support.*

Programs like FASS, that bring together specialist family violence supports in a family law court context are invaluable to victim-survivors and should be available in all family court settings, including in regional areas.

Recommendations from the recent and comprehensive Inquiry into the Family Law System undertaken by the Australian Law Reform Commission in late 2018 have yet to be implemented.

In its final report, published in March 2019, the Commission recommended that the Family Law Act should be amended to replace the presumption of 'equal shared parental responsibility' with a presumption of 'joint decision making about major long-term issues'.²¹ **safe steps** strongly supports this recommendation.

There is no evidence that women make up complaints of family violence to gain sole access to their children. About 3% of separated parents use family law courts to make parenting arrangements. These are predominantly families affected by family violence, child safety concerns and other complex issues.²² Even in this context, orders for a child to have no contact with one of their parents are extremely rare.²³

Claims made by Senator Hanson in late 2019 in regard to family law are outdated, harmful and untrue, they obscure the many ways that mothers are disadvantaged by the family law and child support systems. For example, sole parent families have the highest rate of poverty by family type in Australia, with almost one-third of all people in sole parent families living in poverty.²⁴ Mothers head more than 80 per cent of single-parent households and government figures show it is mostly fathers

²¹Australian Law Reform Commission (March 2019) Family Law for the Future – An Inquiry into the Family Law System. Available: https://www.alrc.gov.au/wp-content/uploads/2019/08/alrc_report_135.pdf P 172.

²² AIFS October 2019 Research Summary Parenting arrangements after separation - <https://aifs.gov.au/publications/parenting-arrangements-after-separation>

²³ AIFS October 2019 Research Summary Parenting arrangements after separation - <https://aifs.gov.au/publications/parenting-arrangements-after-separation>

²⁴ Poverty in Australia 2018 (2018) ACOSS and UNSW. Available: https://www.acoss.org.au/wp-content/uploads/2018/10/ACOSS_Poverty-in-Australia-Report_Web-Final.pdf. P 44.

who owe child support debt, making up \$1.54 billion of the total \$1.64 billion owed nationally.²⁵ There is an urgent need for government to prioritise addressing the underpayment of child support by fathers. This will support greater parental equity and improve outcomes for children in the context of family separation as well as supporting their health and wellbeing into the future.

Instead of misleading rhetoric about the Family Court, what is needed is informed, compassionate decision makers who understand the many complex ways in which family violence presents, including the ways that men, family violence perpetrators (the majority of whom are men), use the legal system to inflict further harm on women and children.

As one mother affected by family violence reported to **safe steps**,

After years of escalating physical, emotional and psychological violence including stalking, destroying property and threats to kill, I was finally advised by the police that I should contact a family violence service in my area for support. Child protection were also increasingly concerned about my children's safety.

After calling the family violence service I was immediately placed in refuge accommodation in another town, but within 6 hours the perpetrator had located me.

At the same time, I was advised by my lawyer that the perpetrator was now seeking to have full custody of the children on the basis that I had left the family home to enter refuge, and no longer had a permanent residence.

Safety first in family law reform

The safety of victims-survivors of family violence must be front of mind when considering reform to the Australian Family Law System. **The rights of children, but also gender equality and the rights of women, should be enshrined in its objectives and principles.**²⁶ One victim-survivor consulted by **safe steps** expressed her hope that an improved decision-making framework for parenting arrangements would “look for and enable the child-focussed parent” rather than protecting perpetrators.²⁷

This change will require the Australian Government to commit to adequately funding the family law system, particularly to providing affordable legal representation and specialist support to victim/survivors of family violence. Reforms should be co-designed with those currently disadvantaged by family law processes, such as women with disabilities, Aboriginal and Torres Strait Islander women, and women from migrant and refugee backgrounds.

The family law system in Australia is in need of long overdue reform. However, this reform should be based on research, evidence and should take account of the recommendations of the recent

²⁵ When child support isn't paid, families struggle in more ways than one. ABC News. 3 December 2019. The child support debt figures quoted in this ABC News article are not available in any regular Government publication. The figures were provided to the journalist by Services Australia (formerly the Department of Human Services) following a request from the journalist and have been reproduced here with guidance from the ABC.

²⁶ DVVic (2018) *Submission to the Australian Law Reform Commission's Review of the Family Law System Discussion Paper*. Available online: http://dvvic.org.au/wp-content/uploads/2018/12/DVVIC_-_Submission_ALRC_FAMILYLAWREVIEWWDP_FINAL_20181127.pdf

²⁷ **safe steps** submission to the Australia Law Reform Commission's Review of the Family Law System Discussion Paper, November 2018, page 8. Available: <https://www.safesteps.org.au/our-advocacy/policy-submissions/>

Australian Law Reform Commission Inquiry, rather than be based largely on the anecdotal accounts of individuals and non-experts.

Along with other family violence and legal bodies, **safe steps** is concerned that the proposed merger between the Family Court and Federal Circuit Court may reduce specialisation in family violence and thereby risk the safety of children.²⁸ We will be making a more detailed submission on this matter for the consideration of the Senate Legal and Constitutional Affairs Legislation Committee in April 2020.

Australian research from 2019 has examined separated fathers' assessments of gender fairness and unfairness in submissions to a 2014–2015 parliamentary inquiry into Australia's child support system, following significant policy changes that occurred in 2008. It found that in terms of submissions made by individuals, it is the most aggrieved fathers, who have the highest liabilities, that are the most active in policy reform processes.²⁹ In comparison,

*Few women will feel comfortable airing their most traumatic and humiliating stories before a politician who has already pre-judged them as liars. This is about boosting the grievances of a certain group of men – some dedicated fathers who have been wronged, and others excluded from their children's lives because they are dangerous. In an inquiry like this, there will be no way to tell the difference between the two.*³⁰

Despite these concerns, some victim-survivors may decide to bravely share their experiences with the Inquiry. Alongside other family violence organisations, we strongly urge the Government to prioritise the safety, dignity and wellbeing of victim-survivors while sharing their experiences and providing input to the Inquiry to ensure that the trauma they have already experienced is not compounded.

safe steps endorses the five steps to creating a family violence law system put forward by Women's Legal Services Australia in *Safety First in Family Law*³¹:

1. Strengthen the family violence response in the family law system

Strengthen family violence response through a specialist family violence pathway or specialist family violence family law courts and introduce effective ongoing court-based family violence risk assessment practices.

Remove the presumption of equal shared parenting responsibility from the Family Law Act to shift culture and practice towards a greater focus on safety and risk to children.

2. Provide affective legal help for those who need it

Boost funding to community legal centres, including specialist women's legal services, National Family Violence Prevention Legal Services, Aboriginal and Torres Strait Islander legal services and legal aid

²⁸ 'Safety must come first in family law': Legal groups reject merger plan. (November 2019). Available: <https://www.watoday.com.au/national/safety-must-come-first-in-family-law-legal-groups-reject-merger-plan-20191110-p5395q.html>

²⁹ Kay Cook and Christine Skinner (2019) Gender Equality in Child Support Policy: Fathers' Rhetoric of "Fairness" in a Parliamentary Inquiry. *Social Politics 2019*, Vol 26, No 1. P 171.

³⁰ Jess Hill. (October 2019) 'Family law inquiry is no sop to Hanson, It's a deliberate move to bury previous reviews', The Guardian. Available: <https://www.theguardian.com/law/2019/oct/03/family-law-inquiry-is-no-sop-to-hanson-its-a-deliberate-move-to-bury-previous-reviews>

³¹ Women's Legal Services Australia (2018) *Safety First in Family Law*. Available online: <http://www.wlsa.org.au/campaigns/safety-first-in-family-law>

commissions to enable legal representation for disadvantaged and high-risk families in the family law system.

For example, in 2017, **safe steps** and Victoria Legal Aid developed a mutual referral agreement to improve the legal response provided to people affected by family violence. The partnership aims to minimise the number of times that victims have to repeat their stories and to promote safety and help resolve parenting disputes and other legal problems.

3. Ensure family law professionals have real understanding of family violence

Embed the principle and practice of accessibility in the family law system and provide regular and consistent training on family violence, cultural competency, LGBTQ awareness and disability awareness for all professionals in the system, including for family law judicial officers, lawyers and interpreters.

Establish a national accreditation and monitoring scheme for all for professionals who prepare family reports and for children's contact services and legislate to ensure that judicial appointments have adequate family violence and family law expertise.

4. Increase access to safe dispute resolution services

Implement and fund a national legally assisted family dispute resolution program, appropriate for family violence cases (property and parenting), that is supported by specialist family violence and trauma informed lawyers and family dispute resolution practitioners.

5. Overcome the gaps between the family violence and child protection systems

Develop an appropriate framework that crosses over the family law system and other federal, state and territory systems, including family support services and the family violence and child protection systems.

For more detailed information on how the Australian Family Law System should be reformed to improve the safety of victim-survivors of family violence, we refer the committee to our detailed submission to the Australian Law Reform Commission prepared less than 12 months ago:

- **safe steps** Family Violence Response Centre (2018) *Submission to the Australian Law Reform Commission's Review of the Family Law System Discussion Paper*. Available online: <https://www.safesteps.org.au/wp-content/uploads/2019/01/safe-steps-submission-to-Family-Law-Review-Discussion-Paper-FINAL.pdf>

We also refer the Committee to the following submissions and statements prepared by other specialist family violence and legal services:

- Women's Legal Services Australia (2018) *Safety First in Family Law*. Available online: http://www.wlsa.org.au/campaigns/safety_first_in_family_law)
- DVVic (2018) *Submission to the Australian Law Reform Commission's Review of the Family Law System Discussion Paper*. Available online: http://dvvic.org.au/wp-content/uploads/2018/12/DVVIC_-_Submission_ALRC_FAMILYLAWREVIEWDP_FINAL_20181127.pdf