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Joint Select Committee on Australia's Family Law System Submission of the Women's Electoral Lobby Australia

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Women's Electoral Lobby, established in 1972, is national, independent, non-party political lobby group dedicated to creating a society where women's participation and their ability to fulfill their potential are unrestricted, acknowledged and respected and where women and men share equally in society's responsibilities and rewards. It is an incorporated association.

The group has worked tirelessly for over 45 years to improve the position of women in Australian society.

WEL applies a feminist approach to all its work from policy analysis and development to campaigning. WEL thus works within a feminist policy framework. In proposing and analyzing policy solutions we measure fairness and justice for women and fairness and justice for society. WEL lobbies and works with governments at all levels to achieve better and fairer policy and program outcomes to achieve equality for all women.

Our current national strategic focus areas include:

- Eliminating Violence against women and children including securing crucial funding for women's refuges
- Financial security for women through an equitable taxation system and social services
- Women's health and reproductive rights.

It is in relation to matters arising from or related to the first focus area that we make this submission. WEL acknowledges, however, that the outcomes from the application of family law to particular women's lives can have devastating consequences for women's financial security and their health.

WEL works in cooperation with Australian Women against Violence Alliance and other peak women's organisations to develop national policy solutions. At the state and territory level, it works with peak organisations as well as seeking information and advice from service providers in homelessness services and in court support services at the local level. WEL is not a service provider.

WEL makes this submission cognizant of the views of these various organisations which work to support women and children fleeing family and domestic violence, seeking safety and security into the future. We have reviewed the recommendations of organisations as well as submissions made to previous inquiries and the outcomes from those inquiries. The WEL Eliminating Violence against Women Action Group contains members who are service providers which support women fleeing domestic violence and proceeding to access the family law system.

WEL has raised its concerns about the institution of this further joint select committee inquiry in the absence of a government response to the very comprehensive Australian Law Reform Commission (ALRC) **Family Law for the Future – An Inquiry into the Family Law System – Final Report**. March, 2019 and its 60 Recommendations for reform. WEL considers this further inquiry as a dangerous obstacle to immediate action to reform the family law system. It is bewildering to all who work in the domestic violence service sector and those providing court advisory services why this wide-ranging thorough report is not being given serious attention by governments towards implementation.

In the context of this ALRC report and the numerous previous reports, (11 inquiries between 2001-2017) recommending reform or changes to the family law system, WEL would like to highlight and lend our support to some we consider to be overdue. As such, WEL is dealing in this submission with solutions it believes have been raised by many previous inquiries.

As stated in the ALRC report (p111):

** the family law system does not deal with violence. (This then is a key factor to any reform or improvement.)*

** there needs to be greater information sharing between family courts and state and territory child protection agencies, and*

** matters involving family law, family violence and child abuse need to be dealt with in the same place at the same time.*

SOLUTION addressing Term of Reference “a. (i) and (ii)” Ongoing Issues...

The ALRC refers to **jurisdictional gaps** which have serious consequences for children and people who have experienced family violence. WEL supports the recommended solution to bridging these gaps with the establishment of state and territory family courts: *to exercise jurisdiction concurrently under the Family Law Act 1975 (Cwth) as well as state and territory child protection and family violence jurisdiction.*

This would streamline case decisions and expedite assessment and resolution of issues. Such reform is ambitious, requiring strong national leadership, the agreement of state and territory governments, political conviction, but, is urgent. If the political will is found, such reform needs to be adequately resourced. The delay in dealing with problems identified over the years continues to damage and endanger lives.

As the ALRC report points out (p114) in quoting from the 2001 Report of the Family Pathways Group, **Out of the Maze**, the Council of Australian Governments (COAG) needs to: *consider ways to ensure that family law, violence and child abuse matters can be dealt with in the same place at the same time; that processes for handling such cases be streamlined; that assessment and resolution be expedited; and that cooperation be improved and promoted between professionals and services working with at-risk families who are involved with the family law system.*

Since *family violence and abuse is a sustained and growing issue for the family courts*, as detailed by the ALRC (p80), it is vital that governments actually deal with this reality through wide-ranging reform.

In the absence of major reform, there needs to be a **national information sharing platform** established as part of the Domestic Violence Order Scheme to combine with orders issued under the Family Law Act 1975 (Cth) and orders issued under state and territory child protection legislation. Judicial officers need to be able to access and act upon all available information relevant to cases.

Consideration also needs to be given to the creation of specialist domestic and family violence family law courts so that the risks of harm to women and their children are addressed from the beginning and the possibility or risk of coercion by a partner is reduced. These measures are all aimed to achieve a just and fair settlement of all matters in dispute and to safeguard the welfare of children in the immediate and longer term.

SOLUTION addressing Term of Reference “e”. Support services...

WEL draws the Committee’s attention to recommendations 32 and 33 of the Standing Committee on Social Policy and Legal Affairs Parliamentary Inquiry report of December, 2017: **A Better family Law System to Support and Protect those Affected by Violence** as well as the Australian Government’s Response, September, 2018 to those recommendations.

The Family Advocacy and Support Service (FASS) was funded under the Third Action Plan of the National Plan to Reduce Violence against Women and their Children. Its evaluation was published in

October, 2018 and this found it to be “*an effective and important program which fills gaps in both legal and social service provision to family law clients with family violence matters.*” (p10)

The ALRC report discusses the merits of this service and the extent of support for its expansion in submissions received during the course of its inquiry. Accordingly, it supports this expansion to provide case management to clients as required.

WEL strongly supports such expansion. The Government response to the SPLA Inquiry recommendations on FASS acknowledges that FASS: *integrates duty lawyer and specialist family violence services, co-located at the family law courts to address legal and non-legal needs, including effective referrals to other supportive services.* Further it agrees that FASS provides: “*continuity of support.*”

It goes on to say that FASS is one way of solving *service fragmentation* identified by many in the family law system as a major obstacle to the efficient, effective and fair and just resolution of cases.

There may be other solutions, but since this service already exists; has been evaluated very favourably, WEL advocates its extension and expansion with adequate resourcing.

Any expansion should identify areas of high need and include rural and remote areas. It should require the incorporation of a case management approach and be guided in its design by the experience and knowledge of and data held by specialist women’s services such as women’s refuges and women’s legal services.

It should be noted that the government agreed in principle to considering options for extending and expanding FASS, subject to a positive evaluation. Its extension has been implemented to 2022, but there is an expansion required to other centres across Australia, as well as recognition of the level of resourcing required to ensure its effectiveness into the future. Any service established must be staffed by trained professionals.

SOLUTION addressing Term of Reference “h” Improving performance of professionals....

The ALRC report and the SPLA Inquiry report both make reference to the workforce capability of professionals in the family law system. The ALRC Discussion Paper 86 (DP 86) on the **Review of the Family Law System**, released in October, 2018, raises the importance of a workforce capability plan for the system. Other reports and reviews referenced in the ALRC **Final Report** (pp405-421) raise the issue of gaps in some lawyers’ knowledge about family violence and *the complex dynamics* in that context so that they can *properly identify risk flags* as well as properly advise clients in those circumstances.

WEL contends that the existing continuing professional development requirements for family law work, where domestic and family violence is involved, are inadequate and considers that there needs to be an obligation on lawyers doing such work to undertake some mandatory training, whose content needs to be consistent across the nation.

Such family violence training needs to contain a number of key competences including knowledge and skills. The ALRC (p407) lists these as follows:

- the ability to identify primary aggressors

- the ability to work with both people who have experienced family violence and people who have perpetrated it
- sexual abuse and trauma
- child development and family dynamics
- trauma-informed practice and the impact of trauma on adults and children
- developments in family violence research
- respecting diversity and ethical conduct for managing the intersection of domestic violence and family law
- cultural competency and the disparate impacts of family violence on vulnerable groups
- family violence and child sexual abuse.

Importantly, the reports referenced by the ALRC stress that lawyers need to understand the risk factors associated with further violence.

All practitioners working in the family law system need adequate domestic and family violence skills, knowledge and abilities to ensure responsiveness, improve access to the system, identify risks as early in the legal process as possible and practice at a consistent standard with shared understanding of family violence.

While the ALRC **Final Report** makes a limited recommendation (Recommendation 52) for the Law Council of Australia to work with state and territory regulatory bodies, that is: to *complete annually at least one unit of continuing professional development relating to family violence*, WEL considers this to be a basic minimum when reviewing the complexity of issues faced by the family law system and its workforce in general where it deals with cases affected or impacted by domestic and family violence.

In this submission, WEL has confined itself to a small number of issues, but ones WEL considers to be fundamental to reforming a family law system currently struggling to deal with a caseload (60%) overburdened with *family violence, including physical hurt and emotional abuse*.