



Towards a Safer Future

NSW WOMEN'S REFUGE MOVEMENT WORKING PARTY INC.

Level 2, 619 Elizabeth Street, REDFERN NSW 2016
PO Box 3311 REDFERN NSW 2016
Tel: 02 9698 9777
Fax: 02 9698 9771
Email: admin@wrrc.org.au
www.wrrc.org.au

ABN 51 326 110 595
NSW WOMEN'S REFUGE MOVEMENT WORKING PARTY INC.

NSW Women's Refuge Movement Working Party Inc Response to 'Australia's children: safe and well: A National Framework for Protecting Australia's children' Discussion paper

Prepared by: NSW Women's Refuge Movement Resource Centre
Catherine Gander & Taryn Champion

Contact: Catherine Gander

About the NSW Women's Refuge Movement Working Party Inc (WRM WP Inc)

The NSW Women's Refuge Movement has been operating for over 30 years and is incorporated as the NSW Women's Refuge Movement Working Party Inc (WRM WP Inc). This is a non-profit state-wide representative body of women's refuges. Member refuges are women's services which aim to respond to community needs by providing a continuum of services in accordance with SAAP to women and children who are homeless or at imminent risk of homelessness particularly when this is due to domestic violence.

The WRM WP Inc:

- Provides a supportive network and forum for refuge workers to discuss and promote best practice and exchange skills and knowledge
- Undertakes projects to facilitate the work and effective operation of member refuges
- Develops and provides resources and information about women and children's homelessness, domestic violence and related matters for refuge workers, the sector and the community
- Advises and informs Government about issues relating to domestic violence and sexual abuse, women and children's homelessness, and the needs of women and children as clients of SAAP and other services
- Works with government and community groups to improve responses to women and children escaping domestic violence, sexual assault and other forms of abuse

Overview of the NSW WRM WP Inc Response

The NSW WRM WP Inc welcomes the Commonwealth's commitment to a National Child Protection Framework. Overall we are supportive of many of the options proposed in the discussion paper and the 6 key priorities identified in the discussion paper, including:

1. Stronger Prevention Focus
2. Better Collaboration between services
3. Improving responses for children in care and young people leaving care
4. Improving responses to Indigenous children
5. Attracting and retaining the right workforce
6. Improving child protection systems

The impact that domestic and family violence can have on children's safety and wellbeing is now widely accepted and is now embedded within NSW statutory frameworks; including in the definition of 'at risk of harm' in the *Children and Young People (Care and Protection) Act 1998* (NSW) and more recently in the *Crimes (Domestic and Personal) Violence Act 2007* (NSW) which mandates the court to include children on Apprehended Violence Orders. In NSW domestic violence is the single most commonly cited reason for 'risk of harm' reports¹. Despite this strong link much more work is required to ensure an integrated response between domestic violence and child protection systems and to reduce the number of women and children experiencing domestic violence.

The NSW WRM WP Inc is disappointed that the discussion paper only made passing references to the interaction between child protection and domestic violence. We note that the discussion paper mentions that the Framework will link with the National Plan to Reduce Violence Against Women and Children, unfortunately there is no indication on how will this occur. We are therefore concerned that the job of linking the two will occur after the development of both the Framework and the Plan, without thorough consultation and that neither framework will adequately address the need for an integrated response between the service systems. Both the Framework and the Plan must acknowledge and propose responses that ensure both service systems are geared toward keeping both women and children safe and holding the perpetrator accountable.

The WRM WP Inc was also disappointed to see that the discussion paper did not propose any options to improve support to women and children with disabilities this must be addressed in the Framework.

¹ NSW Department of Community Services, 2007, NSW Department of Community Services Child Protection Quarterly Data, July 2005 - March 2007, p.9

1. Stronger prevention focus (preventing child abuse and neglect)

The NSW WRM WP Inc welcomes the Government's commitment to strengthening prevention activities. As the discussion paper notes domestic violence is one of the key risk factors for child abuse and neglect².

Children who have experienced domestic violence frequently suffer from feelings of guilt, powerlessness, fear and uncertainty. The symptoms displayed by these children have been described by some as similar "to those of other severe traumas, such as witnessing a terrible accident or being caught in a war zone". The observations of refuge workers have been confirmed by research. It is now widely accepted that infants, children and adolescents who witness domestic violence can suffer severe psychological trauma, and that this trauma may have far reaching and long term implications. However, this trauma can be significantly reduced when appropriate supports are put in place early.

Often, through living with violence, the child/ren's relationship with the protective parent has been compromised, and the child and mother both need support to re-establish and build their relationship outside of the violence. Support that works towards identifying with the mother the strengths and strategies that child/ren have adopted to 'cope' with the violence, builds understanding, strengthens their relationship with the child and empowers the mother. Support that assists the mother to protect and nurture her child/ren builds trust and confidence in the children's relationship with the mother. Such an approach can significantly reduce the long term effects of trauma.

Unfortunately responses by child protection authorities are often not geared to providing such support. In 2006 WRM RC undertook a study that tracked the responses of child protection workers in relation to 'risk of harm' reports relating to domestic violence. The study involved 21 cases involving 34 children, in 17 instances the mother/guardian reported being told that if she did not leave the home where the perpetrator was also residing the children would be removed from her care. In all cases the mother was either accompanied by the refuge or was directed by the Department of Community Services (DoCS) worker to go to the refuge. Once the women and children were accommodated in a SAAP service there was minimal support provided by any Government agency. The women and children were not supported by the DoCS worker to obtain AVO's or to obtain long term safe housing following that initial intervention. This is highlighted in the study findings that of the 34 children that DoCS assessed as being in immediate danger of domestic violence and recommended an intervention whereby they would have to leave their home and reside in the safety of a refuge, only 2 children received the protection of being included on the AVO. Only 5 women were advised to take out an Apprehended Violence Orders (AVO). None were advised to seek an exclusion order to have the perpetrator removed from the home.

In two cases DoCS had removed the children from the mothers care without using any early intervention strategies including the use of AVO to protect the mother and the children from the perpetrator of violence. This evidence supports assertions that current

² P.15

child protection responses tend to focus on the damage that the violence has caused the child, with the blame often directed at and felt by the mother, not the perpetrator.

Fortunately, DoCS were quite responsive to our concerns regarding these findings and have implemented several policy and practice changes to address these issues. More however, remains to be done and the National Child Protection Framework must provide leadership in this area.

2. Better collaboration between services (all parties working together better to protect children)

The National Child Protection Framework outlines what existing measures the Federal Government already has in place. These include income management, through Centrelink. Under this response child welfare authorities will be given the power to “advise Centrelink to manage government payments”. The WRM WP Inc believes that such policy responses are too simplistic and ignore the complexities of domestic violence, which includes financial abuse, and can further disadvantage women and children who are the victims of such violence. The NSW WRM WP Inc is gravely concerned that this policy will increase the risk of further violence against many women and children. The NSW WRM WP Inc understands that the provision of welfare payments will in the future also be tied to children’s attendance at school³. Again this is a simplistic response that ignores the needs of women and children who have escaped domestic and family violence. There are many legitimate reasons why children’s attendance at school may be disrupted including safety concerns and the need to relocate outside of the area.

The Commonwealth through the integration of the National Child Protection Framework and the National Plan to Reduce Violence Against Women and Children must ensure that:

The responsibility to protect the child/ren should not continue to be burdened on the mother or the child, who are the victims. Instead police, courts and child protection agencies should focus on enforcing laws to make the perpetrator fully accountable. Currently the burden of protection in Australia is overly reliant on the victims. If the police, courts and the child protection agency have not exercised all of the powers available to them to protect the child and the child/ren still remains at risk, ‘failing to protect’ and ‘neglect’ should not be applied to the mother under the Child Protection Act. Instead, enforcement of the laws should be directed to making the perpetrator accountable and protection for the victims increased.⁴

As already highlighted above there is currently not sufficient integration between child protection responses and broader justice and human service responses to domestic and family violence.

³ Department of Families, Housing, Community Services and Indigenous Affairs, 2008, *Improving School Enrolment and Attendance through Welfare Reform: Budget Fact Sheet*, http://www.facs.gov.au/internet/facsinternet.nsf/aboutfacs/budget/budget2008-08_fs-25.htm

⁴ Catherine Gander –Churchill Fellow, 2006, *Report to the Winston Churchill Memorial Trust of Australia*, pp.7-8

In a recent submission to the Special Commission of Inquiry into Child Protective Services in NSW, the NSW WRM WP Inc identified a range of factors required to make children safer who have experienced domestic violence. The National Child Protection Framework and the National Plan to Reduce Violence Against Women and Children must acknowledge and address the following factors:

- a A recognition that currently when a child or the protective parent calls for help to the police, to the courts, or the child protection system the mother and child/ren enter into a complex system, which often deals with cases based on institutional imperatives rather than on making victim's safety central.
- . Protecting children should be the responsibility of the community and Government and not just one Government body. No doubt the introduction of mandatory reporting in NSW was based on this concept. Current practice of many mandatory reporters however is based on a 'tick box' system without giving any substantial thought as to whether or not a child is currently at risk of harm. Such practices are just resulting in a duplication of reports and in many cases a belief by reporters that they have done all that is required of them⁵. This has created a situation where no agency is taking responsibility for the safety of women and children experiencing or escaping domestic violence.
- e Mandatory reporting should take into account that the mother's choice to remain or return to a violent relationship could be due to her assessment of the risk of lethality of leaving at that time. All agencies working with a woman and children that are leaving a violent relationship should inform the woman and make provisions for the fact that violence escalates upon separation.
- f All mandatory reporters should give proper consideration non-offending care givers capacity to protect the child/ren and the presence of other protective factors.
- c To reduce the effects of violence on children, a non-neutral approach is important to reduce on-going violence or intimidation and to show children that the protective parent is supported and believed.
- p The role and responsibility of holding the perpetrator accountable should be the responsibility of DoCS [child protection authorities], police and the judicial system and never reliant on or burdened on the mother and children who are the victims.
- a The terms and categories of 'failure to protect', and 'neglect', under Child Protection legislation, should not be applied to mothers who are escaping domestic violence where the state has not exercised all of its powers to stop the abuser, or the abuser has not been deterred by those powers.
- t Child protection responses should not work in an adversarial role with the mother or act as a deterrent to calling for assistance.

⁵ Currently, for example NSW Police are will report all children present at domestic violence incidents

- All work with women who have been through a domestic violence relationship needs to take into account, that it is highly likely that parenting skills have been compromised as a strategy to placate the perpetrator. For example, being overly disciplinary to please the perpetrator and protect the children or being overly permissive to make up to the children for the perpetrators behaviour.
- p Many women and children who have experienced domestic violence suffer from mental health issues, particularly depression, post traumatic stress disorder, self harm and anxiety disorders. From the outset any intervention post- disclosure of a child living with domestic violence should acknowledge the effects the violence has had on the protective parent's ability to parent within the adversity of navigating violent circumstances and trauma experienced as a result of this.
- v Interventions, whether crisis protection or therapeutic, should support and nurture the relationship between the protective parent and the child.

3. Improving responses for children in care and young people leaving care (e.g. foster care and other out-of-home care)

The NSW WRM WP Inc would welcome the development of national standards and monitoring of the OOHC systems. The out of home care system must be resourced to provide a range of flexible out of home care services that meet the needs of children and young people. The service system needs to focus on outcomes for children and young people in care which emphasizes stability of placement, continuity of care, school retention rates and successful and supported transition to independence.

4. Improving responses to Indigenous children

The provision of culturally appropriate policy and programs to engage Aboriginal communities in the prevention and intervention of domestic and family violence, child abuse and neglect must take into account the impact of white colonization on culture and its enduring effects on the ways Aboriginal communities engage with services. Many of these effects have in themselves created strong barriers for Aboriginal women and children seeking help. The negative consequence Aboriginal women face from our current system, families and communities when they seek help to end living with domestic violence is so high that Aboriginal women and children are too often forced to except a life of living with domestic violence and other abuse.

It is not possible to address the issues of domestic violence in isolation from the social and economic disadvantage and oppression faced by Aboriginal Australians. Any policies or programs that work towards preventing domestic violence and other abuse must also work to increase social and economic participation, reduce oppression and strengthen culture.

Many of the Aboriginal women that our domestic violence services assist report additional barriers in seeking long term safety, these include;

1. experiencing racism and discrimination
2. losing their children (e.g. intervention by child protection services)
3. Family and community pressure
4. Fear of being ostracised by family or community
5. Fear of police/authority figures
6. feelings of responsibility for keeping the family together

When Aboriginal women do leave their violent partner, they often grieve for the loss of community and family causing more trauma. In recognition of the particular barriers and problems faced by Aboriginal women and children the NSW WRM established the Koori Support Group, Walan Jineras. The Walan Jineras is represented on the WRM Working Party and informs WRM policy, procedures and practices to help ensure that refuges meet the needs of Aboriginal women and children. The WRM, through the Walan Jineras would welcome the opportunity to work with both State and Commonwealth authorities to improve the safety of Aboriginal women and children.

The discussion paper makes many references to the Northern Territory Emergency Response (NTER) to which the Australian Government “remains committed”⁶. Whilst the NSW WRM WP Inc appreciates the Commonwealth Government’s commitment to improving the safety of Aboriginal women and children, we are opposed to the manner in which the NTER was implemented and some of the measures included in the response. We are supportive of an increase in resources and infrastructure in remote Aboriginal communities, such as housing and services for women and children including Safe Houses, however there has been and continues to be scant opportunity for the Aboriginal communities to drive change through the NTER.

The NSW WRM WP Inc broadly supports the other options proposed in the discussion paper aimed at improving responses for Indigenous children, however, the responses must have a ‘community wellbeing approach’ and acknowledge the request from Aboriginal women over the decades for families to go forward together. Responses must be positioned within a broader community driven response that has the capacity to hold mainstream agencies accountable to delivering culturally relevant services. For this to be possible there must be significant Indigenous representation at the local, regional, state and national levels during the development and implementation of responses.

5. Attracting and retaining the right workforce (the child protection and child welfare workforce)

The issue of attracting and retaining the right workforce has been of concern to the WRM for a long time. Whilst we have many women in the sector who have specialist skills and are committed to assisting women and children it is an ageing workforce and the ability to retain younger skilled workers is prohibited by the lack of pay parity between the community sector and Government and for profit sectors. Women’s refuges funding levels must reflect the need to attract and retain skilled staff.

⁶ Department of Families, Community Services, Housing and Indigenous Affairs, 2008, Australia’s Children: Safe and Well, p.26.

The NSW WRM WP Inc would be supportive of a National Workforce Strategy as proposed in the discussion paper. We would recommend that any such strategy identify the need for increased training of child protection workers in the risk factors of child abuse and neglect, particularly domestic and family violence. There must be ongoing analysis of staffing needs in relation to changes in laws regarding the protection of children including Family Law and Domestic Violence Laws in all jurisdictions.

In addition to the option for a national program for secondary service providers⁷ we would strongly recommend that both the National Child Protection Framework and the National Plan to Reduce Violence Against Women and Children identify the need and propose strategies to improve training to primary service providers such as schools, child care providers, health services etc.

The Workforce Strategy should identify opportunities to foster improved collaboration through joint training opportunities for child protection workers and secondary service providers, such as services for women and children experiencing domestic violence and other abuse. WRM members have reported an erosion of good working relationships with child protection workers since the creation of a centralised reporting system and have identified joint training opportunities as one strategy to address this issue.

The WRM WP Inc would also welcome the development of a specific Indigenous child protection workforce strategy as proposed in the discussion paper.

6. Improving child protection systems (there are eight different state and territory systems)

The NSW WRM WP Inc welcomes the acknowledgement in the discussion paper that the Commonwealth has a role to play in the protection of children to ensure Australia fulfils its International obligations as outlined in the UN Convention on the Rights of the Child and to “address any deficits” at the Commonwealth Level. The NSW WRM WP Inc also welcomes the Commonwealth’s commitment to ensure more consistent best practices responses across the State and Territories. The options included in the discussion paper are a good start the WRM WP Inc would particularly support the recommendation for:

- s The establishment of a National Commissioner for Children and Young People. The Commissioner could oversee and report on actions aimed at improving consistency across different jurisdictions as well as review Commonwealth legislative and other policy frameworks which can impact on the safety of children.

There are many Commonwealth policy areas that can impact on the safety and wellbeing of children who have experienced domestic and family; family law, child support and welfare reforms and the interaction between all three continue to place women and children at further risk. Below is some more detailed discussion on Family Law and Welfare reforms:

⁷ Department of Families, Community Services, Housing and Indigenous Affairs, 2008, Australia’s Children: Safe and Well, p.27

Family Law

The following case study highlights how Family Law can adversely impact on the safety of women and children. The case occurred 10 years ago.

Case study

When Maria met George she was 31 years old. Maria had two children aged 13 ½ and 4 from a previous marriage. Maria loves George. After 2 years of dating they decided to marry. In the beginning the relationship was relatively good as Maria agreed to all of George's demands.

As time passed, Maria noticed she could not spend time with her children as she wanted, as George would get angry with the children, so Maria learned not to cuddle them in front of George. Nor could she be honest regarding her shopping or other expenses for the family as George would make an issue of it. Maria also noticed she couldn't have friends as this annoyed George.

Maria learned to maintain peace at home by 'behaving' as George wanted however this would not be enough and George would often become physically violent. Maria disclosed the Domestic Violence to her GP but no support was offered.

After 4 years of marriage Maria and George had a child. The relationship was more stable for a while. When their son was 6 years old he tried to stop George assaulting Maria, but his father turned and assaulted him instead.

This incident was the turning point for Maria. She approached a social worker from a Community Centre and told her the story including how her son had been assaulted. By then Maria had notified the police and George had been asked to leave the family home and an AVO was in place protecting Maria and her children.

During the separation George asked Maria to sign "A Child Support Agreement" so he could pay maintenance in a form of 'home mortgage, education, or other". Maria signed the document without legal advice.

Many breaches of AVO followed. Maria became sick due to the DV and could not work. After a few months Maria got her strength back and decided to sell the family home and re-locate in a country town.

When Maria and her children lived in the country, Maria agreed for George to have 'access visits' with their son at the family home so she could protect her son better, as all access visits away from home would result in emotional and psychological abuse on her son. All this information was updated to the police, but police informed Maria they could not do much as there were no specific Family Court Orders in place.

One day Maria received a letter from George's lawyers advising her that George had filed for access visits and property settlement in the Sydney Family Court.

Maria did not have money as she was not working full time. She approached Legal Aid, however was not eligible due to the equity in the family home. Maria only managed to have minimum legal representation and paid fees with her credit card (around \$16,000 ten years ago). George used the equity in the family home to pay his legal team in excess of \$40,000. Maria represented herself and was not heard.

Maria requested to have her son independently represented due to her concerns of child abuse. Maria was able to obtain legal representation for her son, however the Family Court Orders allowed George equal access during school holidays, Christmas, birthdays. The domestic violence and other abuse appeared not to be taken into consideration. Sadly, a few months ago Maria heard from her 18 year old son that his father had sexually assaulted him during one of those visits.

The above case occurred over a decade ago. The Family Law Reforms of 2006 further weakened protection for women and children experiencing family violence and other abuse.

The Family Law Amendment (Shared Parental Responsibility) Act 2006 brought about substantial changes to how arrangements for children are dealt within relationship breakdowns. The primacy given to the child having contact with both parents throughout the Act has raised expectations in the community that "shared parenting" is the norm, while the safety of women and children takes second place.

Requiring victims of violence to counter a presumption of shared responsibility may further discourage women from leaving violent relationships, for fear of their safety and that of their children.

Furthermore the "friendly parent" consideration is also a barrier to women disclosing abuse and domestic violence, as they would risk being seen as "non-cooperative" and not prepared to facilitate contact with the other party.

The WRM's concerns regarding the Family Law Reforms of 2006 have been supported by the NSW Government and NSW Parliament who have found the Family Law System has the potential to place women and children at a disadvantage, particularly those that have experienced violence^{8,9}.

In recognition of the significant disadvantages faced by women and their children who have experienced family violence or child abuse in family law processes, the NSW WRM established in partnership with Sydney Registry of the Family Law Court the Women's Family Law Support Service (WFLSS). The WFLSS enables a holistic response for women by facilitating communication and coordination between the client, solicitor, court staff and other organizations. It aims to ensure that the diverse and often complex needs of women are met and that the court system is more accessible.

⁸ NSW Government, NSW Government Response to the Inquiry in to the Impact of the Family Law Amendment (Shared parental Responsibility) Act 2006 (Commonwealth)

⁹ NSW Legislative Council Law and Justice Committee, 2006NSW Government Response to the Inquiry in to the Impact of the Family Law Amendment (Shared parental Responsibility), Act 2006 (Commonwealth)

Since the WFLSS commenced operation in April 2007 it had provided support to 221 women by April 2008. Of the 221 women supported 152 (69%) women had disclosed that they had experienced domestic or family violence. Of those women that did disclose domestic and family violence 85 of these women did not have an Apprehended Violence Order in place. Agencies involved in the protection of children including Courts, Police and DoCS and other human service agencies are often reluctant to intervene in cases where the children are entering into Family Law Court proceedings. Where domestic violence or other abuse is present a proactive approach is required to ensure safe long term parenting orders for children.

In addition to the Reforms placing women and children at further risk of violence and abuse, costly and protracted family law hearings can exacerbate women and children's homelessness or risk of homelessness.

Many women (46%) accessing the WFLSS were not entitled to Legal Aid. Just under half of the women not entitled to Legal Aid were not eligible due to the value of the property they had. In many cases the property held by the women would be jointly owned, accessing the equity in these homes in many cases does not occur quickly.

Welfare Reforms

Welfare to Work is a punitive system that further compounds disadvantage for women and children who are homeless or at risk of homelessness due to domestic violence and other abuse. A study funded by the NSW Office for Women and UTS found that *welfare to work* has a significant number of negative impacts on sole mothers including housing instability; disruption of relationships between mothers and children; forces mothers into employment that does not accord with carer responsibilities and increases childcare costs resulting in little economic benefit. Further to this the reforms tended only to move people from income support to low paid insecure employment¹⁰.

A women's capacity to obtain and maintain employment can be significantly hindered by domestic and family violence¹¹. The short term case by case exemption for domestic violence from participation requirements is simply inefficient. In addition to the further disadvantage the Welfare to Work policy creates, other policies intended to support women and children experiencing the domestic violence, such as the crisis support payment are insufficient.

¹⁰ Cox, E., Priest, T, *Welfare to Work: At what cost to parenting*,
http://www.women.nsw.gov.au/PDF/Welfare_to_Work_At_what_cost_to_parenting.pdf

¹¹ Murray, S., Powell, A, 2008, 'Working it out: domestic violence issues and the workplace', *Issues Paper 16*, Australian Domestic Violence & Family Violence Clearinghouse: April 2008