THE LAW SOCIETY OF NEW SOUTH WALES
youngLAWYERS

Human Rights Committee

NSW Domestic and Family Violence Strategic Framework

27 March 2009

"All of us – men and women…citizens and leaders – have a responsibility to help end violence against women. States must honour their commitments to prevent violence, bring perpetrators to justice and provide redress to victims. And each of us must speak out in our families, workplaces and communities, so that acts of violence against women cease".

Ban Ki-Moon, Secretary General of the United Nations
(International Day for the Elimination of Violence Against Women – 25 November 2008)

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27 March 2009

To Whom It May Concern,

NSW Domestic and Family Violence Strategic Framework

The Human Rights Committee **(HRC)** of NSW Young Lawyers is grateful for the opportunity to make a submission on *'NSW Domestic and Family Violence Strategic Framework'.*

NSW Young Lawyers is made up of law students and legal practitioners who are in their first five years of practice or under the age of 35. The HRC is concerned with a range of human rights issues both in Australia and abroad and aims to raise awareness and provide education to the legal profession and the wider community on these issues.

If you have any questions in relation to the matters raised in this submission, please contact Carolina Riveros Soto, Co-Vice Chair of the NSW Young Lawyers Human Rights Committee (hrc.vicechair@younglawyers.com.au) or Louise Jardim, President of the NSW Young Lawyers (president@younglawyers.com.au).

Yours faithfully,

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INTRODUCTION

1. According to the Commonwealth's Office for Women **(OFW)** domestic violence can be exhibited in many forms, including physical violence, sexual abuse, emotional abuse, intimidation, economic deprivation or threats of violence.

2. The *Convention on the Elimination of Discrimination Against Women* **(CEDAW)** defines gender-based violence as:

   'Violence directed against a woman because she is a woman or which affects a woman disproportionately. It includes physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty'.

3. The HRC notes that domestic violence occurs in all geographic areas of Australia and in all socio-economic and cultural groups. We recognise, however, that domestic violence is a more significant problem for certain groups, such as regional and rural Australian and Indigenous communities.

4. Statistics in Australia indicate that:

a) 19 per cent of all women in Australia experience sexual violence during their lifetime;

b) 33 per cent of all women experience (at least) one incident of physical violence during their lifetime[1] and,

c) approximately half of female homicide victims are killed as a result of a domestic dispute[2].

[1] Australian Bureau of Statistics, *Personal Safety Survey Australia* (2005), ABS Catalogue No 4906

5. The HRC recognises that federal, state and territory governments have
made addressing the issue of violence against women a priority, in particular through the *'Women's Safety Agenda'* initiative.

6. The HRC also commends the NSW government for introducing the *Crimes (Domestic and Personal Violence) Act 2007* **(the Act)**, which effectively removed domestic violence from Part 15A of the *Crimes Act 1900 (NSW)* and clearly stated that the legislation is intended to reduce and prevent violence, protect those facing domestic violence and send a clear message from Parliament that family violence constitutes unacceptable behaviour[3].

7. The introduction of **the Act** on the 10th March 2008, specifically identifies domestic violence offences in their own right, including:

    a) Section 13 – Stalking or intimidation with intent to cause fear of physical or mental harm

    b) Section 14 – Contravening an Apprehended Violence Order **(AVO)**.

8. The HRC also acknowledges that the use of AVOs is a practical way in which victims or Persons in Need of Protection **(PINOP)** can legally protect themselves from the defendant or perpetrator/s of domestic or family violence.

9. Furthermore, the HRC particularly supports Section 12 of **the Act**, which specifically provides for the recording of such offences as domestic violence offences on a person's criminal record. This is

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[2] Mouzas, J. 'Homicide in Australia: 2003-2004 National Homicide Monitoring Program (NHMP) Annual Report' (2005) *Australian Institute of Criminology*

[3] *Crimes (Domestic and Personal Violence) Act 2007, section 9.*

intended to make it apparent to a court that a person is a repeat domestic violence offender, which is relevant in relation to bail and sentencing proceedings.

Violence Against Women is a Human Rights Issue

10. The HRC reinforces that the Vienna Declaration and the Programme of Action noted that:

    'the human rights of women and of the girl-child are inalienable, integral and indivisible part of universal human rights[4]'.

11. Furthermore, the elimination of violence against women in all areas of life, both public and private, is central to the attainment of women's human rights[5].

12. The Convention on the Elimination of Discrimination Against Women **(CEDAW)** Recommendation 19 on violence against women views gender based violence as:

    'a form of discrimination that constitutes a serious obstacle in the enjoyment of human rights and fundamental freedoms by women, and addresses intersections of gender-based violence with the different substantive areas covered by the articles of CEDAW[6]'.

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[4] A/CONF.157/23 (12 July 1993), Part I, para 18
[5] A/CONF.157/23 (12 July 1993), Part II, para 38
[6] 15 Years of The United Nations Special Rapporteur on Violence Against Women, Its Causes and Consequences, http://www2.ohchr.org/english/issues/women/rapporteur/docs/15YearReviewofVAWMandate.pdf

TERMS OF REFERENCE

1. What are the key principles that should guide the Strategic Framework on Domestic and Family Violence in NSW?

13. The HRC submits that human rights principles should be the key principles to guide the Strategic Framework on Domestic and Family Violence in NSW.

14. Human rights principles are founded on the inherent right to be treated

    with dignity and respect and specifically include:

    - The right to an adequate standard of living, including the right to housing[7]
    - The right to health[8]
    - The right to equality[9]
    - The right to life[10]
    - The right to social security[11]
    - A child's right to protection[12]

15. Australia has ratified the *International Covenant of Economic, Social and Cultural Rights (ICESCR), The International Covenant on Civil and Political Rights (ICCPR),* the *Convention on the Elimination of Discrimination Against Women* (*CEDAW)* and the *Convention on*

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[7] Article 11 *International Covenant on Economic, Social and Cultural Rights (ICESCR),* opened for signature 16 December 1966, 999 UNTS 3 (entered into force 3 January 1976), ratified by Australia 10 December 1975, entered into force for Australia 10 March 1976;
Article 27 *Convention on the Rights of the Child (CRC),* opened for signature on 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), ratified by Australia 17 December 1990, entered into force for Australia 16 January 1991.

[8] Article 12 *ICESCR*; Article 24 *CRC.*

[9] Article 2, *ICESCR*; Article 3, 26 *International Covenant on Civil and Political Rights (ICCPR),* opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976), ratified by Australia 13 August 1980, entered into force for Australia 13 November 1980; *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981), ratified by Australia 28 July 1983. The Convention is set out in the Schedule to the *Sex Discrimination Act 1984* (Cth).

[10] Article 6 *ICCPR*; Article 6 *CRC*

[11] Article 9 *IESCR*; Article 11(1)(e) *CEDAW*; Article 26 CRC

[12] Article 24 *ICCPR*; Article 10 *ICESCR*; Articles 3, 9, 19, 20, 39 *CRC*.

the Rights of the Child (CRC). As such, Australia has an obligation to uphold the rights referred to above and state and federal governments have a responsibility to enact domestic legislation to protect such rights.

16. Further key principles should include the right to development, that is, the full and active participation of all in their own development.[13] This means not only that the voices of those most affected by domestic and family violence in NSW must be heard, but that such voices should play a further vital role in informing the strategic response to such violence.

4. What areas in the current service response can be improved to meet the needs of certain groups, including (but not limited to):

- **Aboriginal women**
- **CALD women**
- **Women with a disability**
- **Older women**
- **Young women**
- **Women in rural and remote communities**
- **People in same sex relationships**

17. The HRC reiterates that domestic and family violence is one of the most serious and widespread issues confronting women on a state, national and international level. Domestic violence affects women and men of all ages and sexual orientation, and from all socio-economic and cultural backgrounds.

18. Whilst family and domestic violence in endemic among women of all backgrounds, the HRC understands that there are particular women that are more vulnerable to domestic and family violence.

[13] OHCHR, *Declaration on the Right to Development,* Adopted by General Assembly Resolution 41/128, 4 December 1986 – while noting that Declarations are not necessarily legally binding, they still hold considerable authority and provide guidelines for best practice.

19. The Human Rights Council, enunciated in Council Resolution 7/24 (Preamble paragraph 7) stated,

'The Human Rights Council is deeply concerned that all forms of discrimination…can lead to the particular targeting or vulnerability to violence of girls and some groups of women, such as women belonging to minority groups, indigenous women, refugee and internally displaced women, migrant women, women living in rural and remote communities, destitute women, women in institutions or in detention, women with disabilities…and…elderly women'.

20. Women particularly vulnerable and susceptible to violence include, but not limited to, the following groups. Each group will be discussed in term, below.

a) Aboriginal women

21. Indigenous Australians are over-represented as both victims and perpetrators of all forms of violent crime in Australia.

22. In Western Australia, the incidence of family violence is 45 times higher than that of non-Indigenous women and Indigenous women are 10 times more likely to be killed as a result of domestic violence than non-Indigenous women[14].

23. The *'Australian Component of the International Violence Against Women Survey'* **(IVAWS)** (2004) showed that the rate of family violence victimisation for Indigenous women may be 40 times the rate of non-Indigenous women and that, despite representing just over 2 per cent of the total Australian population, Indigenous

[14] A Ferrante et al, *Measuring the Extent of Domestic Violence* (1996) 10

women accounted for 15 per cent of homicide victims in Australia (2002-2003).

24. The National Crime Prevention Program, *'Violence in Indigenous Communities'* (2001) estimated that the rate of death from interpersonal violence in Indigenous communities is 10.8 times higher than for the non-Indigenous population.

25. The **AIC** report titled, '*Young Australians and Domestic Violence'* in 2001 found that Indigenous youth were significantly more likely to have witnessed physical domestic violence amongst their parents or parents' partners.

26. The overwhelming response to domestic violence requires women to leave their homes and to secure short term emergency accommodation (in a refuge or alternative accommodation).

27. The HRC submits that this form of response can adversely impact on a women's realisation of the right to adequate housing. While there are legislative provisions within state and territory jurisdictions for the perpetrator of domestic violence to leave, this is very often not the case[15].

28. The HRC is concerned that for women living in rural or remote communities (in particular Indigenous women) may be required to reside in alternative accommodation with children and this may be untenable.

29. Further, women who leave their homes often struggle to find adequate accommodation. The 'Supported Accommodation Assistance Program', referred to in the Common Core Document as 'Australia's primary service response to homelessness', while

[15] Edwards, R. Australian Domestic and Family Violence Clearinghouse, *Staying Home/Leaving Violence: Promoting Choices for Women Leaving Abusive Partners,* 2004

playing a vital role, only addresses emergency accommodation rather than long-term housing solutions for women escaping domestic violence.

30. The HRC emphasises that more than 350 people a day are turned away from homelessness services across Australia because of a lack of capacity and resources, with women and children the most likely to be rejected[16].

31. There is also no systemic program to meet the needs of children who enter refuges with their mothers or who have experienced domestic violence.

32. Furthermore, whilst the 'Women's Safety Agenda' initiative is a significant commitment to address violence against women, the level of government resources remains inadequate.

33. The number of women's housing refuges, and other temporary housing that is available is extremely limited. In particular, 'women from non-English speaking backgrounds, women with disability and indigenous women are not appropriately supported in the majority of refuges[17]'.

b) Women with a disability

34. The HRC understands that women with a disability (physical, psychological, psychiatric or otherwise) are particularly vulnerable and susceptible to domestic violence.

35. The HRC refers to Section 16 of **the Act** which allows Court to make an order if it is: *'satisfied on the balance of probabilities'…that*

[16] Common Core Document, p.356
[17] Australian Institute of Health and Welfare, *Demand for SAAP Accommodation by Homeless People: 2005-2006,* (2007) accessed on 21 March 2009 at: http://www.aihw.gov.au/publications/index.cfm/title/10491

the applicant 'has reasonable grounds to fear and in fact fears' certain behaviour of the defendant including the commission of a personal violence offence, intimidation or stalking'.

36. The HRC strongly supports the provision in **the Act** that stipulates that, of a person for whose protection the order is sought is a child or suffering from *'an appreciably below average general intelligence function',* it is not necessary for that person to hold such fears.

37. The HRC envisages that this provision will specifically protect women with disabilities who might not have the requisite mental capacity to satisfy the test as laid out in the legislation.

c) Young women

38. The HRC acknowledges that often children, both boys and girls, can be either direct or indirect victims of family and domestic violence.

39. The survey titled, *'Young Australians and Domestic Violence'* by the **AIC** in 2001 found that up to one-quarter of the 500 young people aged 12 to 20 from all states and territories surveyed had witnessed parental violence against their step-mother or mother.

40. The study also revealed that young people of lower socio-economic status were about one and half times more likely to be aware of violence towards their mother or father than those from upper socio-economic households.

41. In addition to this, another **ABS** survey titled, *'Women's Safety Survey'* (1996) found that younger women were more at risk of violence than older women. In fact, in the previous 12 month period, 38 per cent of women aged 18-24 had experienced an

incident of violence, compared to 15 per cent for women aged 45 and over.

42. The provision of AVOs is certainly an important step in terms of protecting young women (and women generally) from a perpetrator of violence. Nevertheless, the overwhelming fear that women often have when contacting or approaching the police is still one of the greatest obstacles for women in seeking legal redress and help in relation to their abuse.

Same Sex Relationships

43. The HRC stresses the importance of recognising that domestic violence in same sex relationships is a significant problem in society.

44. The HRC expresses its concern that domestic violence within the framework of same sex relationships is often ignored or not recognised as a legitimate domestic violence.

45. The HRC understands that inroads have and are being made in relation to raising awareness and understanding of this particular form of domestic violence. For example, in February 2004, the AIDS Council of NSW and the Same Sex Domestic Violence **(SSDV)** Interagency Working Group launched Australia's first major same sex domestic violence community awareness campaign.

46. The feedback that came from the campaign revealed that,

'lesbians and gay men who had experienced domestic violence identified that most of their clients had a poor understanding of

domestic violence, even if they were living with it, and that they had no language to describe what they were experiencing[18]'.

47. The HRC commends the SSDV Community Awareness Campaign, funded through the NSW Attorney General's Department Innovative Grants Program, which was developed to address some of the information deficits relating to domestic violence within same sex relationships.

5. What are the key elements of an effective primary prevention response to domestic and family violence and what is required to implement these elements?

48. An effective primary prevention response to domestic and family violence requires a co-ordinated, integrated and holistic response.

49. Education, community awareness and community ownership of the issues surrounding domestic and family violence are key elements in any response.

50. A consistent message must be promoted and appropriate and effective sanctions implemented.

51. The voices of those most affected by domestic and family violence must be heard and mechanisms should be in place to evaluate the effectiveness of any response.

52. While noting that our expertise is limited to human rights, the law and community legal education, the HRC also acknowledges the importance of a holistic, integrated and co-ordinated response to domestic and family violence.

Health

[18] Gray, B. 'There's No Pride in Domestic Violence: Gay and Lesbian Community Awareness Campaign' (2005) accessed on 21 March 2009 at: http://www.glhv.org.au/node/199

53. The Australian Component of the International Violence Against Women Survey undertaken between December 2002 and June 2003 found that in Australia, one in three women who have been in relationships have experienced violence.[19]

54. Research undertaken by VicHealth found that violence perpetrated by an intimate partner is the leading risk factor of death, disability and illness for Victorian women aged 15 to 44 years.[20] While similar research does not appear to have been undertaken in NSW, the research to date does highlight that domestic and family violence impacts significantly upon the health of victims and survivors.

55. What mechanisms are in place to alert those at risk of domestic and family violence to health services? How accessible are these health services? How best can all service providers respond in a co-ordinated manner?

Education

Mandatory school education

56. The HRC commends initiatives taken to date regarding the provision of programs for high schools students addressing the issue of domestic and family violence and building of healthy relationships.[21]

57. The HRC also acknowledges the important work of the Australian Human Rights Commission which has statutory functions in relation

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[19] Mouzos, J and Makkai, T (2004) "Women's Experiences of Male Violence: Findings from the Australian Component of the International Survey on Violence Against Women," *Australian Institute of Criminology, Research and Public Policy Series No. 56*, Canberra, 2004, accessed on 21 March 2009 at: http://www.aic.gov.au/publications/rpp/56/RPP56.pdf at 21.

[20] VicHealth, *The Health Costs of Violence: Measuring the Burden of Disease Caused by Intimate Partner Violence*, VicHealth, 2004 accessed on 15 March 2009 at: http://www.vichealth.vic.gov.au/~/media/ProgramsandProjects/MentalHealthandWellBeing/DiscriminationandViolence/IntimatePartnerViolence/ipv.ashx at 10

[21] Office for Women's Policy, *Discussion Paper on NSW Domestic and Family Violence Strategic Framework,* NSW Department of Premier and Cabinet, 2008, accessed on 15 March 2009 at http://www.women.nsw.gov.au/discussion_paper.pdf at 39-40.

to national education and public awareness about human rights.

58. However, there appears to be a noticeable gap with respect to such educational resources for preschoolers and lower primary students. Such a gap was identified in the *Senate Committee Report on the Effectiveness of the Sex Discrimination Act (1984) in eliminating discrimination and promoting gender equality.*[22]

59. This is significant given it is well documented that children are influenced by the attitudes of those around them from as young as 3 years of age.[23] Indeed the discussion paper addresses the issue of children, particularly males, who witness violence later becoming perpetrators of such violence as adults.[24]

60. This raises several questions:
    - What steps are being taken outside the home to break this cycle of violence, particularly with children of preschool and lower primary age?
    - How can the state and federal governments work in collaboration on these issues?
    - Will adequate resources be provided for the development of such educational resources and programmes?

61. Mandatory school education is not the panacea for preventing domestic and family violence but in combination with other strategies, it has an important role to play.[25]

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[22] *Senate Committee Report on the Effectiveness of the Sex Discrimination Act (1984) in eliminating discrimination and promoting gender equality* accessed on 21 March 2009 at http://www.aph.gov.au/Senate/committee/legcon_ctte/sex_discrim/report/report.pdf at 140, note 26.
[23] For example, TROCAIRE, "A Framework for Early Learning," Ireland, July 2004, at 5, accessed on 15 March 2009 at: http://82.195.132.36:5050/j/pdf/early/Trocaire.pdf
[24] *Discussion Paper*, Note 20 at 5.
[25] Hassall, I & Hanna, K. *School-Based Violence Prevention Programmes: A Literature Review*, Accident Compensation Corporation and Institute of Public Policy, New Zealand, accessed on 21 March 2009 at: http://www.ipp.org.nz/publications/Violence%20Prevention%20Programmes.pdf at 9.

Selected interventions targeted towards at risk groups

62. In the *World Report on Violence and Health*, the World Health Organisation identifies the importance of targeting particular intervention programs towards groups at risk of violence.[26] Such programs could include, for example, parenting programs for low income, single parents. It could also include child support programs for those affected by domestic and family violence.[27]

Working with perpetrators of domestic and family violence

63. The HRC acknowledges that men are not the only perpetrators of domestic and family violence. However, men are the main perpetrators of such violence.[28]

64. Franks argues that "if men are said to be part of the domestic violence problem, they also need to be part of the solution."[29]

65. It is noted that there have been mixed reactions and results in working with perpetrators of domestic and family violence in order to change behaviour and prevent further violence.[30]

66. The HRC supports continued work with perpetrators of domestic and family violence.

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[26] World Health Organisation, *World Report on Violence and Health*, Geneva, 2002 accessed on 21 March 2009 at: http://www.who.int/violence_injury_prevention/violence/world_report/en/full_en.pdf at 40.

[27] See: Tomison, A, *Preventing Child Abuse and Neglect in NSW: Finding from a State Audit*, NSW Child Protection Council, Sydney, 1997 accessed on 21 March 2009 at http://www.aifs.gov.au/nch/pubs/reports/NSWaudit/NSWaudit.pdf at 32.

[28] Romans, S. Poore M. & Martin, J. "The Perpetrators of Domestic Violence," *Medical Journal of Australia* (2000) accessed on 21 March 2009 at: http://www.mja.com.au/public/issues/173_09_061100/romans/romans.html

29 Cited in Dodson, M. "Healing body, mind and spirit – It's about time we took a stand," *The National Indigenous Men's Issues Conference*, Coolangatta, 25 October 2002, accessed on 21 March 2009 at: www.reconciliation.org.au/extras/file.php?id=79&file=healing.doc *at 4.*

[30] See Laing, L, *What is the Evidence for the Effectiveness of Perpetrator Programmes*? Australian Domestic and Family Violence Clearinghouse, 2003, accessed on 21 March 2009 at: http://www.austdvclearinghouse.unsw.edu.au/PDF%20files/perpetrator_final.pdf ; Office for Women, *Women, Domestic and Family Violence and Homelessness*, Flinders University, 2008 accessed on 21 March 2009 at: http://www.ofw.facs.gov.au/publications/synthesis_report04/Women,%20Domestic%20and%20Family%20Violence%20Synthesis%20Report%20(Flinders%20University%202008).pdf at 50.

Community Legal Education

67. The HRC acknowledges the important role played by Legal Aid, Community Legal Centres and other legal service providers in providing community legal education about laws relating to domestic and family violence, particularly to those who work directly with victims and survivors of domestic and family violence.

68. Continued attention must be paid to how such education can respond specifically to the needs of different groups and individuals**,** noting that all groups do not experience domestic and family violence in the same way nor is each group homogenous.

Community Sanctions

69. In examining ways for the issues of domestic and family violence to be seen as community issues rather than confined to the private sphere or seen only as women's issue, Tomison cites the example of a community leader in a remote Aboriginal community introducing a policy in the local football club such that players who assaulted their wives or children, or who turned up drunk to matches, were not able to play for the team.[31]

70. The AFL has also taken a stance against domestic violence.[32]

71. It will be important to monitor the effectiveness of these strategies and how they are enforced.

Recent changes to *Family Law Act 1975*

72. The HRC welcomes the changes to the *Family Law Act 1975* (Cth) through the *Family Law (Shared Parental Responsibility) Act 2006*

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[31] Tomison, A "Exploring family violence: links between child maltreatment and domestic violence," *Issues in Child Abuse Prevention*, (13) 2000 accessed on 21 March 2009 at: http://www.aifs.gov.au/nch/pubs/issues/issues13/issues13.html

[32] ABC News, "AFL Joins Stance Against Domestic Violence," 26 May 2008 accessed on 21 March 2009 at: http://www.abc.net.au/news/stories/2008/05/26/2256053.htm

which provide for the protection of children from harm[33] and that the Court needs to take "prompt action in relation to allegations of child abuse or family violence."[34]

73. However, the impact of changes to the *Family Law Act 1975* by the *Family Law (Shared Parental Responsibility) Act 2006* should be critically examined.

74. Prior to its introduction, concerns were raised about the impact of the recent shift from litigation to family dispute resolution in family law matters. While exemptions to mediation do exist in the context of domestic and family violence,[35] it is possible that domestic and family violence may not always be identified and so mediation proceeds in such contexts of unequal power balance.

75. Concerns have also been raised as to the narrowing of the definition of domestic and family violence so as to require a higher standard of proof, that is, that the fear of violence be "reasonable".[36]

76. Additionally, it is noted that the change in definition of domestic and family violence is also accompanied by the threat of a costs order for "false allegations".[37] It would be important to research whether such inclusions are impacting upon the reporting of domestic and

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[33] See the object of Part VII: Section 60B *Family Law Act 1975* (Cth)
[34] Section 60K *Family Law Act 1975* (Cth)
[35] Section 60I(9)(b)(iii) & (iv) *Family Law Act 1975* (Cth)
[36] Section 4 *Family Law Act 1975* (Cth); Flinders Institute for Housing, Urban and Regional Research, *Women, Domestic and Family Violence and Homelessness*, Office for Women, Department of Families, Housing, Community Services and Indigenous Affairs, 2008 accessed on 21 March 2009 at: http://www.ofw.facs.gov.au/publications/synthesis_report04/Women,%20Domestic%20and%20Family%20Violence%20Synthesis%20Report%20(Flinders%20University%202008).pdf at 42.
[37] Section 117AB *Family Law Act 1975* (Cth); Flinders Institute for Housing, Urban and Regional Research, *Women, Domestic and Family Violence and Homelessness*, Office for Women, Department of Families, Housing, Community Services and Indigenous Affairs, 2008 accessed on 21 March 2009 at: http://www.ofw.facs.gov.au/publications/synthesis_report04/Women,%20Domestic%20and%20Family%20Violence%20Synthesis%20Report%20(Flinders%20University%202008).pdf at 42.

family violence.

77. In its submission to the Inquiry into the *Family Law (Shared Parental Responsibility) Bill 2006,* Women's Legal Services Australia raised concerns about the additional considerations in determining the best interests of the child. While one of the factors includes the "willingness and ability of each of the child's parents to facilitate, and encourage, a close and continuing relationship between the child and the other parent," a parent with genuine fears of family violence may not wish to foster such a relationship between the child and alleged perpetrator.[38] Furthermore, Women's Legal Services Australia noted that this "additional consideration" takes on all the more significance because it is possible that the two primary considerations: namely, the benefit of having a "meaningful relationship" with both parents[39] and the need to protect the child from harm[40] may "cancel each other out."[41] The impact of such provisions needs to be closely monitored and if necessary amendments made.

78. It is therefore important that the effect of the amendments to the *Family Law Act 1975* be considered carefully, particularly with regards to the impact on the protection of victims of domestic and family violence and where appropriate necessary amendments are made.

6. How can NSW improve its data collection on the incidence and prevalence of domestic and family violence and on the usage of services by women?

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[38] Section 60 CC(3)(c) *Family Law Act 1975* (Cth); Women's Legal Services Australia, *Submission to the Senate Legal and Constitutional Committee Inquiry into the provisions of the Family Law Amendment (Shared Parental Responsibility) Bill,* accessed on 21 March 2009 at: http://www.parliament.nsw.gov.au/prod/PARLMENT/committee.nsf/0/4e733dc0d57416f9ca257212000afd8b/$FILE/sub%2006%20attachment.pdf at 6-7.
[39] Section 60CC(2)(a) *Family Law Act 1975* (Cth).
[40] Section 60CC(2)(b) *Family Law Act 1975* (Cth)
[41] Women's Legal Services Australia, Note 37 at 6.

79. The HRC understands that there is the practical difficulty associated with gathering statistical information concerning the incidence/s of family or domestic violence. Often, many incidences of domestic violence go unreported and it is, therefore, difficult to measure the true extent of the problem.

80. The HRC notes that the Special Rapporteur on Violence Against Women found that,

'Laws, State policies and programmes regarding women are often not based on actual data or research studies, resulting in a disjuncture between State responses and the prevalent patterns of violations/violence[42]'.

81. The statistical information that is available, reaffirms that family and domestic violence is a serious and widespread problem in NSW and in Australia.

82. According to the Australian Institute of Criminology **(AIC)**, a study titled *'Reporting Crime to the Police'* revealed that most assaults go unreported. Furthermore, the Australian Bureau of Statistics **(ABS)** *'Personal Safety Survey'* estimated that 36 per cent of women who experienced physical assault by a male perpetrator reported it to police in 2005, compared to 19% in 1996.

83. The HRC commends the NSW Minister for Women for announcing (19 December 2008) the establishment of a process to review all domestic violence related homicides in the last five years. The Review process will be headed by the Director of the Bureau of Crimes Statistics and Research and the Convenor of the Domestic

[42] 15 Years of The United Nations Special Rapporteur on Violence Against Women, Its Causes and Consequences, p.30
http://www2.ohchr.org/english/issues/women/rapporteur/docs/15YearReviewofVAWMandate.pdf

Violence Coalition, the Chair of the NSW Council on the Prevention of Violence Against Women and representatives of NSW Police, Prevention of Violence Coordination Unit and the Departments of the Attorney-General, Health and Community Services.

7. What are the priorities for a domestic and family research agenda?

84. Some of the priorities for a domestic and family violence research agenda should include:
    - Early Identification of families at risk of domestic and family violence and early intervention strategies
    - How best to promote and improve the safety of victims and survivors
    - Long term solutions to domestic and family violence related homelessness[43]
    - How can a response to domestic and family violence be better co-ordinated

8. What are the most effective ways to raise community awareness on domestic and family violence?

85. The HRC supports television advertisements raising awareness concerning domestic violence from a national perspective. The benefit of such form of community awareness is its propensity to reach a large number of people.

86. Other effective ways to raise community awareness (on a local level) include:

    - Posters and displays in health centres, GP surgeries, community legal centres

[43] Where appropriate incorporating the findings from the White Paper into Homelessness into the NSW Domestic and Family Violence Strategic Framework.

- Domestic violence awareness events to coincide with International Women's Day and other human rights days

- Establishing support groups on a local level for men who are victims of domestic violence

- Training Migrant Resource Centre or Refugee associated services in domestic violence training

- Circulating domestic violence information pamphlets in various languages to a range of legal and health centres who have a high number of refugee, culturally and linguistically diverse women.

CONCLUSION

In summary, the HRC makes the following key observations and recommendations.

- Family violence is a very serious issue that affects men, women and children of all ages and sexual orientations and cultural and socio-economic backgrounds.
- Certain groups within Australian society are more vulnerable to family violence. These groups include Indigenous women, women with disabilities, older and younger women, women in remote locations and people in same-sex relationships.
- Australia has human rights obligations under various international treaties to take decisive measures and implement policies and services to protect women and children.
- Family violence can have a serious impact on the physical and mental wellbeing of those affected, including those that witness such violence.
- Addressing domestic violence requires a co-ordinated, integrated and holistic approach with a consistent message to the community.

KEY RECOMMENDATIONS

The HRC respectfully submits that:

- The Strategic Framework relating to domestic and family violence in NSW should be guided by fundamental human rights, as found in key conventions to which Australia is a party, including ICESCR, ICCPR, CEDAW and CRC.
- Promoting a consistent message in relation to family violence should be a priority and education for young people should begin at a much earlier age, recognising that children are heavily influenced and affected by their environment from infancy.
- There should be a greater focus on services addressing specialised needs with the recognition that family violence affects different families and communities in different ways. What may be an appropriate response to domestic violence in an urban environment for violence between a same-sex couple may not be an appropriate response to an Indigenous woman with children in a remote area.
- Greater efforts should be made to make family violence a community issue, rather than a minority or women's issue.
- There should be more services providing support and shelter to families facing domestic violence and these should be adequately funded and properly promoted within the community.
- Greater sensitivity and flexibility should be implemented through the *Family Law Act* in situations where there are families affected by domestic violence involved in family law disputes. Greater emphasis should be placed on dispute resolution services being trained to identify signs of family violence and recognise the significant power imbalance that results from this.
- Perpetrators of family violence should have access to effective counselling and rehabilitation services that are aimed at educating offenders about the devastating impact their conduct has on their

family and the community but also targeted towards rehabilitation and reducing offending behaviour.

The NSW Young Lawyers again wishes to thank the Office for Women's Policy for the opportunity to contribute to this consultation on such an important issue. If NSW Young Lawyers can be of further assistance in this review, please contact Carolina Riveros Soto on hrc.vicechair@younglawyers.com.au.