

INFORMATION PACK

LEGAL SERVICES



Domestic Violence: The Legal Services Challenge

Domestic violence victims often encounter numerous legal issues relating to their abuse and separation. These include tenancy, property and debt-related problems, as well as arrangements about the care of their children. Finding specialist domestic violence lawyers to give affordable, accessible and appropriate legal advice across all areas of law that a woman may need (family, criminal, property, commercial, credit, contract) is difficult in the ACT.

Women who have left a domestic violence relationship are already under increased financial pressure through a loss of income and increased expenses, but they also need to find money to cover legal costs, which can be extremely prohibitive. The legal process can be very expensive, protracted, difficult for victims to navigate, and can, at times, lead to further re-victimisation, especially the disconnection between domestic violence orders (DVOs) and family law matters relating to arrangements for children and property..

Legal Aid can be difficult to access, particularly for those who appear to be 'asset rich' but cannot, in practice, access those assets (for example, because they are tied up in mortgages, or trusts controlled by their partner). Women in these circumstances may not qualify for Legal Aid but still do not have the resources to pay for private representation.

The Women's Legal Centre (ACT & Region) are over-stretched and under-resourced and rely heavily on a pool of experienced, volunteer family lawyers who have expertise in domestic violence and who will provide free appointments to Women's Legal Centre clients, and in some instances, undertake ongoing pro-bono or reduced-fee services.

The legal system can often be used by perpetrators to exercise power and control. Legal professionals need to have a good understanding of domestic violence to be in a position to support a woman through complex legal processes to ensure that she is not being unfairly disadvantaged and that the court system is not being used as another site for abuse.

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Removing the barriers and costs associated with legal services and support would reduce pressure on women who have experienced domestic violence.

Beyond Crisis Housing Forum Findings:

At the first Beyond Crisis Forum on **Housing** participants raised the following issues that are relevant to the Legal Services forum:

- ▶ Legal representation and court support for property settlement and funding private/pro-bono assistance
- ▶ “Protected characteristics” of domestic violence being considered in breaking leases

The Statistics: National

- ▶ Women who reported physical abuse were **three times more likely** than those who did not report abuse to **receive less than 40%** of the property in property settlements

Community Law Australia's 2012 findings show:

- ▶ A growing gap exists for women from middle-income brackets when it comes to accessing affordable legal assistance (*Unaffordable and out of reach: The problem of access to the Australian legal system*).
- ▶ The average cost of legal fees and disbursements in Family Law proceedings is approximately **\$6,500**, making it well out of reach for many women subjected to DV families who are experiencing financial disadvantage.

The Statistics: In the ACT

A local ACT study by the Domestic Violence Crisis Service (DVCS) found:

- ▶ **65.7%** of the women had been dealing with Family Law matters involving property settlement and/or children's matters. For many women this was seen as just another area for the abuse to continue.
- ▶ Of those dealing with family law matters, **100%** raised lack of access to affordable legal representation as a barrier.
- ▶ More than half experienced ongoing risk to safety; were involved in Family Law Court proceedings and had an ongoing involvement in Criminal Justice System matters.

Women interviewed by Women's Centre for Health Matters about their help-seeking for domestic violence highlighted the need for:

- ▶ Affordable, appropriate and available legal services or court representation
- ▶ Lawyers with specialist knowledge and understanding of domestic violence

In **2014-15**, **56%** of the women who contacted the Women's Legal Centre about Family Law matters had experienced, domestic violence, and **56% of their clients were earning under \$35,000 or had no income.**

In **2014-15**, **78%** of **Legal Aid family law** cases in the ACT were cases in which **domestic violence was a factor.**

Both Legal Aid and Women's Legal Centre have experienced increased demand for services in the past two years at the same time as funding reductions. This highlights the need for broader access to legal services and financial assistance to support women to cover legal costs in the ACT.

Legal Services Barriers

► Conflict between family, property and criminal law

Under the Family Law Act courts do not generally give significant weight to a history of family violence when determining property settlements, which can lead to inequitable outcomes for women. Women who have experienced family violence may be reluctant to pursue financial matters through the legal system because they are fearful of their abusive ex-partner and choose their safety over their property entitlement; they may be deterred by the costs of legal proceedings or may even be unaware of their financial rights under the law. In some cases, women report having had their Legal Aid support withdrawn because they have not agreed to facilitate contact between their child and an abusive ex-partner. For example, in a situation where there are criminal proceedings on foot connected to an assault on the child by the abusive ex-partner.

► Secondary victimisation by the legal system and courts being used to continue abuse

Ending an abusive relationship does not necessarily mean an end to the violence, particularly when children are involved.

Court proceedings are often lengthy and onerous, with women waiting **three years** for property and children's matters to be resolved from the start of negotiations to obtaining final orders. Litigants in the Family Court are waiting up to **two years** to receive a trial date. A woman may also experience additional barriers such as cultural or language barriers to add to the difficulty in navigating complicated court procedures.

Many ACT women report that their abusive partners presented very well in the face of Family Court proceedings and manipulated and used the family law system as a tool to continue to exert power and control. Women frequently experienced conflict during handover of children, and mothers expressed feeling that their children were being used as 'bargaining chips'. Abusive partners often use family law proceedings to continue controlling the mother through the children, and in some cases are more likely to challenge arrangements for children than ex-partners who are not abusive. Family courts must consider whether shared care arrangements will be best for children, which can encourage abusers to continue to harass their ex-partners.

Cases are particularly complex when there are allegations of child abuse perpetrated by a parent. In such circumstances, Child Protection Authorities frequently identify the mother as the 'protective parent'. The mother then holds the burden of keeping her child 'safe' from their other parent. If she fails in this role, the mother risks having the children removed from her care.

Perpetrators can also use joint debt to continue to perpetrate violence against women. Women then carry the burden of seeking legal assistance to deal with the debt, or to potentially sever joint liability.

Abusive ex-partners may draw out proceedings by:

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- Repeatedly forcing women back into the legal system to respond to disputed parenting arrangements, breaches of court orders, and non-compliance
- In relation to child support, the perpetrator may avoid making payments, or request frequent changes of assessment
- failing to provide information about their financial circumstances, known as ‘full and frank disclosure’
- refusing to attend Court dates
- refusing to enter into meaningful negotiations.

► Access to/awareness of information about the legal system

Often women are not even aware of, or do not know how to find information on the steps and actions they need to take to address all of the legal matters they face. They often need to deal with criminal, property and family law matters which all have different processes and requirements.

Further, victims of domestic violence are often unaware of their eligibility for victims of crime compensation, or other forms of financial assistance (which could provide much-needed financial support).

► Enforceability

Enforceability of court orders across multiple jurisdictions poses a huge barrier to justice. This is a particular issue in relation to breaches of DVOs and final property settlement orders. In relation to property orders, there is no continuing oversight by the Court of the enforcement of orders and there are rarely penalties imposed if property orders are disregarded. Enforcing an order requires a party to return to Court and pursue discrete enforcement proceedings, at additional cost.

Limitations of Free Legal Assistance

Limited Legal Assistance Sector Funding means that stringent Legal Aid guidelines limit the availability of Legal Aid in Domestic Violence Order and Family Law Matters. Similarly, Community Legal Centres are often limited in the assistance they can provide.

Although Legal Aid assistance is equally available to both parties, women have reported that they have not been able to access ongoing representation from some legal assistance services because their partner accessed that service first. This reflects general misunderstandings about who can access legal assistance services.’

Legal Aid Guidelines have specific restrictions on when Aid is available for property disputes and the Women’s Legal Centre (ACT & Region) has limited capacity to take on property cases. ; This means it can be difficult for women to access legal assistance when there is only a small amount of property that needs to be split.

► Access and high cost of legal services and support

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Private legal representatives and barristers' fees can be prohibitively expensive (fees are generally upwards of \$400 per hour). Very few private practitioners are now willing to represent parties to property proceedings on a 'deferred payment basis', particularly where the property pool is small and their client's share may not cover the lawyer's fees. , Women who are not eligible for Legal Aid and have insufficient income or savings to pay a solicitor upfront, are often forced to represent themselves.

Further, within Legal Aid and in the private sector, it is rare for a woman to be able to access a single lawyer to handle all of their legal issues. Women dealing with a DVO, Victims of Crime Compensation, Property and Children's matters and child protection matters (or any combination of the above) often have to repeat their story to multiple representatives, compounding their trauma.

Without legal representation, DVO, family law and child protection proceedings are complex and intimidating. Legal expertise is essential to understanding legal processes including the filing of documents, how to gather and put evidence before the court, and preparation of matters for hearing.

► Non Specialist Lawyers & Legal Professional

Women have reported feeling judged or not believed by their legal representatives, magistrates and judges, particularly in matters concerning economic and financial abuse. Legal professionals and decision-makers need to have training on domestic violence and ideally, develop specialist expertise in domestic violence so that they understand how it manifests and its complexity.

Case study: Rosie Batty

“I didn’t have a lawyer, because I couldn’t afford one. The business had left me so financially stretched that my cash flow was negligible. But Legal Aid was means-tested, and because of the capital value I had in my property, I wasn’t eligible. Ironically enough, Greg was eligible for Legal Aid. The legal system benefits those who are chronically poor or stinking rich. If you sit in the middle, you’re on your own. Not that I was especially comfortable financially. It was a huge struggle to keep my home, and I would lie awake at night worried about how I was going to pay the bills and mortgage. I had a child for whom I was solely responsible. The last thing I wanted to do was to fall off the property ladder because it was nigh on impossible to get back on it. And so I fronted up to court alone.” (p.183, Rosie Batty, A Mother’s Story)

Barriers

- ▶ Inability to afford a lawyer because of high costs
- ▶ Being asset rich and income poor, which can lead to limited access to Legal Aid and Community Legal Centre assistance.

Case study: Anne (ACT-based woman)

“But then going through the family court system is horrendous...Having to sit in the courthouse, with him right there, was terrifying. This is a man who’s nearly killed me; twice in the same year, once in front of my son. He tried to run me over with his car....So trying to sit there in the courthouse [is hard]. And ended up self-representing—because the other downside to domestic violence is that Legal Aid, when you go to them...I had a brilliant lawyer at the start, absolutely amazing lawyer, and then she changed firms, so I couldn’t have her anymore because the new firm didn’t take the Legal Aid account and I got two after that who weren’t the best, who said to me “look, you’re going to have to agree to access”, when I’m saying “he’s got a criminal charge of assault against one of the children”. There’s you know, 13 incidences of domestic violence, phone calls, logs, everything, and they said “we’re cutting your funding because you will not agree to access”. And I’m thinking to myself that in my job if I did that I would lose it because I’m putting a minor at risk.

...because going through the Legal Aid system, I would say that you need someone who has dealt with DV who knows all about it, who gets everything that you’re saying. [And not someone who says] it looks bad on you if you don’t give access to the abuser of your children. Because I refused repeatedly, the lawyer just went: “nup, I’m not representing you anymore”. And Legal Aid went “well you’ve had three [lawyers], so no, sorry”. But I kept saying to them “you need to have people who get it. Who understand.”

Women consulted in the ACT said:

Access to, and financial support for covering the cost of legal services is important for women living in the ACT in re-establishing their lives and regaining their independence post-crisis

What role could your sector play in meeting the legal service needs of women leaving domestic violence?

What role could your organisation play in meeting the legal service needs of women leaving domestic violence?

Ideas from Australia and Overseas

Stepping Stones Report 2015 Recommendations:

[http://www.womenslegal.org.au/files/file/Stepping%20Stones%20Report\(1\).pdf](http://www.womenslegal.org.au/files/file/Stepping%20Stones%20Report(1).pdf)

Western Australia

Domestic Violence Legal Clinic (DVLC): <http://domesticviolencelegalclinic.com.au/> is the first Australian private legal firm that provides affordable legal assistance to all victims of domestic violence, handling all legal processes necessary, including Violence Restraining Orders (VRO), custody and parenting arrangements and property settlements and Criminal Injuries Compensation and will also managed referrals to services such as financial counselling and accommodation . Clients are charged in accordance to income.

Income Per Annum	Fee Per Hour
\$30,000 or less	\$125.00
\$30,000 - \$50,000	\$160.00
\$50,000 - \$75,000	\$220.00
\$75,000 - \$100,000	\$280.00
\$100,000 - \$150,000	\$340.00 - \$400.00

GST not included.

Queensland

Toowoomba legal firm (MacDonald Law): <http://www.thechronicle.com.au/news/free-help-offer-for-victims-of-home-violence/2907254/> offers free consultations for anyone affected by domestic violence, its offices are open 24 hours, 7 days a week to discuss domestic violence situations, advise on options and to direct women to appropriate sources of help.

Victoria

Flexible support packages: <http://www.premier.vic.gov.au/labor-government-boosting-flexible-family-violence-support/> (Victorian Government) \$7,000 is made available immediately for those leaving domestic violence for them to cover essential costs of rent/relocation/refurnishing, improving safety/security in home, paying-off bills, covering medical costs/enrolling in training

Women, Lawyers, Workers Project: <http://www.whin.org.au/projects/women-lawyers-workers.html> provides free legal advice via Skype to women who are experiencing family violence, as well as workers who work in the family violence field. This 3-year project was funded by the Legal Services Board (Victoria) and is led by Women's Health in the North, Women's Health Goulburn North East and Berry Street in close partnership with Women's Legal Service Victoria. The Project aims to prevent new or on-going violence against women who are getting ready to leave, or have left violent relationships by providing legal advice on the complexities of the legal system which governs family law matters, from

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children's living arrangements, Intervention Orders to property settlement after separation. Women who are experiencing family violence can obtain legal advice on Family Law related matters with the support of a worker from participating agencies. Workers supporting women are also able to have secondary consultations with the lawyers about family matters.

USA

Domestic Violence Legal Empowerment and Appeals Project (DV LEAP):

<http://www.dvleap.org/Home.aspx>, represents abuse survivors appealing custody decisions, advancing legal protections for victims of domestic violence and their children through expert appellate advocacy, training lawyers, psychologists and judges on best practices, and spearheading domestic violence litigation in the Supreme Court. Victims of domestic violence are rarely able to access the appellate courts - appeals are very expensive and few lawyers possess both an understanding of domestic violence and the necessary appellate expertise. Systematic and sophisticated appellate litigation is critically needed to protect the legal rights of victims of domestic violence and to provide safety and justice. DV LEAP provides this in advocacy and pro bono appeals, training, and strategic assistance to lawyers and courts.