



Safe through Separation

Family law legal help is essential safety infrastructure

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Victim-survivors of family violence shouldn't be left to navigate complex legal processes alone. That's why National Legal Aid is calling on the Australian Government to use the Second Action Plan under the National Plan to End Violence Against Women and Children to guarantee timely legal assistance for victim-survivors and children when they need it most.

Victim-survivors must be able to access specialist, trauma-informed legal help from the time they are considering leaving a violent relationship, through to safety, resolution and recovery. National Legal Aid is calling for a National Family Violence Legal Assistance Guarantee to ensure victim-survivors who cannot safely or reasonably afford private legal services can access the specialist support they need.

The Federal Circuit and Family Court of Australia reports that 86 per cent of parenting matters involve allegations of family violence and 77 per cent involve allegations of child abuse. These figures make family law a critical point of intervention in Australia's response to violence against women and children.

"We know that separating from a violent partner is a period of heightened risk. Timely legal assistance can help a woman understand the safest way to separate, reduce direct contact with a person using violence, secure safe arrangements for her children, understand her financial rights, and provide a safeguard against systems abuse," National Legal Aid Executive Director the Hon. Yvette D'Ath said.

"It can also resolve connected parenting, housing and financial problems before they become further crises. This is critical safety work."

Legal Aids across Australia provide assistance from the point a victim-survivor is considering leaving a violent partner through to the resolution of parenting, property, child support and related proceedings. This includes early advice, Family Advocacy and Support Services, urgent and ongoing representation, lawyer-assisted dispute resolution and protection from direct cross-examination.

However, only about 8% - or half of those living below the poverty line - are eligible for Legal Aid, and growing demand for assistance, increasing case complexity and inadequate funding have already forced Legal Aids in several jurisdictions to restrict family law services even further.

"When a woman or child reaches out for help or the system identifies family violence risk, that help must be available," Ms D'Ath said.

Without legal assistance, victim-survivors may delay leaving a violent relationship, their children may be subject to unsafe parenting arrangements, they may abandon financial claims or return repeatedly to court because orders are unsafe or unworkable,”

“Legal assistance is critical to support victim-survivors to get safe and stay safe.”

Independent Children’s Lawyers are a critical safety response

Family law decisions about where children live, who they spend time with and how orders are enforced can either promote safety and recovery or expose children to continuing harm. National Legal Aid calls for the Australian Government to invest in ensuring more at-risk children can access Independent Children’s Lawyers to promote their safety and best interests when these decisions are being made.

ICLs are appointed in the most difficult family law cases. They independently represent and promote a child’s best interests, gather and test information relevant to risk, work with police, child protection and health agencies, help children participate safely and keep proceedings focused on the child. Currently, many at-risk children are missing out on this essential support.

Legal Aids provide more than 7,000 ICL representation services each year. Their availability is under acute pressure from growing demand, expanded statutory responsibilities and funding that does not reflect the real work required to represent children safely.

“Children are not passive witnesses to family violence. They are victim-survivors and rights holders whose safety, experiences and views must be properly understood when decisions are made about where they live and who they spend time with,” Ms D’Ath said.

“An ICL is not an optional extra - it is a critical child-safety mechanism. An ICL helps ensure the court has properly tested information, the child’s experiences are understood and proposed arrangements are safe and workable. Without adequate funding, fewer children will have access to this independent protection when decisions are being made that have a profound impact on their safety and daily lives.”

Independent modelling has estimated that every dollar of Commonwealth investment in legal aid produces \$2.25 in benefits and avoided costs, with more than half of those benefits arising from assistance to women and children experiencing family violence.

“Unmet legal need does not disappear. It becomes greater risk for women and children and higher costs across courts, child protection, housing and crisis services,” Ms D’Ath said.

“The Second Action Plan is a critical opportunity to improve safety for victim-survivors and children through better access to family law legal assistance, and to properly fund representation for children as core components of Australia’s safety infrastructure.”

“Ultimately, this is about whether women can leave violence safely and whether children are protected when decisions about their lives are made. Properly funding Legal Aid gives women and children more than legal help -it gives them a safer path forward,” Ms D’Ath said.

For comment, please contact National Legal Aid on via
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