THE LAW SOCIETY OF NEW SOUTH WALES
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Inquiry into family, domestic and sexual violence

12 August 2020

Submission by the NSW Young Lawyers Family Law Committee

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The Family Law Committee also wishes to acknowledge the input of the NSW Young Lawyers Criminal Law Committee (Sarah Ienna and Madison Madison Barclay Beaumont) in relation to Terms of Reference e) and i) below

THE LAW SOCIETY OF NEW SOUTH WALES
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The NSW Young Lawyers Family Law Committee (**the Committee**) makes the following submission in response to the Inquiry into family, domestic and sexual violence ("**the Inquiry**").

NSW Young Lawyers

NSW Young Lawyers is a division of The Law Society of New South Wales. NSW Young Lawyers supports practitioners in their professional and career development in numerous ways, including by encouraging active participation in its 16 separate Committee, each dedicated to particular areas of practice. Membership is automatic for all NSW lawyers (solicitors and barristers) under 36 years and/or in their first five years of practice, as well as law students. NSW Young Lawyers currently has over 15,000 members.

The Family Law Committee

The NSW Young Lawyers Family Law Committee ("the Committee") comprises a group of approximately 1,100 members interested in all aspects of family law. The Committee coordinates family law related Continuing Professional Development (CPD) Programs and keeps family law practitioners informed and connected by running regular committee meeting regarding legislative changes, important judicial decisions and current matters of interest in the area of family law. The Committee also provides a networking platform for students and lawyers working across all aspects of family law.

Scope of Submission and Summary of Recommendations

This submission addresses only the following Terms of Reference as listed below with the relevant submissions following each heading.

The Committee prefers the word "survivor" of family violence or abuse rather than "victims" of abuse or family violence as an empowering term. We have used the word victim below noting the Terms of Reference terminology and to maintain consistency.

The Committee has used the term "family violence" with the meaning as defined by the *Family Law Act 1975* (Cth) at section 4AB, noting this definition includes violent, threatening or other behaviour by a person that coerces or controls a member of the person's family, or causes the family member to be fearful.

In summary, the Committee makes the following recommendations:

1. Police should be specifically trained not to view the existence of family law proceedings as a consideration weighing against intervention in cases of possible domestic violence.
2. The current division of responsibility for children between the Federal family law system and the State care and protection regimes should be brought to an end, and a single unified federal system be implemented so that all decisions about the care of a child may be made in the same place (as recommended by Judge Harman in *Naber & Grogan*[1]).
3. The maximum Centrelink Crisis Payment available to those fleeing family violence should be increased, and it should be possible to apply for that payment in advance of leaving one's home.
4. Training in relation to technologically-assisted abuse should be provided to all Australian frontline police and other frontline workers who deal with victims of such abuse, and also offered to judicial officers by way of judicial education programs, which training may be adapted from that already being offered by the Australian eSafety Commissioner.
5. The current "Notice of Risk" and "Form 4" procedures, by which applicants in family law parenting proceedings are required to disclose any abuse, risk of abuse, or family violence, should be expanded to require disclosure of any previous State-based proceedings relating to such abuse or violence, so that the Federal family law courts may be promptly and fully informed when making decisions in such cases.
6. Funding should be provided to advertising to inform those suffering from abuse or violence about the support services available to them to escape their situation.

[1] [2018] FCCA 1562

Responses to Terms of Reference

a) Immediate and long-term measures to prevent violence against women and their children, and improve gender equality.

This is an important inquiry on an important issue, although it cannot be said that the consideration of family, domestic and sexual violence, and how to best address and alleviate this insidious problem, is something new. In fact, it has been the subject of many public inquiries[2] and captured in holistic reviews of the family law system.[3]

Many recommendations have been made about how to how to fix the 'intrinsic' problems of the Courts exercising family law jurisdiction and how to create a 'better system'; some have been implemented, although many have not. The concern is that attention paid to this area is lip-service – it is used as a political tool to provide catharsis for certain constituencies or the loosening of a valve to relieve political pressure.

On 26 May 2002, the NSW and Federal Government announced a 'funding boost' joint initiative to invest $21 million in frontline support to support domestic violence survivors during COVID-19. The Commonwealth, states and territories have also announced there is a new partnership, the 'National Legal Assistance Partnership 2020-25 (NLAP)', being the commitment of $2 billion to the states and territories to fund services available to vulnerable Australians, including people affected by domestic violence.

The Committee endorses the funding currently being committed to support domestic violence survivors and the *ongoing* funding into this area.

c) The level and impact of coordination, accountability for, and access to services and policy responses across the Commonwealth, state and territory governments, local governments, non government and community organisations, and business.

Police Education

The experience of some members of the Committee is that when family law proceedings are ongoing, Police are hesitant to take action in protecting potential Persons In Need Of Protection (PINOPs).

While there are certainly occasions where it is appropriate for Police to not take action (for example, where Police believe there has been a false report), the Committee submits that whether Police do take action is highly inconsistent and in fact completely dependent on the specific Police Officers providing assistance at that time. Again, that is particularly the case when there are family law proceedings on foot, possibly from the mistaken belief that the involvement of the Court means the police should refrain from their own involvement.

The Committee acknowledges and commends the work the Police do and do not intend any slight or criticism of the Police in this regard, but think it is important to establish a greater level of consistency which will go some way in protecting victims of violence and their children.

To that end, the Committee recommends that Police be specifically trained not to view the existence of family law proceedings as a consideration weighing against intervention in cases of possible domestic violence.

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[2] See for example, the 'Every pictures Tells a Story' report of 2003; the 'Family Courts Violence Review - Australian Government' inquiry headed by the Honorable Richard Chisholm in 2009; the Family Law Council's inquiry of that same year, 'Improving responses to family violence in the family law system: An advice on the intersection of family violence and family law issues' and the Australian Law Reform Commission & New South Wales Law Reform Commission joint report, 'Family Violence: A National Legal Response' (2010).
[3] See for example, the Federal parliamentary Inquiry, 'A better family law system to support and protect those affected by family violence' undertaken in 2017 and more recently, the Joint Select Committee on Australia's Family Law System headed by Senator Pauline Hanson.

Duality of Jurisdiction – Care and Protection

The Committee is concerned that the present duality of a Federal family law system and a State care and protection system is not the preferable way to protect children from violence and neglect. The Committee supports the comments of his Honour Judge Harman of the Federal Circuit Court of Australia in the matter of *Naber & Grogan*[4]. His Honour made the following comments at paragraphs 28-31:

> *That one child might be dealt with in two different systems, in two very different ways, must be seen by parents involved in proceedings as ludicrous. In reality, children are dealt with in potentially one or more of 10 different systems, (as every State and Territory within the Commonwealth has its own system of care and protection laws together with the Federal system (Family Court and Federal Circuit Court of Australia) and the Family Court of Western Australia).*
>
> *There are a number of potentially significant benefits to children and their families if their needs and interests could be dealt with by one Commonwealth system. The most immediate benefit would be uniformity with one set of legislation, one standard, one test (the child's bests interests of which protection from harm is a significant consideration), one set of proceedings with rules of evidence. All children irrespective of where they may be within the Commonwealth and irrespective of their needs would be dealt with on the same footing.*
>
> *Under the Family Law Act 1975, Courts largely deal with disputes involving separated and dysfunctional families. The State system deals with dysfunctional families, whether separated or not. Thus, address of dysfunction is nothing new to the Federal system. The term, "dysfunctional" is not used to cause offence to these or any other parties. It is used in its broader sense, considering the family as a system and as a dysfunctional system that is not functioning optimally or so as to appropriately protect and produce benefit for children.*
>
> *The present duality leaves a great hole for children's welfare. This hole is filled with disadvantage. Children can be caught between systems when children are not yet at a point where a risk of serious harm is apprehended such as to compel action by a State Child Welfare Agency. It may leave the disadvantage of children without remedy or redress, where the parents do not see the need to bring proceedings and no action is taken by a Child Welfare Agency.*

The Committee agrees with his Honour that the present duality gives rise to an undesirable division in responsibility in children's welfare, given the discrepancy between private parenting matters, which are dealt with by the Federal system, and public welfare parenting matters, which are dealt with by the State jurisdiction.

That is, even though a Court exercising Federal family law jurisdiction in a parenting matter is in substance tasked with assessing the suitability of the parents as carers so as to determine the best interests of the child, if (as was the case in *Naber & Grogan*) there is a prospect that *both* parents might be found unfit then the Court has no power to make orders under State child welfare laws. Instead, any orders under such laws must be sought separately by way of different proceedings in a different Court.

In the Committee's view, this divided system should not continue. Child welfare, including in situations involving family violence, would be best served by a single unified system – ideally managed through the family law courts – rather than the current divided system that, in Judge Harman's words, leaves a *"great hole … filled with disadvantage"*. In making this recommendation, the Committee appreciates that this may involve a substantial reform of the area, and quite probably require a further referral of power to the Commonwealth, but does not see that as a reason to not make what would otherwise be a beneficial change.

The Committee also notes that its view is supported by the conclusions of the Australian Law Reform Commission (ALRC) in its Final Report "*Family Law for the Future – An Inquiry into the Family Law System*". That report recommended that federal family law and state care and protection legislation should be

[4] [2018] FCCA 1562.

administered by the same Courts[5]. While it is acknowledged that the ALRC recommended that occur by way of a devolution of power to State Courts, rather than a referral of power to Federal Courts – being a position with which the Committee does not agree on the basis that (as argued by Judge Harman) a consistent Federal regime would be preferable to disparate State-based regimes – there is no disagreement with the underlying point that the present duality is unsatisfactory.

d) The way that health, housing, access to services, including legal services, and women's economic independence impact on the ability of women to escape domestic violence.

Economic independence

Research has found that close to 16 percent of Australian women will experience financial abuse in their lifetime.[6] Financial abuse (or economic abuse) is a serious form of family violence, and a means by which an abuser can keep their partner in a relationship where they continue to experience family violence or limit their options for assistance and advancement, even when they leave that relationship.

Economic independence for women is key to addressing the issue of family violence and the disadvantage that arises out of staying in, or leaving, a relationship where they experience family violence. Without economic independence, a woman lacks agency to leave the relationship home and secure rental accommodation, pay for childcare so that they can attend job interviews and obtain employment, fund transport for herself and the children, pay for groceries and other necessities, and otherwise re-establish herself.

Women are particularly vulnerable to staying in violent relationships in circumstances where they have been out of the work force for extended periods, and where they face the competing demand of care for children, particularly, if not yet of school age. Women from culturally and linguistically diverse (CALD) backgrounds, are often financially dependent on their spouses or unable to work due to visa restrictions, are also particularly vulnerable, along with Aboriginal and Torres Strait Islander woman. Financial abuse is also common in abusive lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) relationships. Women with disabilities or long-term health conditions are significantly more likely than the general population to experience financial abuse.[7]

Members of the Committee have had direct experiences with clients in these circumstances and see this as a major issue facing those presently suffering from domestic, family and sexual violence.

Housing

Housing concerns for women are intrinsically linked to those around financial abuse and the need for economic independence for women seeking to escape family violence relationships. Securing rental accommodation requires the payment of a bond (equivalent to four weeks rent) and two weeks rent in advance. That is a significant sum for a person who may not have access to any of their own funds, or persons from whom they can lend. Further, women's ability to be successful in rental applications if they have limited income and access to savings, adds further difficulty to their ability to successfully and safely leave a relationship.

Women escaping family violence are often reliant on charitable organisations for assistance in obtaining suitable accommodation. The Committee also recognises initiatives such as the "Staying Home Leaving Violence" program offered by the Department of Family and Community Services, a program run in cooperation with NSW Police with the aim of preventing victims of family violence or their children from becoming

[5] Australian Law Reform Commission, *Family Law for the Future – An Inquiry into the Family Law System*, Report No 135 (2019) 113
[6] Kutin, Russell, Reid (2017), Economic Abuse between intimate partners in Australia: prevalence, health status, disability and financial stress, Australian and New Zealand Journal of Public Health
[7] Ibid.

homeless.[8] However, demand often outstrips resources and there is often a stigma associated with the use of these services.

Health

The World Health Organisation ("WHO") recognises that violence has immediate effects on women's health, and that physical, mental and behavioural health consequences can persist long after the violence has ended.[9] In its Fact Sheet "Understanding and addressing violence against women – Health Consequences", the WHO notes:

> *In most settings, women who have experienced physical or sexual violence by a partner at any time after age 15 are significantly more likely than other women to report overall poor health, chronic pain, memory loss, and problems walking and carrying out daily activities. Studies have also found that women with a history of abuse are more likely than other women to report a range of chronic health problems such as headaches, chronic pelvic pain, back pain, abdominal pain, irritable bowel syndrome, and gastrointestinal disorders.*

It is not difficult to understand that leaving a family violence relationship will be more difficult for women who are experiencing poor health as a consequence of that violence.

Access to Services (Including legal services)

The Committee recognises the vulnerability of women who fall between eligibility for legal aid funding and being able to afford legal representation on a private fee-paying basis. Again, these circumstances are often perpetuated by economic imbalance between men and women within relationships, particularly for families with young children where the mother has taken time out of the workforce to take on the primary care giving role.

If a party has the opportunity to apply to the Court in circumstances where their spouse has funds or assets which can be utilised for legal fees or reestablishment costs, a woman seeking to escape family violence may have the opportunity to obtain litigation funding to enable them to be legally represented. However, if a woman is not legally aided, she will usually need to be able to finance that application or otherwise rely on the legal practitioners instructed being prepared to shoulder the risk of that application in the absence of funds in advance in the usual course. These are the limited choices available to a woman seeking to leave a violent relationship, in circumstances where she is likely to be the party more vulnerable to agreeing to a financial settlement which does not meet her entitlements in order to bring the relationship to an end and resolve matters more quickly.

Deficiencies in the Present Regime

As set out above, the lack of funds with which to obtain housing, support oneself, and otherwise obtain services stands as a serious barrier for many women (and their children) attempting to flee family violence.

However, at present, the primary support provided by the Commonwealth to such women is the Centrelink Crisis Payment for Extreme Circumstances Family and Domestic Violence. That payment, however:

1. Can only be applied for by a person *after* they have left their home (or had the perpetrator of violence removed from the home);
2. Requires that the person receive some other kind of income support payment; and

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[8] Staying Home Leaving Violence - https://www.facs.nsw.gov.au/domestic-violence/services-and-support/programs/staying-home-leaving-violence

[9] World Health Organisation (2012), Understanding and addressing violence against women – Health Consequences - https://apps.who.int/iris/bitstream/handle/10665/77431/WHO_RHR_12.43_eng.pdf;jsessionid=ADA799E703FCE8E9D6BCBAADDD8BBF8A?sequence=1

3. Is equal to only one additional week's payment of that other income support payment (limited to up to 4 times in a 12 month period).

That is, the Crisis Payment is not something realistically able to be used to directly fund departure from a situation of family, sexual, or domestic violence, and is insufficient to fund a person re-establishing themselves. Although crisis accommodation and other charities may in some cases be able to assist women in such circumstances, Australia's response to family violence should not depend upon charity.

Solutions

Given the above, the Committee submits that the Commonwealth should increase the maximum amount of the Centrelink Crisis Payment available to those fleeing family violence, and making it possible for a person to apply for the payment in advance of their departure (even though the payment itself should not be released until the person has left their home). Such a change would help enable survivors of family, sexual and domestic violence to rehouse and re-establish themselves.

e) All forms of violence against women, including, but not limited to, coercive control and technology-facilitated abuse.

With the rapid growth of technology, family violence has taken on new forms in recent years, posing challenges for victims of domestic violence and increased complexities for the support services that they engage with for assistance. Perpetrators of family violence are often devising new ways to stalk, harass, intimidate or control their victims with the benefit of anonymity – posing certain challenges for the legal system.

Family, domestic and sexual violence is a growing issue in Australia. According to the Australian Institute of Health and Welfare, Family, Domestic and Sexual Violence in Australia: Continuing the National Story 2019, June 2019, since 2016, over 2.2 million Australians had experienced some form of physical or sexual violence and 3.6 million Australians who have suffered emotional abuse from a partner.[10]

Growth in technology facilitated abuse

Advances in technology have changed the ways in which family and domestic violence is inflicted, and create new issues for victims, including new avenues for abuse. The fact that technology can be used inflict family and domestic violence is reflected in the definitions of stalking and intimidation in the *Crimes (Domestic and Personal Violence Act)* 2007, which encompass conduct such as cyberbullying and conduct carried out using technologically assisted means.[11]

A QUT report dated 11 July 2019 found that technology facilitated abuse threatens privacy and safety of those subject to it and forced them to take precautions; [12] for example 41 per cent of people changed their phone number and 21 per cent created new social media profiles.[13] Research conducted in Brisbane,[14] found that:

- 47 women documented that a smart phone was used as a tool of abuse.[15]
- 20 women were either monitored or stalked.[16]

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[10] Australian Institute of Health and Welfare, *Family, Domestic and Sexual Violence in Australia: Continuing the National Story 2019, June 2019* (Catalogue No FDV 4, 5 June 2019).
[11] *Crimes (Domestic and Personal Violence Act) 2007,* ss 7(a), 7(b), 8 (c).
[12] QUT, *Domestic Violence and Communication Technology* (Report, 11 July 2019) 10.
[13] Ibid, 11.
[14] Namely, interviews undertaken with 55 domestic and family violence survivors in Brisbane, Australia. See Heather Douglas, Molly Dragiewicz and Bridget Harris, 'Technology-facilitated Domestic and Family Violence: Women's Experiences' (2019) 59(3) *British Journal of Criminology* 55.
[15] Heather Douglas, Molly Dragiewicz and Bridget Harris, 'Technology-facilitated Domestic and Family Violence: Women's Experiences' (2019) 59(3) *British Journal of Criminology* 55, 557.
[16] Ibid, 558.

- 39 were harassed.[17]

This increase in the use of technology creates new avenues in which abuse can be perpetrated, and may result in victims feeling as though they are not able to escape perpetrators of domestic and family violence, even if they are physically separated from them. The Committee is also concerned about the prevalence of behaviours such as revenge porn as a means of abusing intimate partners; particularly when technology has made it much easier for such images to be recorded and distributed. The recording, dissemination, and threatened dissemination of intimate images as a means of revenge can have devastating and far reaching consequences for those who are depicted in these materials.

The Committee is also concerned that victims of domestic and family violence may not be aware of steps they can take to secure their privacy online and on their devices. The Committee would welcome any educational programs to address this growing concern, or to be included in checklists as referred to further below.

The Committee is also encouraged by some of the positive effects of technology. The research conducted by Douglas, Dragiewicz and Harris found that technology was used by survivors:

- "*in a positive way to record abusive behaviour for evidence purposes*";
- "*to document their responses to abuser's allegations*",
- "*to save compromising pictures of their partners to justify separation to their partners or to their partner's relatives*"; and
- "*for their own protection*" [using, for instance closed-circuit television (CCTV) and GPS].[18]

Deficiencies in the Present Regime

The substantive law has begun to respond to the issues emerging from technologically-assisted bullying. In particular, the "revenge porn" laws introduced in Division 15C of the *Crimes Act 1900* (NSW) and their interstate equivalents have filled what was long an inadequacy in the substantive law, and the Committee is pleased to see that legislative focus.

However, it is the experience of some members of the Committee that some police and judicial officers, particularly those that are of an older age demographic, are not sufficiently in tune with technology facilitated abuse and therefore the complaints of victims may not be pursued or addressed. That is, an unfamiliarity with technology (and how it is often nowadays used as a tool for abuse) has meant that police and others have in some cases had difficulty understanding the complaints of victims. Where that occurs, it is obviously a barrier to those suffering such abuse obtaining protection.

Solutions

To alleviate the lack of understanding addressed above, the Committee submits that frontline workers such as police officers, domestic violence support workers, and judicial officers within the family law system receive specific training regarding technology facilitated abuse to ensure they understand how it occurs.

In that respect, the Committee notes that the Australian Government's eSafety Commissioner already offers workshops to "*raise awareness of technology-facilitated abuse and provide staff with up-to-date skills and knowledge to support anyone who is experiencing or has experienced domestic violence*"[19], tailored to frontline support staff in the domestic violence sector and now available online. The Committee recommends that similar workshops be made a mandatory aspect of training for members of the various Australian police forces and other frontline workers, and also be made available to judicial officers by way of judicial education programs.

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[17] Ibid.
[18] Ibid, 556.
[19] Australian Government, *Training for frontline workers,* eSafety Commissioner <https://www.esafety.gov.au/key-issues/domestic-family-violence/training-for-frontline-workers>.

f) The adequacy of the qualitative and quantitative evidence base around the prevalence of domestic and family violence and how to overcome limitations in the collection of nationally consistent and timely qualitative and quantitative data including, but not limited to, court, police, hospitalisation and housing.

Since 2015, the Federal Circuit Court Rules[20] have required a "Notice of Risk" to be filed in every parenting matter before the Federal Circuit Court of Australia[21], providing early disclosure of any allegations of abuse, risk of abuse, or family violence in cases involving children. Substantially the same procedure applies by way of the equivalent 'Form 4' in Family Court proceedings.

The Committee considers the abovementioned disclosure requirements to be an effective measure of ensuring, to the extent possible, the effective disposal of matters on a first return date (including the ordering of injunctive relief for the protection of women and their children), compliance with the Court's obligation pursuant to section 67BB of the Act and, where possible, the informing[22] and potential involvement of state based child welfare Departments where appropriate.

Further, and specifically focusing on this Term of Reference, as the Notice of Risk and Form 4 provide a standardised form of disclosure, the Committee suggests them to be (on a de-identified basis) a suitable source for quantitative data about domestic and family violence. Even if that data is only drawn from persons undergoing family law parenting proceedings (who might be expected to be at a higher risk of violence than average), the data about the nature and prevalence of violence amongst such a group is of itself likely to be of significant value to policy-makers.

Provision of information between state based Court and Family law Courts

The Notice of Risk and Form 4 are not solely used to inform the Court and child welfare authorities of the existence of allegations of abuse, risk of abuse, or violence. Rather, when a Notice of Risk alleges abuse, risk of abuse or family violence by one of the parties to the proceedings, the Court will also ordinarily of its own motion seek from the relevant state authorities (principally, police or child welfare authorities) any records they may hold in relation to the allegations.[23]

However, at present the Notice of Risk and Form 4 do not extend to requiring disclosure of previous State-based proceedings relating to any such abuse or violence (for example, proceedings for a domestic violence order, or criminal proceedings in relation to abuse). That is despite the fact that, where there have been concluded proceedings of that kind, the State Court is likely to possess evidence or other information (for example, orders made) in relation to the allegations, which the family law Court would otherwise want to possess in the same manner as it would seek information from other state authorities.

Accordingly, the Committee submits that the Notice of Risk/Form 4 should be amended to require the disclosure of any previous or concurrent proceedings in relation to any abuse, risk of abuse, or family violence by one of the parties to the proceedings, so that the Court may if appropriate issue a letter of request for the State Court file.

It is the submission of the Committee that the early production of information prior to the first time that a matter comes before the Court will ensure that the Family Court and Federal Circuit Court will be able to make informed and appropriate decisions about the safety of women and their children without the need for adjournments (which are and have been for some time considerably length) to obtain evidence, whilst meeting the best interests of the children.[24]

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[20] *Federal Circuit Court Rules 2001* (Cth), Part 22A.
[21] As opposed to the previous regime where a Notice of Risk (in the Federal Circuit Court of Australia) or a From 4 (in the Family Court of Australia) was, legislatively, only to be file if an allegation of risk or abuse was alleged.
[22] As required by s 67Z(3) of the *Family Law Act 1975* (Cth).
[23] Pursuant to section 67ZBB(2)(a)(i) of the *Family Law Act 1975* (Cth).
[24] s 60CA *Family Law Act* 1975 (Cth).

i) The impact of natural disasters and other significant events such as COVID-19, including health requirements such as staying at home, on the prevalence of domestic violence and provision of support services.

More recently, members of the Committee have experienced in their legal practice the prevalence of family violence increasing during the recent bushfires and the happening of the current novel coronavirus, COVID-19, pandemic with changed work habits and stay at home Orders impacting people's day to day lives. Further implications for those with children were added when children in NSW were directed to be taught at home via 'online' or 'home' learning with the assistance of parents, whilst parents were expected to continue to work full time also at home.

However, as a particular issue calling for attention, the Committee is concerned that those currently suffering from family, domestic and sexual violence are – as a result of COVID-19 – less likely to be able to escape their situation, at least in part due to having even less time away from their abusers in which they could otherwise plan or access resources to help them plan their safe departure.

To that end, the Committee submits that further funding should be committed to advertising schemes to allow those suffering from family, domestic and sexual violence to obtain information about leaving such a situation and feel they have the tools they need to do so. That measure, that would have merit even before COVID-19, is all the more essential now.

j) The views and experiences of frontline services, advocacy groups and others throughout this unprecedented time.

The Committee recognises that the unprecedented challenges caused by the current novel coronavirus, COVID-19, pandemic have caused difficulties for many frontline services and advocacy groups, and significant disruptions to the legal system.

Focusing on the experience of the Committee's members within the Federal family law system, the Committee applauds the ways in which Courts have swiftly embraced new technology to assist in case management and to continue hearing cases throughout these challenging times.

The Committee welcomes the ability of courts to facilitate virtual Courtrooms (whether by video or by telephone) to enable legal representatives, witnesses, defendants and victims to participate in Court proceedings without the need for downloading costly software. The Committee is of the view that such technology assists in facilitating access to justice by allowing cases to be heard, and that the use of such technology can facilitate victims' participation in proceedings by removing the risk of encountering defendants in person in a Courtroom.

The Committee recognises however that the use of such technology needs to be carefully monitored in sensitive Court proceedings to ensure that proceedings are not broadcast when there is a prohibition on such broadcasting.[25] Further, if links to virtual courtrooms were only made available on an as needs basis, this may make it difficult for members of the public to watch proceedings in open Court; therefore use of technology must be carefully considered or otherwise there is a risk of diminishing the principles of open justice. It is noted that the Family Law Courts website provides for an email address for members of the public to directly contact Judges' Associates prior to a Court event to obtain access details in the event they wish to observe proceedings. The Committee also notes that high profile Supreme Court proceedings such as the judgment in *R v Leonard John Warwick* (the Family Court bomber) have been livestreamed, facilitating access to open justice.

[25] See eg *Supreme Court Act 1970* s. 128; *Children (Criminal Proceedings) Act 1987* s. 15A;

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Concluding Comments

NSW Young Lawyers and the Family Law Committee thank you for the opportunity to make this submission. If you have any queries or require further submissions please contact the undersigned at your convenience.

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