



**LEGISLATIVE ASSEMBLY**  
**FOR THE AUSTRALIAN CAPITAL TERRITORY**

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**STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY**

Mrs Giulia Jones MLA (Chair), Ms Bec Cody MLA (Deputy Chair), Ms Elizabeth Lee MLA,  
Mr Chris Steel MLA

**Inquiry into Domestic and Family Violence—Policy approaches and responses**

**Submission No. 29**  
**Legal Aid ACT**

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13 October 2017

Dr Andrew Cullen  
Committee Secretary  
Standing Committee on Justice and Community safety  
ACT Legislative Assembly  
GPO Box 1020  
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Via email: [committees@parliament.act.gov.au](mailto:committees@parliament.act.gov.au)

Dear Dr Cullen,

**INQUIRY INTO DOMESTIC AND FAMILY VIOLENCE – POLICY  
APPROACHES AND RESPONSES**

Please find attached Legal Aid ACT's submission to this inquiry.

Yours faithfully,

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**ACT Legal Aid Submission to the ACT Legislative Assembly Standing  
Committee on Justice and Community Safety Inquiry into Domestic and Family  
Violence – policy approaches and responses**

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## **Introduction**

Legal Aid ACT is an independent statutory authority tasked with providing legal advice and support services in the ACT. We are a primary provider of expert legal advice, representation and support to people affected by family violence in criminal, family and other civil law matters. Our office also provides community legal education to increase awareness and understanding of family violence along with help available to those affected. These activities aim to prevent the incidence and escalation of violence through early identification, early access to legal assistance and referral to appropriate non-legal support services.

Meeting the needs of primary victims of family violence is a core priority for the Commission.<sup>1</sup> Legal Aid ACT is committed to ensuring greater integration of services for victims whose legal needs extend beyond immediate safety to a range of family, criminal and civil matters. For example, in addition to advice about a Family Violence Order, a victim may require legal assistance with relationship breakdown, arrangements for children, property settlement, child protection, debt and victims of crime compensation. The multifaceted and complex nature of family violence often requires holistic assistance to cater for clients' varied legal and non-legal needs. Legal Aid ACT's Cultural Liaison Unit comprising our 2 Aboriginal and Torres Strait Islander Liaison Officers, 2 Cultural Liaison officers and our Family Violence Support Officer work alongside our legal team to ensure clients affected by violence receive the non-legal support and referrals they require.

Legal Aid also assists people who have used, or are alleged to have used, family violence. We provide advice and representation to those charged with family violence offences and assist respondents to family violence orders. The provision of expert, timely advice to offenders and respondents is essential to ensuring procedural fairness. Moreover, in some cases it becomes evident that the respondent or alleged offender is in fact the primary victim of the violence, requiring safety-related support and referrals. Overall, Legal Aid ACT's assistance to respondents and accused persons helps to

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<sup>1</sup> Legal Aid ACT Annual Report 2015-2016 p27 available at: [http://www.legalaidact.org.au/pdf/annualreport\\_2015-2016.pdf](http://www.legalaidact.org.au/pdf/annualreport_2015-2016.pdf)

streamline complex legal processes and limit the length of time both victim and accused spend before the courts.

This submission addresses the inquiry's following terms of reference:

a) The adequacy and effectiveness of current policy approaches and responses in preventing and responding to domestic and family violence in the ACT;

and

b) the implementation of the ACT Government's 2016–17 funding commitments to prevent and respond to domestic and family violence in the ACT, in particular how outcomes are being measured;

Our submission addresses Legal Aid's observations of policy and practice regarding the ACT's Criminal Justice response to family violence. We also explore policy and practice in relation to the diverse civil law needs of clients affected by family violence, particularly relating to Family Violence Orders, Family Law and Child Protection. Finally, our submission identifies Elder Abuse as an emerging area of family violence where new approaches are needed to maximise the safety of vulnerable older people in the ACT.

### **Family Violence - Definition**

Family violence broadly refers to violence between family members or intimate partners. Family violence may involve physical, sexual, emotional, psychological or financial abuse. At its heart, family violence is characterised by a pattern of behaviour that enables a perpetrator to exercise ongoing control over a victim.<sup>2</sup> No social group is immune from the effects of family violence, however factors including gender, age, ethnicity, cultural and linguistic diversity, socioeconomic status, mental health, geographic isolation and indigenous status can increase vulnerability to the incidence and effects of family violence.<sup>3</sup>

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<sup>2</sup> Health and Community Services Directorate (ACT), *ACT Prevention of Violence Against Women and Children Strategy 2011–2017* (2011) 15.

<sup>3</sup> Janet Phillips, 'Domestic, Family and Sexual Violence in Australia: An Overview of the Issues' (Research Paper Series, 2014–15, Parliamentary Library, Parliament of Australia, 2014) 7.

Legal Aid ACT recognises that people of all genders can be victims and/or perpetrators of Family Violence. However, research clearly identifies that family violence is overwhelmingly committed by men against women and children. Eighty nine women were killed by their current or former partner in Australia between 2008-10. This equates to nearly one woman every week.<sup>4</sup>

In relation to terminology, for brevity Legal Aid ACT has chosen in this submission to use the terms ‘perpetrator’ and ‘victim’. We recognise that some members of the ACT community prefer alternate terms including ‘survivor of family violence’ or ‘a person who uses family violence.’ In practice, Legal Aid ACT uses a range of terminology when assisting and supporting clients affected by violence.

In relation to legislative definitions, the term ‘family violence’ is defined in section 8 of the *Family Violence Act 2016* (ACT) and includes physical violence, sexual violence, emotional or psychological abuse and economic abuse. The full legislative definition is at ‘Annexure A’ of this submission.

Family Violence is also defined in section 4AB of the *Family Law Act 1978* (Cth) as ‘violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the *family member*), or causes the family member to be fearful.’ Section 4AB provides examples of such behaviour including assault, sexual assault, repeated derogatory taunts and unreasonably denying a family member financial autonomy. The full Family Law Act definition is included at ‘Annexure B’ of this submission.

## **Incidence**

People of all gender can be victims and/or perpetrators of family violence. However, that family violence is overwhelmingly committed by men against women is uncontested. Research from the 2012 ABS Personal Safety Survey and Australian

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<sup>4</sup> Australia’s National Research Organisation for Women’s Safety Limited (ANROWS) ‘Violence Against Women: Key Statistics’ 2016 Factsheet available at: <https://anrows.org.au/publications/fast-facts-0/violence-against-women-key-statistics%20>

Institute of Criminology shows that 1 in 6 Australian women had experienced physical or sexual violence from a current or former partner and 1 in 4 Australian women had experienced emotional abuse by a current or former partner.<sup>5</sup> By contrast, 1 in 19 Australian men had experienced physical or sexual violence from a current or former partner and 1 in 7 Australian men had experienced emotional abuse by a current or former partner. These estimates are likely conservative due to the ongoing challenges of underreporting and limited community awareness of the scope of family violence.

In the ACT, the reported victimisation rate for family violence related assault rose by 33% to 240 victims per 100,000 persons in the ACT from 2015 – 2016.<sup>6</sup> Indeed, 41% of Assaults recorded in the ACT during 2016 were Family and Domestic Violence-related.<sup>7</sup>

Between 2015-16 and 2016-17, Legal Aid has had a 15% increase in the number of clients seeking assistance in relation to matters involving family violence and a 23% increase in work undertaken for those clients. In 2016-17, 22% of all advices or legal tasks undertaken by Legal Aid related to family violence or personal protection orders. A review of our family law practice in 2016 showed that some 80% of litigation files involve family violence. This finding was consistent with a 2016 National Legal Aid survey across all Legal Aid Commissions.<sup>8</sup>

The figures in the table below reflect work undertaken for clients in criminal, family and other civil matters involving family violence. They demonstrate the high incidence of family violence across all of the Commission's core work areas.

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<sup>5</sup> Australia's National Research Organisation for Women's Safety Limited (ANROWS) 'Violence Against Women: Key Statistics' 2016 Factsheet available at: <https://anrows.org.au/publications/fast-facts-0/violence-against-women-key-statistics%20>

<sup>6</sup> Australian Bureau of Statistics, *4510.0 – Recorded Crime – Victims, Australia, 2016* (2017).

<sup>7</sup> Ibid.

<sup>8</sup> National Legal Aid, 'COAG Commitment Welcomed as New DV Figures Released Study Reveals DV Endemic in Family Law Cases' (Media Statement, 18 April 2016) 1.

<b>Matters involving Family Violence</b>	<b>Number of Legal Advices, Tasks, Duty Representation and Grants</b>	<b>Number of clients</b>
2015-2016	1,624	1,176
2016-2017	1,994	1,357

**Criminal Law – current policy approaches to prevent and respond to domestic and family violence**

In 2016-17, Legal Aid provided 191 grants of legal aid to clients charged with family violence offences. Legal Aid wishes to highlight the following issues relating to the ACT’s current criminal justice response to family violence matters.

**Criminal Hearings for Family Violence Matters**

One of the key aims of the long running ACT Family Violence Intervention Programme (FVIP) upon its establishment was to improve time frames for the resolution of criminal charges arising from family violence incidents. This Programme recognised the stress and anxiety that can accompany protracted criminal proceedings for all parties involved, especially for victims of family violence and their children.

Parties to a family violence matter may still be living together or at least co-parenting children as part of a separation. Many victims report that they wish to remain in a relationship with the other party, but they want the violence to stop. In this context, if an offender requires assistance or support to cease the use of physical violence and/or other forms of, the sooner that assistance can be implemented the better for the entire family. Initial implementation of the FVIP saw family violence criminal matters listed for contested hearing within weeks of the confirmation of a plea of not guilty.

In this vein, Legal Aid supports block listing of family violence hearings to facilitate earlier resolution of matters. Block listing has been utilised in the Supreme Court with

tremendous success with both the profession and the judiciary embracing its benefits for the community. Block listing in the Magistrates Court could see similar results. We note that if such block-listing were to occur, there would need to be a level of cooperation between the Magistrates and Supreme courts to ensure that block listing periods were not held in both courts at the same time. Legal Aid ACT would otherwise struggle to appropriately resource appearances in dual block listing periods.

### **Alternative pathways for first time offenders committing family violence offences**

Legal Aid regularly appears for family violence offenders in circumstances where it is their first offence and the offence is of relatively minor technical criminality. These offenders are unlikely to see any significant sentence that might assist to bring about behavioural change. Such offenders are typically sentenced to a simple good behaviour order. Some of them are given no conviction and sent on their way. Legal Aid considers such circumstances a lost opportunity for intervention. We would like see the exploration and consideration of how this cohort of offenders could be dealt with in a way that might secure the beginnings of behavioural change. For example, offenders could be offered the opportunity to participate in a program precisely targeted to their circumstances at the point of initial police intervention. Further, offenders could be directed to participate in appropriate programs as part of the granting of bail. The individual's participation could then be taken into account on sentence.

We note that we are unaware of any current programme specifically designed for this kind of offender with interventions typically (and not inappropriately) designed for more high- risk serious family violence offenders. We regularly deal with matters where parents of young adults and partners contact police because they simply feel they have reached their limit and have nowhere else to turn. These clients commonly do not want their partner or child charged with a criminal offence but are seeking some sort of intervention to assist their loved one to begin to reflect on and change their behaviour.

Legal Aid recognises the appropriateness of criminalising family violence behaviour and the need to remove responsibility for charging perpetrators from victims of their crimes. However, we also recognise the complexity of family dynamics, and that victims who contact police are drawn almost unwittingly into the criminal justice system - a system they often determine they do not want to be a part of. These victims feel the full weight of that system when they seek to have charges dropped and soon realise that is unlikely to occur. They may then leave the system without an ongoing remedy to assist their loved one to change.

Legal Aid have concern that this category of victim may not contact police again in future. Further, as a community, we are missing a valuable opportunity to intervene in a meaningful way. Providing a programme that can be accessed by this cohort of offender almost immediately upon police intervention would go some way to maximising the opportunity of that intervention.

### **Support for unfavourable witnesses in Family Violence Matters**

From time to time, Legal Aid ACT receives requests for assistance from the complainant partners of clients who have been charged with family violence offences. The ACT DPP's 'pro-prosecution' approach to Family Violence matters ensures that once a charge is laid, the prosecution proceeds if there is sufficient evidence to put before the court, even where the complainant requests that the charges be dropped. Legal Aid ACT is concerned that where a partner complainant does not wish a matter to proceed, her relationship with the DPP can become fraught, leading to in a distinct lack of engagement with the relevant prosecutor and/or the DPP Witness Assistants. Accordingly, the partner complainant may fail to access important information relating to the legal processes that she is required to participate in and as a result, lacks of understanding of what will be required. As advocate for the accused, Legal Aid ACT cannot provide complainants in this situation with the information or advice they request regarding upcoming legal processes and court appearances.

Legal Aid ACT recommends that consideration be given to how family violence complainants in this situation can obtain appropriate information and advice about

their role in proceedings and potentially, advice about the risks associated with perjuring oneself in the witness box. It may be that other service providers in the ACT criminal justice sector could be drawn on to provide support to complainants in this context.

**Training for the Judiciary, Members of the Legal Profession, Support and other front-line court staff**

Legal Aid ACT strongly supports comprehensive and regular training for members of the judiciary, members of the profession, support and other front line court staff around the dynamics of family violence and the challenges of working with perpetrators and victims. Appropriate, targeted training enhances the capacity of those professionals to recognise family violence and identify why perpetrators and victims might behave in particular ways. This inevitably impacts the assistance and support that can be provided to those who access the court as well as positively impacting judicial understanding of the complexities involved in domestic relationships that feature violence. We note that Recommendation 26-3 of the ALRC report recommends such training and we strongly endorse it as best practice across criminal and civil jurisdictions.<sup>9</sup>

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<sup>9</sup> Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence – A National Legal Response*, ALRC Report No 114, NSWLRC Report No 128 (2010) 17.

## Family Violence and Civil Law needs

People affected by family violence often have a complex range of related legal problems. Addressing these diverse issues across territory and federal jurisdictions can present considerable challenges for victims, perpetrators and practitioners.<sup>10</sup> Legal Aid ACT has identified the following as key area of legal need that often intersect with exposure to family violence:

- Family Violence Orders
- Family law
- Child Protection
- Housing
- Financial issues
- Employment
- Health and injury compensation

Where appropriate legal assistance is not available, the above issues can further exacerbate the trauma and stress experienced by clients. A failure to address legal issues stemming from violence may also escalate conflict and the likelihood of further violent incidents. Confusion associated with multiple legal processes, court dates and evidence requirements can make it extremely difficult for victims and perpetrators to navigate the legal system and achieve just and effective outcomes.<sup>11</sup> Such confusion can be exacerbated where an individual cannot access legal representation where, for example, the person is not eligible for a grant of Legal Aid and cannot afford private legal representation.

As noted above, meeting the needs of primary victims of family and violence is a core priority for the Commission.<sup>12</sup> Over recent years, Legal Aid has sought to provide more

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<sup>10</sup> Christine Bond et al, 'Evaluation of the Specialist Domestic and Family Violence Court Trial in Southport' (Summary and Final Reports, Griffith Criminology Institute, February 2017) 8 [2.1.1].

<sup>11</sup> Ibid.

<sup>12</sup> Legal Aid ACT Annual Report 2015-2016 p27 available at: [http://www.legalaidact.org.au/pdf/annualreport\\_2015-2016.pdf](http://www.legalaidact.org.au/pdf/annualreport_2015-2016.pdf)

assistance to a greater number of primary victims. This has been achieved through several mechanisms including the following:

**Increasing access to information and legal advice**

The Legal Aid Helpline received 15,877 calls in 2016-2017. Domestic violence and personal protection orders were the most second most common inquiry handled by our helpline team, consisting of 598 calls. The most common type of inquiry related to contact arrangements for children, at 770 calls. Clients calling the Helpline who require ongoing assistance with family violence-related matters are directly referred to the appropriate area within the Commission including our Domestic Violence Unit, our Family Advocacy and Support Service or our Criminal and Family litigation teams.

**Cultural Liaison Unit**

The Commission has a strong commitment to the delivery of culturally appropriate legal services. Our Cultural Liaison Unit includes 2 Aboriginal Liaison officers, 2 Cultural Liaison Officers and a Family Violence Support Officer who work together to provide specialist support to clients from the Aboriginal and Torres Strait Islander Community, CALD clients and clients affected by family violence. Overall, Legal Aid ACT provided 1,156 services to Aboriginal and/or Torres Strait Islander clients in 2016-17 and our Cultural Liaison Officers provided 347 non-legal support services to members of the CALD community in the same period.

In particular, we have found that many indigenous or CALD victims are more comfortable having an initial conversation with a liaison officer about their experience of violence prior to being willing to seek advice from a lawyer. Our liaison officers also provide support to clients across multiple legal matters, assisting them to understand advice provided by lawyers, prepare and manage their cases across multiple jurisdictions, and provide referrals for non-legal support in areas including counselling, housing and health services. Our Cultural Liaison Unit has a crucial role engaging sectors of the community that may previously have been unlikely or unwilling to seek legal help in relation to family violence.

**Increasing provision of legal advice at outreach locations.**

Legal Aid has commenced a growing number of outreach services where clients receive advice and task assistance at community centres or other locations where they already feel comfortable accessing other types of assistance. Outreach locations include the ACT Government's Child and Family Centres, the Migrant and Refugee Settlement Service and Council on the Ageing. Clients who may not otherwise feel comfortable contacting Legal Aid directly about their family violence issue are often more willing to speak to a lawyer when the appointment can take place at an external agency which the client already considers to be 'safe' environment. Anecdotally, this is particularly the case for clients from a culturally and linguistically diverse background.

**Integrated Services**

Legal Aid has also sought to provide 'joined up' services so that no matter which part of our service a client presents their legal issues relating to family violence are identified and appropriately triaged. For example, a client who presents at our Family Law Duty Service at the Family Court may require advice about a Family Violence Order, upcoming Child Protection Proceedings and a Family Court dispute. Having identified these issues, the lawyer providing advice at the duty service will either have the expertise to provide initial advice on multiple issues, or will directly refer the client to another Legal Aid lawyer who can assist. Wherever possible, we are working to improve information flow to ensure clients don't have to tell their stories multiple times and, where possible, have the same lawyer represent them in related proceedings.

Where clients obtain initial advice, but are not eligible for a grant of legal aid for ongoing representation, we ensure that clients understand alternate options for seeking assistance—for example, via the Women's Legal Centre—or pathways for contacting a private lawyer, often through the ACT Law Society's referral list.

Below, we provide further detail regarding the different civil law issues that commonly arise for clients affected by family violence. Analysis of these issues is essential in

exploring the adequacy and effectiveness of current policy approaches and responses in preventing and responding to domestic and family violence in the ACT.

### **Family Violence Orders and the Legal Aid Domestic Violence Unit**

Legal Aid's specialist Domestic Violence Unit has been providing front-line services to members of the community for over 25 years. The Unit operates at the Magistrates Court, providing free legal advice and representation to community members who are applying for, or responding to, Family Violence Orders. The Unit operates flexibly, with clients able to book appointments or 'drop-in' to obtain legal advice.

Legal Aid is supporting more victims to navigate the often confusing processes involved in applying for a family violence order and safe-guarding arrangements for children after separation. We are also working with clients to identify risk and determine how legal processes can help them to prioritise their safety and their children's safety. Without Legal Aid support, these victims would generally go unassisted.

### **Safer Families Initiative**

It is relevant here to address the Committee's term of reference relating to the implementation of the ACT Government's 2016–17 funding commitments to prevent and respond to domestic and family violence in the ACT. As part of the Safer Families Initiative, the ACT Government has committed to providing Legal Aid with \$300,000 per annum of additional funding for four years to increase our capacity to represent victims of family violence. As a result, our specialist Domestic Violence Unit is now staffed with three solicitors each morning and offers drop-in appointments throughout the day. In the 2016-17 financial year, Legal Aid has assisted 141 more victims of family and domestic violence – a 20% increase on the number assisted in 2015-2016.

## New Legislative Framework

On May 1 2017 a new legislative framework commenced, with the *Domestic Violence and Protection Orders Act 2008* replaced by the *Family Violence Act 2016* and the *Personal Violence Act 2016*. In line with this new framework, the old terminology of ‘Domestic Violence Orders’ has been replaced by that of ‘Family Violence Orders’. Legal Aid played an integral role in the consultation and law reform process that led to the introduction of *Family Violence Act 2016*. This included Legal Aid seconding one of our domestic violence solicitors to the Justice and Community Safety Directorate for 6 months to contribute their practical expertise to the development of new policy and procedure.

### Case Study

Claudia’s ex-partner John has been attempting to contact her incessantly, sending her dozens of messages and calling her up to 50 times per day. John has not made explicit threats to physically harm Claudia in these messages but has used derogatory and intimidating language. Claudia has repeatedly asked John to stop but his conduct continues to escalate. Claudia has been experiencing significant psychological distress as a result of John’s behaviour and is concerned that it will continue to escalate, further impacting her health and wellbeing. Legal Aid ACT solicitors provide Claudia with legal advice and represent her in an application for interim and final Family Violence Orders to prevent ongoing emotional and psychological abuse from John.

## Definition of Family Violence – Use of Technology

Legal Aid warmly welcomes the expanded legislative definition of family violence<sup>13</sup> in section 8 of the *Family Violence Act 2016* that explicitly recognises emotional,

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<sup>13</sup> *Family Violence Act 2016* s8

psychological and economic abuse. In our view, the expanded definition better reflects the reality of family violence reported by our clients.<sup>14</sup>

There remains a key element of family violence that we believe is not sufficiently reflected in the new definition. This relates to the use of technology to harass, threaten or intimidate a victim, including through the electronic distribution of intimate images.

A 2017 study found that one in five Australians has experienced intimate image online harassment.<sup>15</sup> Victims experience high levels of psychological distress, and women are more likely than men to fear for their safety due to image-based abuse.<sup>16</sup> Perpetrators are more likely to be male, and use images to coerce, threaten and harass victims for a range of reasons, including control and intimidation.<sup>17</sup> Research suggests that image-based harassment, particularly forms in which victims are threatened with online distribution, is strongly associated with family violence.<sup>18</sup>

Legal Aid is generally supportive of the introduction of a new offence criminalising the non-consensual distribution of intimate images, as outlined in our submission regarding the Crimes (Revenge Porn) Amendment Bill 2017 exposure draft. Legal Aid notes the likely passage of criminal legislation in the ACT in the coming months, which will seek to hold perpetrators to account for the impact of intimate image online harassment.

Legal Aid ACT would also welcome amendment of the definition of 'Family Violence' in section 8 the *Family Violence Act 2016* to specifically reference the use of technology to intimidate, harass and threaten, with particular emphasis on the distribution of intimate images. Legal Aid recognises that expanding the definition of Family Violence in this way would have consequences in a criminal context in regards to triggering police powers to arrest without a warrant under s212 of the

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<sup>14</sup> Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence – A National Legal Response*, ALRC Report No 114, NSWLRC Report No 128 (2010) 17 [5-1], 216.

<sup>15</sup> Nicola Henry, Anastasia Powell and Asher Flynn, 'Not Just 'Revenge Pornography': Australians' Experiences of Image-Based Abuse' (Summary Report, RMIT University, May 2017) 2.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid 3.

<sup>18</sup> Ibid 6.

*Crimes Act 1900*. Section 212 provides that ‘A police officer may, without warrant, arrest a person for a family violence offence if the police officer suspects on reasonable grounds that the person has committed or is committing the offence.’ For the purposes of s212 ‘family violence offence’ is defined by reference to the *Family Violence Act 2016*. The relevant Dictionary provision of the *Family Violence Act 2016* states: ‘A family violence offence means an offence if the conduct making up the offence is family violence’ as defined by s8 of the *Family Violence Act*.

Amendment to the definition of Family Violence should ideally be accompanied by amendment to s38 of the *Family Violence Act 2016*. Section 38 identifies conditions that may be imposed on the respondent to a Family Violence Order such as prohibiting the respondent from being at the protected person’s home, or their place of work. We recommend that this list be expanded to include prohibitions relating to the distribution of intimate images and use of technology to harass, threaten or intimidate the protected person.

Explicit recognition of this type of family violence may strengthen the ability of Family Violence Orders to deter ongoing use of technological abuse and would further aid enforcement of breaches relating to on-line harassment.

### **Family Violence and Family law**

The safety of women who are subjected to family violence is at greatest risk when they attempt to leave, or leave, the relationship. At this point family law disputes often arise in relation to arrangements for children and an equitable division of property.<sup>19</sup> Legal Aid’s expert litigation practice provides advice and representation in a high volume of family law matters. As noted above, a national survey indicated that family violence is a factor in 79% of family law cases run by Legal Aid Commissions Australia-wide.<sup>20</sup> This supports a 2016 review of Legal Aid ACT’s family law practice which found that

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<sup>19</sup> Renata Alexander, ‘Moving Forwards or Back to the Future? An Analysis of Case Law on Family Violence under the ‘Family Law Act 1975’ (Cth)’ (2010) 33(3) *The University of New South Wales Law Journal* 907, 910

<sup>20</sup> National Legal Aid, ‘COAG Commitment Welcomed as New DV Figures Released Study Reveals DV Endemic in Family Law Cases’ (Media Statement, 18 April 2016) 1.

80% of our case files involve allegations of family violence. The Family Court takes into account experience of, or exposure to, family violence as a primary consideration in assessing the best interests of the child.<sup>21</sup>

In addition to ensuring that relevant evidence of Family violence is before the court, Legal Aid solicitors also often assist clients to navigate the interplay between the federal (family law) and territory (family violence) jurisdictions. Clients often require strategic advice about how Family Violence Order proceedings may impact or relate to their Family Law Proceedings, including how to address inconsistency between Family Law and Family Violence Orders. From Legal Aid's perspective, it is essential that clients can access expert, timely advice about the overlap in these jurisdictions to minimise confusion and ensure relevant evidence concerning any violence is before both courts.

## **Family Violence and Family Dispute Resolution**

Legal Aid ACT's Family Dispute Resolution (FDR) Program also provides crucial, safe opportunity for families affected by family violence to reach a negotiated solution. Our FDR program provides a lawyer-assisted model of mediation for family law disputes. We undertake FDR at all stages of family law disputes including pre-litigation, mid-litigation, pre-final hearing and post Final Orders (where suitable). The vast majority of matters involved in FDR Conferences involve allegations family violence. Legal Aid ACT undertook 260 conferences in 2016/17 with a settlement rate of 77%. All matters referred to our FDR conferencing unit are assessed for suitability, including careful assessment of safety issues relating to family violence. In 2016/17, only 7 cases were found to be unsuitable for conferencing.

There are several key aspects of our FDR conferencing program that make it possible for Legal Aid ACT to effectively conference family law matters involving family violence matters. These include our use of 'shuttle conferencing' where the parties are not required to see each other throughout the process. Our conference facilities allow the parties to be physically separated throughout the conference with access to

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<sup>21</sup> *Family Law Act 1975* (Cth) s 60CC(2)(b).

independent exits and toilets. Legal Aid's FDR program also uses a lawyer-assisted model, which provides support and empowerment for family violence victims and goes a considerable way towards addressing the power imbalance between the parties.

Legal Aid's FDR conferencing program is complementary to the dispute resolution work of local ACT services including Relationships Australia and the Family Relationships Centre (in fact a Memorandum of Understanding was recently agreed between the organisations). Relationships Australia and the Family Relationships Centre do not currently allow parties to be legally represented in their conferences. Legal Aid ACT has established referral arrangements to ensure that where clients are found to be unsuitable for FDR at the Family Relationships Centre or Relationships Australia, they are direct referred to Legal Aid to explore the possibility of accessing our lawyer-assisted model. This collaborative approach provides additional options for clients who are 'screened out' of community-based FDR services at the Family Relationships Centre or the Family Relationships Centre but do not want to commence Court proceedings.

Without the option of a Legal Aid FDR conference, these clients would generally have no choice but to resort to litigation to resolve their family law dispute. Alternatively, a family violence victim wishing to avoid litigation may feel they have no choice but to submit to the perpetrator's demands, resulting in arrangements for children or property settlement that are not 'just and equitable' and/or do not reflect what is in the children's best interests.

### **Family Law Advice and Duty Services**

In addition to providing representation and Family Dispute Resolution services to clients eligible for a grant of legal aid, the Commission provides free advice and duty assistance to people affected by family violence through our Family Law Duty Service and our new Family Advocacy and Support Service (FASS).

### **Family Law Duty Service**

Legal Aid’s Family Law Duty Service operates from 10am-3pm each day at the Family Court Registry. Anyone with a family law question can ‘drop in’ to the office to seek advice. The service receives queries from people across the spectrum, from those who are thinking of separating and want to know more about the law to self-represented litigants who have been embroiled in family law proceedings for many years and require advice about a one-off procedural or legal issue.

Many clients also present with legal issues related to their family law matter, particularly family violence orders and child protection issues. Duty service lawyers are trained to identify these issues and respond appropriately, whether it be through the provision of duty advice about these matters, direct referral to another part of the Commission—such as the Domestic Violence Unit—or the making of appropriate referrals for non-legal help. Since April 2017, we have had the option of diverting many clients presenting at the Duty Service with family violence problems to our new Family Advocacy and Support Service (FASS).

### **Family Advocacy and Support Service (FASS)**

In 2017, Legal Aid Commissions across Australia implemented the Family Advocacy and Support Service (FASS), funded under the Third Action Plan of the *National Plan to Reduce Family Violence against Women and their Children* (2010 – 2022).<sup>22</sup> The Federal Government funds FASS programs in locations across Australia in agreement with state and territory governments.<sup>23</sup>

FASS provides integrated duty lawyer and social support services. It aims to help clients navigate the complex interplay between the ACT and federal court systems, and provides tailored assistance that supports the efficient resolution of family law matters

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<sup>22</sup> Department of Social Services, Commonwealth of Australia, *National Plan to Reduce Violence Against Women and their Children 2010–2022: Third Action Plan 2016–2019* (2016).

<sup>23</sup> *Project Agreement for Family Advocacy and Support Services: An Agreement Between the Commonwealth of Australia and the States and Territories*, 23 January 2017, 2.

involving family violence.<sup>24</sup> This includes appropriate referrals to necessary social support services that cater for the direct implications of seeking legal assistance, including safety, housing and financial support. A key aim of FASS is to ensure that both clients alleging, and accused of family violence have the opportunity to put evidence about that violence, or alleged violence, before the courts. At present, the Federal Government has committed to funding FASS until 30 June 2019.

### *Legal Aid ACT and FASS*

Through FASS, Legal Aid ACT has expanded its service provision to clients who experience or use family violence in the context of relationship breakdown. Legal Aid's FASS operates from the Canberra Family Law Courts Registry. Client intake to the FASS occurs through multiple channels. Key intake points for FASS include the Commission's Family Law Duty Service, our Domestic Violence Unit, the Domestic Violence Crisis Service, local community-based support services including emergency accommodation providers and Legal Aid ACT's own outreach programs and helpline service.

FASS lawyers provide clients with an extended duty service that may involve advice, assistance drafting court documents including subpoenas and one-off representation in short or procedural mentions and urgent interim proceedings.<sup>25</sup> Critically, FASS enables clients to be interviewed and assisted immediately, particularly with urgent matters. Following the commencement of FASS operations on 1 July 2017, Legal Aid ACT has provided 216 instances of legal advice or duty assistance to FASS clients.

Family Advocacy and Support Legal Services (FASS)		Number of Services	Number of Clients
July – September 2016-2017	Advice	120	60
	Duty Lawyer: representation, drafting etc.	96	70

<sup>24</sup> *Family Advocacy and Support Services Scheme National Guidelines*, 1 March 2017, 1.

<sup>25</sup> *Family Advocacy and Support Services Scheme National Guidelines*, 1 March 2017, 3.

**Case Study**

James applies for an urgent Family Court order requiring Preeda, his ex-partner, to post bond prior to travelling to Thailand with their daughter to ensure she returns to Australia. Preeda is a permanent resident with a stable job and says she will return to Australia. She is travelling to Thailand with her daughter to visiting a dying relative. There is a long history of James using family violence against Preeda. Preeda is from a culturally and linguistically diverse background and has difficulty with written english, increasing her confusion about the court application that has been filed by James. Preeda has complied with the procedure for overseas travel agreed to under previous Family Court consent orders. She is confused about James's application and is concerned that her daughter will be unable to travel with her to visit their extended family. Preeda fears that James has filed this application as another means to continue his exercise of control over her. Preeda is supposed to leave for Thailand imminently. Legal Aid ACT's FASS team drafts documents and negotiates with James on Preeda's behalf. His application is ultimately withdrawn and he provides written consent provided for Preeda to travel overseas with their daughter.

*FASS Social Support Worker*

FASS funding has allowed Legal Aid ACT to employ an in-house social support worker to provide direct support to clients using, or being subjected to, family violence. This Worker is based within our Community Liaison Unit. Our Social Support Worker provides support including risk assessment, identification of non-legal needs, connection with appropriate support services and practical assistance in managing court appearances across territory and federal courts.

The social support worker also provides tailored assistance to clients who are particularly vulnerable due to a range of factors. This includes victims of elder abuse, many of whom do not want to pursue a legal solution and may experience degenerative conditions such as dementia, potentially resulting in distrustful and ineffective relationships with other support providers. Legal Aid ACT's social support worker has also provided assistance to a range of culturally and linguistically diverse clients who experience additional barriers accessing support services.

**Case Study**

Tess has been experiencing family violence from her intimate partner for 15 years. She still lives with him and struggles to articulate her fears and identify options for ending the violence. Tess has been isolated from friends and family due to the violence. Continuous psychological control from her partner over a sustained period of time has left her unable to determine whether his behaviour falls into what may be considered 'normal' or whether his conduct is unacceptable. Tess eventually builds the courage to seek initial advice from a Legal Aid lawyer at our Domestic Violence Unit during a drop-in appointment. However, Tess simply isn't ready to pursue a legal solution and is overwhelmed by the notion of applying for a Family Violence Order. With Tess's agreement, the Legal Aid solicitor arranges for Tess to speak with the FASS social support worker who talks to Tess about steps she can take to safeguard her safety on a day-to-day basis and connects her with some free counselling. The social support worker checks-in with Tess over the coming months and reminds her that when and if she's ready to take further steps, the social support worker can attend a further legal appointment with her and talk to her about alternate accommodation options and accessing financial support.

**Family Violence and Child Protection**

Family violence can also trigger intervention by Child and Youth Protection Services (CYPS) and in some cases, removal of children under the *Children and Young People Act* 2008.<sup>26</sup> In many child protection cases, CYPS has concerns regarding the exposure of children to family violence. Exposure to family violence can severely impact a child’s health and safety, psychological adjustment and social development.<sup>27</sup> Legal Aid ACT provides legal assistance and advocacy to individuals whose children have been, or are at risk of being, removed, by CYPS. Our clients may have been accused of using violence or of insufficiently shielding a child from violence in the home. An in-house Legal Aid lawyer is also frequently appointed as a representative for the child or children concerned.

Key issues before the court in child protection matters often include the extent to which a parent is willing and able to safeguard a child from ongoing exposure to family violence. In this context, Family Violence Orders made by the Magistrates Court or the Childrens Court can be a key tool used by parents to protect children from exposure to violence from a violent partner or ex-partner.

It is not unusual for clients involved in child protection proceedings to also require advice or representation in a related family law or family violence order matter. Again, the needs of clients who present with multiple issues are triaged and the in-house team work to address the client’s legal needs in order of urgency. The following table demonstrates work undertaken by Legal Aid in the care and protection jurisdiction in the last 2 financial years.

<b>Grants of Aid</b>	<b>Care &amp; Protection</b>	<b>Child Representation</b>	<b>Total</b>
2015-2016	165	144	309
2016-2017	151	128	279

<sup>26</sup> Laurie Glanfield, Board of Inquiry, ACT Government, *Report of the Inquiry: Review into the System Level Responses to Family Violence in the ACT* (2016) 4.

<sup>27</sup> Gayla Margolin and Elana B. Gordis, ‘The Effects of Family and Community Violence on Children’ (2000) 51 *Annual Review of Psychology* 445, 446.

## **Family Violence and other Civil Legal Issues**

Where possible, Legal Aid ACT works to limit the effects of family violence by providing a ‘wrap-around’ service addressing related legal needs. In 2016-17, approximately 50% of clients who received family violence advice or duty assistance from our in-house team were also provided with advice or duty assistance in relation to a second legal matter.

Legal Aid solicitors have a comprehensive understanding of the multifaceted effects of family violence, allowing them to identify and respond to the legal needs of affected persons. Moreover, the strong cross-institutional relationships between Legal Aid ACT, ACT Community Legal Centres and non-legal community support services ensure that practitioners—with the help of our cultural liaison unit—are well-placed to identify a client’s social, emotional and financial needs and make appropriate referrals for support.

Below, we briefly detail common areas of civil law need that arise from exposure to family violence. Again, where appropriate legal assistance is not available these further issues can further exacerbate the trauma and stress experienced by clients. A failure to address legal issues stemming from violence may also escalate conflict and the likelihood of further violent incidents.

### **Family Violence and Housing**

Many Legal Aid clients affected by family violence also experience difficulties relating to Housing. Victims often flee their abusive partner in fear for their safety and that of their children.<sup>28</sup> Indeed, family violence is the leading cause of homelessness in the ACT. Lack of access to finances—particularly as a result of economic abuse—can lead to substantial difficulty accessing secure alternate accommodation. Clients may seek emergency accommodation through the ACT Government’s ‘Onelink’ service, stay with friends, with family, or sometimes in their cars or on the streets. Respondents

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<sup>28</sup> Ibid.

excluded from their home pursuant to a Family Violence Order or Bail Conditions can also find themselves without access to appropriate accommodation.

Australia-wide, women accessing emergency accommodation most often cite family violence as their primary reason for doing so.<sup>29</sup> Research indicates that significant over-demand for appropriate long-term accommodation, compounded by psychological trauma, often results in victims alternating between crisis accommodation and/or a possible return to their violent partner.<sup>30</sup>

Legal Aid ACT provides legal advice and advocacy in this context such as negotiating debt obligations for violence-related damage or unpaid rent to a private landlord, often in collaboration with advice about a Family Violence Order.<sup>31</sup> Where specialist support is required, Legal Aid directly refers clients to our expert Colleagues at ACT Community Legal Centres including Canberra Community Law, who specialise in Public Housing and Centrelink Matters, the ACT Tenants Union and the Consumer Law Centre.

### **Family Violence and Financial issues**

Family Violence involving Economic Abuse often involves a perpetrator controlling the victim's finances and assets, preventing access to work, dictating expenditure or incurring debts in the victim's name.<sup>32</sup> This can result in serious financial disadvantage and increased reliance on the perpetrator, further limiting the capacity of the victim to seek private legal advice or alternative accommodation.<sup>33</sup> Legal Aid ACT provides assistance to victims regarding recovery of assets and obtaining a just property

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<sup>29</sup> Helen McLaren, 'Domestic Violence, Housing and Employment: Workers' Perspectives on Employment Assistance in Supported Accommodation' (2013) 48(4) *Australian Journal of Social Issues* 415, 416.

<sup>30</sup> Selina Tually et al, 'Women, Domestic and Family Violence and Homelessness' (A Synthesis Report, Flinders Institute for Housing, Urban and Regional Research, August 2008) 12, [3.1].

<sup>31</sup> Legal Aid ACT Annual Report 2015-2016 p27 available at: [http://www.legalaidact.org.au/pdf/annualreport\\_2015-2016.pdf](http://www.legalaidact.org.au/pdf/annualreport_2015-2016.pdf).

<sup>32</sup> Judy L. Postmus et al, 'Understanding Economic Abuse in the Lives of Survivors' (2012) 27(3) *Journal of Interpersonal Violence* 411, 413.

<sup>33</sup> Helen McLaren, 'Domestic Violence, Housing and Employment: Workers' Perspectives on Employment Assistance in Supported Accommodation' (2013) 48(4) *Australian Journal of Social Issues* 415, 418.

settlement following separation. We also direct-refer clients to our colleagues at CARE Financial Counselling and the Consumer Law Centre for advice and representation in debt and consumer law matters. The Consumer Law Centre has particular expertise in negotiating debt waiver or reduction in contexts where a victim of family violence is pressured to incur a personal loan or credit card debt but the full benefit of the funds has been enjoyed by the person using violence.

### **Family Violence and Employment**

Family violence can also impact work performance and victims experience higher rates of absence, lateness, turnover and termination.<sup>34</sup> Approximately 55-70% of women experiencing family violence are part of the workforce.<sup>35</sup> Diminished employment capacity has flow-on affects for a victim's economic autonomy and her ability to access stable housing.<sup>36</sup> Studies demonstrate that a woman's increased financial stability can correspond to a decreased likelihood of family violence victimisation.<sup>37</sup> Legal Aid ACT provides assistance and advocacy for victims, such as those who have been discriminated against or wrongfully terminated from their employment.<sup>38</sup> This support is offered through advice sessions at our weekly Employment Clinic and where a client is eligible, pursuant to a grant of Legal Aid.

### **Family Violence, health & injury compensation**

Family violence significantly impacts upon a victim's health. Effects vary, but can include physical trauma, mental health impacts such as post-traumatic stress disorder, and sexually transmitted diseases.<sup>39</sup> Family violence is the leading contributing factor

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<sup>34</sup> Ibid..

<sup>35</sup> Ibid.

<sup>36</sup> Ibid. 418.

<sup>37</sup> Kathryn Showalter, 'Women's Employment and Domestic Violence: A Review of Literature' (2016) 31 *Aggression and Violent Behaviour* 37.

<sup>38</sup> Legal Aid ACT Annual Report 2015-2016 p27 available at: [http://www.legalaidact.org.au/pdf/annualreport\\_2015-2016.pdf](http://www.legalaidact.org.au/pdf/annualreport_2015-2016.pdf).

<sup>39</sup> Janet Phillips, 'Domestic, Family and Sexual Violence in Australia: An Overview of the Issues' (Research Paper Series, 2014–15, Parliamentary Library, Parliament of Australia, 2014) 17.

to the disease burden for Australian women aged 18 to 44.<sup>40</sup> Whilst victims subjected to family violence have the legal option of pursuing a personal injury claim against the offender, few victims choose this route for reasons including lack of prospects of recovery from the offender. The ACT Government's Victims of Crime Financial Assistance Scheme provides an important pathway for people subjected to family violence to obtain financial and practical support. Legal Aid ACT provides advice and assistance to individuals applying for Financial Assistance. Legal Aid's work in this area is generally accompanied by referrals to affordable health and social support services to address the client's physical and mental health needs. Legal Aid has also contributed over many years to the development of the new Financial Assistance Scheme that commenced in July 2016. Importantly, the new scheme provides far greater recognition and support for persons experiencing family violence.

## **Family Violence and Elder Abuse - a key priority for Legal Aid ACT**

Elder Abuse is a particular subset of family violence that disproportionately impacts vulnerable older members of our community. In Legal Aid's view, elder abuse is an emerging issue for the ACT community that has not yet been sufficiently addressed through the development of adequate and effective policy approaches. The existing service sector is still 'catching up' in terms of appropriately identifying abuse and taking effective action to prevent or respond to it.

In response to an increase in community need, Legal Aid ACT has made elder abuse a key priority under Legal Aid ACT's 2017-2020 Strategic Plan.<sup>41</sup> This decision is in line with the National Partnership Agreement on Legal Assistance Services—the State and Territory agreement that underpins Legal Aid Funding—which notes people over 65 as priority clients. National Legal Aid has also made Elder Abuse a service priority.

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<sup>40</sup> VicHealth, 'Violence Against Women in Australia: An Overview of Research and Approaches to Primary Prevention' (Research Paper, Victorian Health Promotion Foundation, January 2017) 3.

<sup>41</sup> For further discussion, see: Alexandra Back 'Demand for Legal Aid in cases of elder abuse exceeds expectations' 3 January 2017. Available at: <http://www.canberratimes.com.au/act-news/demand-for-legal-aid-in-cases-of-elder-abuse-exceeds-expectations-20161218-gtdi7h.html>

Legal Aid ACT has expertise in a number of areas that disproportionately impact older clients and regularly feature the dynamics of elder abuse. Our lawyers provide advice and representation in the ACT Civil and Administrative Tribunal in areas including mental health, guardianship and enduring power of attorney matters. Our Domestic Violence Unit at the ACT Magistrates Court provides advice and representation to older people in family violence order and personal protection order proceedings. Legal Aid ACT's litigation practices also assist older clients that qualify for a grant of legal aid in family and criminal law matters.

To better inform our approach to elder abuse matters, Legal Aid ACT has compiled an internal report exploring how we could better respond to elder abuse matters and has drafted legal education materials to better inform professional and community understanding of the issue. We are also working closely with hospitals, community support providers and other stakeholders to identify and support older people experiencing, or at risk of, abuse. On 15 June 2017, World Elder Abuse Awareness Day, Legal Aid ACT hosted a forum—opened by Attorney General Ramsay—to discuss access and support for older Canberrans experiencing family violence. The Forum was attended by over 90 people with speakers from our office, the ACT Disability and Aged Care Advocacy Service (ADACAS), ACT Policing, the ACT Public Trustee and Guardian and Legal Aid ACT and the Council on the Ageing (COTA).

### **Definition of Elder Abuse and Incidence**

Elder abuse occurs in relationship of trust; but where there is an imbalance of power between the older person and their family member or carer. Elder Abuse has a significant impact on the health and wellbeing of older people and can take a variety of forms, including physical, sexual, psychological and financial abuse. Often abuse occurs in contexts where the older person expects that the perpetrator has their best

interests at heart and will provide them with a safe environment.<sup>42</sup> Studies indicate that male adult children and spouses are most likely to be perpetrators of abuse.<sup>43</sup>

For the purposes of this submission, the definition of ‘older person’ is taken to be 65+ for non-Indigenous Australians and 45+ for Indigenous Australians, who by virtue of their substantially lower life expectancy may require a lower age from which they are considered ‘older.’<sup>44</sup> As of June 2015, 12% of the ACT’s population is aged 65 and over. This number is set to increase in the coming years, in line with the national trend of an ageing population. As the elderly population increases, more people in the ACT will be at the risk of elder abuse.

While there are no concrete figures in the ACT, a 2011 survey conducted by ANU found 6% of respondents had experienced elder abuse.<sup>45</sup> These statistics are likely to be conservative due to limited understanding of elder abuse on the part of victims and service providers, and barriers to reporting abuse.<sup>46</sup> The World Health Organisation estimated in 2015 that the prevalence of elder abuse in high and middle-income countries ranged from 2 to 14%, with psychological abuse (1 – 6%) and financial abuse (1 – 9%) the leading forms of elder abuse.<sup>47</sup>

### **Risk factors**

A number of factors increase the susceptibility of older people to elder abuse including disability, low socioeconomic status, cognitive impairment and social isolation.<sup>48</sup> Loss of social connection and ageism all contribute to the vulnerability of older people who may be heavily reliant on family members and carers.<sup>49</sup> Moreover diminished capacity, caused by conditions such as dementia, compound this vulnerability and reduce the

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<sup>42</sup> Jodie Davis, ‘Elder Abuse’ (2016) 24(3) *Australian Nursing and Midwifery Journal* 28.

<sup>43</sup> Edward W. Campion, Mark S. Lachs and Karl A. Pillemer, ‘Elder Abuse’ (2015) 373(20) *The New England Journal of Medicine* 1947, 1950.

<sup>44</sup> Rae Kaspiew, Rachel Carson and Helen Rhoades, ‘Elder Abuse in Australia’ (2016) 98 *Family Matters* 64, 65.

<sup>45</sup> Eva Cotterell et al. *Elder Abuse in the ACT: a literature review* (Report, Council on the Ageing ACT, June 2015) 7.

<sup>46</sup> Jodie Davis, ‘Elder Abuse’ (2016) 24(3) *Australian Nursing and Midwifery Journal* 28.

<sup>47</sup> Rae Kaspiew, Rachel Carson and Helen Rhoades, ‘Elder Abuse in Australia’ (2016) 98 *Family Matters* 64, 65.

<sup>48</sup> Australian Law Reform Commission, *Elder Abuse – A National Legal Response*, May 2017, p7.

<sup>49</sup> Rae Kaspiew, Rachel Carson and Helen Rhoades, ‘Elder Abuse in Australia’ (2016) 98 *Family Matters* 64, 65.

agency of older people. Older women are also more likely to fall victim to elder abuse than older men.<sup>50</sup>

### **Barriers to accessing justice**

Legal Aid ACT solicitors frequently encounter clients that are reluctant to take a legal response, largely due to the familial nature of the abuse and fears of exacerbating the situation. Other factors preventing older Canberrans from seeking help include physical limitations and social isolation, which diminishes the capacity of older people to access legal and non-legal services.<sup>51</sup> The experience of Legal Aid ACT practitioners suggests that often by the time situations of financial abuse are uncovered, the victim's resources have been substantially depleted – further compounding the victim's inability to seek effective assistance.<sup>52</sup>

### **Elder abuse services in the ACT – looking ahead**

A public spotlight on family violence and elder abuse has led to increased community demand for Legal Aid services in this area over the past 12-18 months. We have done our best to respond innovatively to this need across our legal, support and community education services. Most recently, Legal Aid has received \$10,000 of one-off funding from 'IRT' —a private aged care provider—to trial a weekly outreach service at the Canberra Hospital. The service targets service provision to older people who may be more willing to speak to a lawyer who can visit them in a hospital setting. In its first 3 weeks of operation, Legal Aid ACT has received requests for assistance from patients relating to matters including financial abuse, concerns regarding the conduct of Enduring Powers of Attorney, Guardianship and personal safety concerns. For the past year, Legal Aid ACT has also been operating a regular outreach clinic at Council on the Ageing in Pearce. In 2016-17, Legal Aid also held 9 'elder law' sessions in a variety of locations attended by 155 frontline workers and community members.

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<sup>50</sup> Edward W. Champion, Mark S. Lachs and Karl A. Pillemer, 'Elder Abuse' (2015) 373(20) *The New England Journal of Medicine* 1947, 1949.

<sup>51</sup> Legal Aid ACT, 'Application for IRT Grant', 4.

<sup>52</sup> Edward W. Champion, Mark S. Lachs and Karl A. Pillemer, 'Elder Abuse' (2015) 373(20) *The New England Journal of Medicine* 1947, 1951.

These sessions were aimed at increasing community awareness of elder abuse issues, promoting early identification and prevention.

To date, the majority of requests for assistance from older people have related to financial abuse, including in the context of guardianship and financial management proceedings. For example, cases where an older person has gifted their unencumbered home to a child in exchange for a promise of care. The child has subsequently refused to care for their older parent and thrown them out of their home. Such cases raise complex property, equity and contractual issues. These matters are not funded under the current Legal Aid ACT guidelines. The complexity and cost of these proceedings along with funding limitations make it extremely difficult for Legal Aid to adequately respond to demand in such matters.

Legal Aid ACT's work in the Elder Law space has had to be undertaken within the limits of our existing budget and organisational structure. Despite having considerable relevant legal expertise and community connections, we have limited resources to specifically target elder law issues or to tailor legal service delivery to older clients.

Looking ahead, Legal Aid would welcome the opportunity to create a specialist 'Seniors Rights' service that could substantially improve the Territory's ability to identify, prevent and respond to Elder Abuse. Such a service would best be provided using a 'socio-legal model' that involves lawyers and social support workers working together to support clients. This is the approach that Legal Aid already takes with many vulnerable clients through the support of our community liaison unit. Socio-legal practice models integrate a number of strategies and interventions. For example, a social support worker can help a client to communicate their needs and to understand the legal advice being conveyed by the lawyer. Significant focus is placed on the support officer building a positive relationship with the client to ensure their broader needs met and to ensure that the client is able to receive assistance at a pace appropriate to their capacity. Overall, this approach improves legal outcomes for elderly individuals.<sup>53</sup>

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<sup>53</sup> Mark S Lachs and Karl A Pillemer, 'Elder Abuse' (2015) 373 *New England Journal of Medicine* 1947.

## **Conclusion**

Thank you for the opportunity to provide this submission. Legal Aid ACT would be happy to provide clarification or further information regarding any of the matters set out above. We wish the Standing Committee well in its work on this important inquiry.

**Annexure A**

**Definition of Family Violence in s8 of the *Family Violence Act 2016***

**Meaning of family violence**

(1) In this Act:

"family violence "means—

(a) any of the following behaviour by a person in relation to a family member of the person:

- (i) physical violence or abuse;
- (ii) sexual violence or abuse;
- (iii) emotional or psychological abuse;
- (iv) economic abuse;
- (v) threatening behaviour;
- (vi) coercion or any other behaviour that—

(A) controls or dominates the family member; and

(B) causes the family member to feel fear for the safety or wellbeing of the family member or another person; or

(b) behaviour that causes a child to hear, witness or otherwise be exposed to behaviour mentioned in paragraph (a), or the effects of the behaviour.

**Examples—par (b)**

- 1 overhearing threats being made in another room of the house
- 2 seeing an assault or seeing injuries on a family member who has been assaulted
- 3 seeing people comfort a family member who has been abused

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act

, s 126 and s 132).

(2) Without limiting subsection (1), "family violence" by a person in relation to a family member of the person includes the following:

- (a) sexually coercive behaviour;
- (b) damaging property;
- (c) harming an animal;
- (d) stalking;
- (e) deprivation of liberty.

(3) In this section:

"economic abuse", of a family member, means behaviour by a person that is coercive, deceptive or that unreasonably controls the family member without the family member's consent including by the person's exploitation of power imbalances between the person and the family member—

(a) in a way that takes away the financial independence or control the family member would have but for the behaviour; or

(b) if the family member is wholly or predominantly dependent on the person for financial support to meet the living expenses of the family member or the family member's child—by withholding the financial support.

### **Examples**

- 1 stopping the family member from having access to money to meet normal living expenses
- 2 requiring the family member to transfer or hand over control of assets or income
- 3 stopping the family member from trying to get employment
- 4 forcing the family member to sign a legal document such as a power of attorney, loan, guarantee
- 5 forcing the family member to claim social security payments

"emotional or psychological abuse", of a family member, means behaviour by a person that torments, intimidates, harasses or is offensive to the family member including by the person's exploitation of power imbalances between the person and the family member.

**Examples**

- 1 stopping the family member from visiting or having contact with family or friends
- 2 stopping the family member from engaging in cultural or spiritual practices
- 3 repeated derogatory or racist comments
- 4 threatening to disclose personal information about the family member
- 5 threatening to withhold medication, personal health care items or other things necessary to the family member's health or quality of life
- 6 threatening to self-harm as a way of intimidating the family member

**Annexure B**

**Definition of Family Violence in s4AB of the *Family Law Act 1975 (Cth)***

**Definition of family violence etc.**

(1) For the purposes of this Act, *family violence* means violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the *family member* ), or causes the family member to be fearful.

(2) Examples of behaviour that may constitute family violence include (but are not limited to):

- (a) an assault; or
- (b) a sexual assault or other sexually abusive behaviour; or
- (c) stalking; or
- (d) repeated derogatory taunts; or
- (e) intentionally damaging or destroying property; or
- (f) intentionally causing death or injury to an animal; or
- (g) unreasonably denying the family member the financial autonomy that he or she would otherwise have had; or
- (h) unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or his or her child, at a time when the family member is entirely or predominantly dependent on the person for financial support; or
- (i) preventing the family member from making or keeping connections with his or her family, friends or culture; or

(j) unlawfully depriving the family member, or any member of the family member's family, of his or her liberty.

(3) For the purposes of this Act, a child is *exposed* to family violence if the child sees or hears family violence or otherwise experiences the effects of family violence.

(4) Examples of situations that may constitute a child being exposed to family violence include (but are not limited to) the child:

(a) overhearing threats of death or personal injury by a member of the child's family towards another member of the child's family; or

(b) seeing or hearing an assault of a member of the child's family by another member of the child's family; or

(c) comforting or providing assistance to a member of the child's family who has been assaulted by another member of the child's family; or

(d) cleaning up a site after a member of the child's family has intentionally damaged property of another member of the child's family; or

(e) being present when police or ambulance officers attend an incident involving the assault of a member of the child's family by another member of the child's family.

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