

Submission on Draft National Plan to End Violence against Women and Children 2022-2032

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LAWYERS

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Specifically in relation to issues of domestic and family violence (DFV) impacting First Nations communities, we acknowledge that we have no authority to speak to these issues and so do not seek to address them in our submission. We do however consider First Nations voices on these issues to be of utmost importance.

About HopgoodGanim Lawyers

We are a full sector national family law and commercial law firm. We are more than 280 people, working across 20+ disciplines for local and international clients. Importantly in relation to this submission, we are expert legal advisors on family and relationship law, estates and succession, health and aged care, private enterprise and charities and not-for-profits and operate one of the most well-regarded private client practices in Australia.

We provide legal services both for paying clients and pro bono clients. Our pro bono work is focused on working with First Nations people, assisting victims and survivors of DFV and tackling environmental legal issues, particularly environmental disasters.

We are committed to using our knowledge of the law to reduce DFV and we make our recommendations and submissions in response to the Federal Government's National Plan to End Violence against Women and Children 2022-2032 (**Draft Plan**) in this context.

Our recommendations

Recommendation 1

That the Federal Government list in the Draft Plan the individuals and organisations who have been consulted in the preparation of the Draft Plan, by name, title, organisation and location for greater transparency on the diversity of input into the plan.

Recommendation 2

That the Federal Government revise the Draft Plan to make clear that the plan only addresses gendered violence against a select group of women and children and that the plan does not adequately address broader DFV, for example, DFV in the LGBTIQ community, culturally and linguistically diverse (**CALD**) communities, the disability sector, regional, rural and remote communities, First Nations communities, and elder abuse.

Recommendation 5

That the Federal Government commits in the Draft Plan to work with Australian schools and other key stakeholders to develop and implement mandatory education for the Australian school curriculum to aid in preventing DFV. This education should (among other things):

1. be consistent across jurisdictions and in all schools (private, independent and public), yet flexible to respond to intersectionality;
2. be provided to both teaching staff and students;
3. be conducted by an external facilitator who possesses the relevant training, expertise and cultural (or representative) authority and working together with (for students) the relevant teacher who has a rapport with the students receiving the education; and
4. be comprehensive and inclusive and include (among other things) education empowering young women and girls to stand up and speak out about DFV.

Recommendation 3

That the Federal Government commits to actions and provide funding to conduct broad consultation, and dedicated research, across different intersectional communities, with a view to developing dedicated plans to end DFV for all communities.

Recommendation 4

That the Federal Government commits to actions and funding to conduct consultation and research into DFV during the COVID-19 pandemic and natural disasters, to inform the development of better plans, support and interventions in situations of DFV for future crises.

Recommendation 6

That the Federal Government provide more detail in the Draft Plan about the DFV training to be made available for legal practitioners including but not limited to:

1. a clear commitment to working with Australian universities and law colleges to explore mandatory and consistent DFV legal subjects for undergraduate law students and as part of practical legal training;
2. a clear commitment to working with the Law Council of Australia and State and Territory law societies to explore:
 - a. mandatory continuing professional development (**CPD**) units for all practitioners on DFV legal issues; and
 - b. the establishment of a specialist, comprehensive and consistent accreditation program for both DFV law practitioners and pro bono lawyers seeking to support DFV law practitioners.

Our submissions in support of our recommendations

Scope of Draft Plan and intersectionality

“Intersectionality is about understanding how oppressive structures such as gender, race, disability stigma and homophobia/transphobia work together to uniquely disempower certain groups of people and empower others. Gender alone can’t explain the experiences of people at the intersections (although it’s often important), nor can disability alone or racism alone.”¹

Despite making reference to intersectionality, the Draft Plan does not and, cannot in its present form, seek to end DFV for all women and children and equally, the gendered title and focus of the plan specifically excludes many victim/survivors of DFV, for example, members of the LGBTIQ community and male victim/ survivors of Elder abuse.

Previous Inquiries and reports into DFV, such as the *Not Now Not Ever* report² have differentiated between gendered DFV, and different intersectional communities where gender alone cannot explain the difficulties faced by the people experiencing abuse. By way of demonstration, we have extracted some of the difficulties raised by intersectionality in the context of DFV:³

1. **Regional, rural and remote communities:** perpetrators using geographical isolation to control victims; lack of close-by and accessible support services; problems with privacy, confidentiality and anonymity in small communities; poor mobile phone coverage or landline services; trauma and tensions caused by natural disasters such as bushfires, droughts and floods.
2. **People identifying as LGBTIQ:** threatening to disclose an individual’s sexual orientation, gender identify, and/or intersex status to family members, friends or colleagues; transphobic abuse whereby a person deliberately misgenders their trans partner, ridicules their body or gender identity, or prevents them accessing gender affirming care or services; physical violence committed by a family member due to their homophobia, transphobia and/or transphobia.
3. **People living with a disability:** problems with the physical accessibility of support services; uncoordinated support services across more than one agency.
4. **CALD communities:** dowry abuse; modern forms of slavery; forced marriage, immigration facilitated abuse; technology-facilitated abuse; access to Medicare or Centrelink benefits of social housing; English is not their first language.



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5. **Elder abuse:** misuse or theft of money or assets, using a legal document such as an enduring power of attorney; emotionally pressuring an older parent or relative to relinquish their primary asset; sexual violence in residential aged care; 'inconsistency' in reporting requirements for aged care institutions in relation to abuse of residents; and
6. **First Nations people:** Lack of trust by First Nations women in mainstream services and organisations, lack of culturally safe services delivered by mainstream organisations, reluctance to report due to fear of children being removed.

Though we acknowledge the importance of a plan to end gendered violence, broad consultation with members of the above communities, funded research, and dedicated plans of action to end DFV for these specific communities is critical to comprehensively respond to DFV in Australia.

The Draft Plan should identify how it will invest and how we will learn from these crises to better plan, support and intervene in situations of DFV and future crises.

Similarly, we know through early reports, that the COVID-19 pandemic and natural disasters such as the black summer bushfires have exacerbated situations of DFV.⁴ The Draft Plan should identify how it will invest and how we will learn from these crises to better plan, support and intervene in situations of DFV and future crises.



Better education to prevent DFV

/ Early education is key to prevention

As legal practitioners we are cognisant of the fact that legal responses are, for the most part, reactive, and do not prevent DFV from occurring in the first instance. Behavioural change and education is key to assisting in the prevention of DFV.⁵ Engaging our youth in prevention education and awareness in a school setting can increase the likelihood of children speaking out about domestic violence.⁶

We note education is included in the Draft Plan's prevention and early intervention pillars, however, there is no detail around how the Federal Government is going to work with Australian schools and other key stakeholders to deliver DFV education in a school setting.

Behavioural change and education is key to assisting in the prevention of DFV. Engaging our youth in prevention education and awareness in a school setting can increase the likelihood of children speaking out about domestic violence.

/ DFV education should be comprehensive, consistent and mandatory

Prevention programs are more effective when raised through whole-school policies and practices as opposed to single programs and taught by individual teachers.⁷

The Australia Curriculum, Assessment and Reporting Authority (ACARA) provides a framework and “expectation for what all young Australians should be taught”, however each state and territory is responsible for the implementation of the Australian Curriculum and ACARA does not mandate which subjects are to be taught.⁸ The teaching of respectful relationships falls under the umbrella of Health and Physical Education. The Respect Matters curriculum is a comprehensive program that provides age-appropriate education on respectful relationships, with a component of the curriculum aimed at dealing with relationships where there is an imbalance of power, asking for help and leaving the relationship. The Respect Matters curriculum allows teachers to select and assign certain topics for their classroom and teachers decide what will suit their children’s needs.⁹ We submit this is inadequate where evidence outlines that educating our youth on respectful relationships needs to be conducted with caution. Specifically, working in partnership with funded, external facilitators, who have the specialist knowledge, expertise and experience of delivering DFV training in a school setting, and with the relevant cultural or representative authority as required. External facilitators should work together with school teachers who have a good rapport and knowledge of the individual students will help deliver effective training and education.¹⁰

There is also no consistency or uniformity across the states and territories in relation to Respect Matters curriculum.¹¹ Each state and territory have their own versions and adaptations of the Respect Matters curriculum,¹² and there is no uniformity in relation to the ultimate message delivered (focusing on different aspects of prevention), the language used or the proposed techniques for dealing with DFV.

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/ Empowering young women and girls

The Draft Plan highlights prevention as a national pillar and addresses four focus areas,¹³ including ‘work with men and boys’. We welcome this focus on working with young men and boys given, statistically, men are more likely to be perpetrators of DFV. Of equal importance however, in the context of gendered violence, is the empowerment of girls and young women.

The World Health Organization in its paper “Understanding and addressing violence against women”, stated that promoting “social and economic empowerment of women and girls” was an effective strategy in preventing violence.¹⁴

We are pleased that the Federal Government recently announced that education on consent will be mandatory in all Australian schools from 2023 onwards. This is a positive step in the right direction and needs to be acknowledged and celebrated. Sexual assault is a form of DFV and educating young people early will empower victims of sexual assault, particularly young women and girls, to speak out and receive the appropriate support. We encourage the Federal Government to recognise the need for this type of empowerment for young women and girls, in broader, mandatory DFV education.

As legal practitioners, we have focused on the additional education and training that should be provided to the legal profession, though we acknowledge the need for additional training for police, justice systems and frontline services also.

Additional training for the legal profession

The Draft Plan acknowledges the need for additional training to be provided to members of the legal profession, police, justice systems and frontline services. The Draft Plan however does not identify with particularity the type of training that should be provided and how that training will be delivered. As legal practitioners, we have focused on the additional education and training that should be provided to the legal profession, though we acknowledge the need for additional training for police, justice systems and frontline services also.

/ Why additional training and education is important

A study in 2019 found that people who had experienced DFV are 10 times more likely than others to experience other legal problems.¹⁵ DFV issues therefore influence and intersect with a range of legal problems a person might be experiencing. Despite this, the Women's Safety and Justice Taskforce (**Taskforce**) report titled 'Hear Her Voice' released in 2021 highlights many examples where lawyers lack the understanding and skills required in the area of DFV and trauma informed practice.¹⁶ The Taskforce noted strong feedback that lawyers need knowledge and skills through training

and education to assist in better presenting their cases in Court.¹⁷ For example, currently there are no requirements for legal education and training in respect of DFV for legal practitioners. Further, there have been several concerns raised by stakeholders that junior and inexperienced legal practitioners will commonly be allocated a DFV file.¹⁸ Without proper training, this can result in lawyers re-traumatising a victim, not making relevant referrals or not putting their client's best case forward.¹⁹

The Queensland Law Society (**QLS**) in consultation with Legal Aid Qld (**LAQ**) developed a Best Practice Framework for Legal and Non-Legal Practitioners in October 2020 to assist legal practitioners in providing services to victims of domestic and family violence. A quote from the framework highlights the importance of training of legal practitioners:

*“Legal and non-legal practitioners need to understand domestic and family violence (DFV) because it can affect anyone at any time—clients, employees, family, colleagues and friends. As professionals in a sector where clients share intimate details of their personal lives, a lawyer or non-legal practitioner may be the first person to whom a person discloses experiences of personal violence”.*²⁰

/ When training is required

In our view, because of its wide-ranging impact, mandatory DFV education and training should be implemented at different stages of a legal practitioner's career, regardless of their area of practice.

DFV education and training should be introduced as core subjects for undergraduate law studies and practical legal training at university and colleges of law, to ensure early career lawyers have a base level understanding of DFV and how it might influence and impact on other legal issues.²¹

There has also been significant support from bodies such as Queensland Law Society, the Family Law Section, and the Law Society of New South Wales, for the introduction of DFV training and education for legal practitioners.²² The specific recommendation for there to be CPD for legal practitioners in relation to domestic and family violence is supported by numerous recent reports including the *Not Now, Not Ever Report*.²³

Legal practitioners who practice in family law should be offered the option to complete specialist accreditation in DFV, to maintain a specialist understanding of the law, the impact of DFV, local support available and referral processes. The best practice framework developed by the QLS and LAQ identifies seven principles for legal practitioners who work with victims of DFV, including: improving understanding; prioritising safety; facilitating

empowerment; promoting accountability; communicating respectfully and appropriately; respecting diversity; and collaborating with other services.²⁴

Pro bono lawyers should also be educated and trained to support DFV specialists to help fill a much-needed gap in access to justice for those impacted by DFV and to scale up the support provided by specialist DFV lawyers.

/ Training should be comprehensive and consistent

There is a need for a unified and consistent national approach to the level and standard of DFV education for law students and legal practitioners.

In the first instance, the Federal Government can take guidance from the Law Council of Australia's detailed overview of the areas and capabilities that should form part of DFV training. This includes training in respect of:

- a. Understanding family violence;
- b. Family violence risk identification, assessment and management;
- c. Working with perpetrators;
- d. Working with diverse and vulnerable clients;
- e. In depth legal knowledge.²⁵

Our Team

We thank you for the opportunity to make this submission and we look forward to reviewing the additional detail the Federal Government will provide in relation to its Draft Plan.



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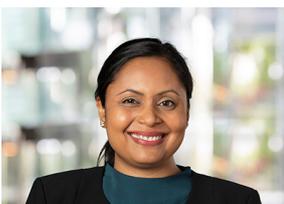


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Endnotes

1 Sophie Yates, *An intersectional approach to understanding family violence* (21 November 2019), University of Canberra, Broad Agenda <<https://www.broadagenda.com.au/2019/why-we-need-an-intersectional-approach-to-family-violence/>>.

2 Special Taskforce on Domestic and Family Violence in Queensland, *Not now, not ever: Putting an End to Domestic and Family Violence in Queensland*, (Report, 28 February 2015) 14 ('Not now, not ever').

3 Ibid; Parliament of the Commonwealth of Australia, *Inquiry into family, domestic and sexual violence*, (Report, March 2021); The Equality Institute, Melbourne, *Preventing and responding to family violence* (2017), <<https://apo.org.au/sites/default/files/resource-files/2017-10/apo-nid185301.pdf>>.

4 Hayley Boxall, Anthony Morgan and Rick Brown, 'The prevalence of domestic violence among women during the COVID-19 pandemic' (Report, Australia Institute of Criminology, July 2020); N Pfitzner et al, 'Responding to Queensland's 'shadow pandemic' during the period of COVID-19 restrictions: practitioner views on the nature of and responses to violence against women' (Report, Monash Gender and Family Violence Prevention Centre, Monash University, 30 June 2020); Jennifer Neil, 'Domestic violence and COVID-19: Our hidden epidemic' (2020) 49 *Australian Journal of General Practitioners*; Anastasia Kourti et al, 'Domestic Violence During the COVID-19 Pandemic: A Systematic Review' (17 August 2021) *Trauma, Violence and Abuse* 1; Kim Usher et al, 'Family Violence and COVID-19: Increased vulnerability and reduced options for support' (2020) 29:3 *International Journal of Mental Health Nursing* 315-318.

5 Michele Lloyd, 'Domestic Violence and Education: Examining the Impact of Domestic Violence on Young Children, Children, and Young People and the Potential Role of Schools' (13 November 2018) *Frontiers in Psychology*.

6 Ellis J, et al, 'School-based prevention and the disclosure of domestic violence' (2015) *Domestic Violence and Protecting Children, New Thinking and Approaches* 50-62.

7 Lloyd (n 5).

Endnotes

8 Australian Curriculum, <https://www.australiancurriculum.edu.au/about-the-australian-curriculum/>.

9 Australian Government, Department of Education, Skills and Employment, *Respect Matters program launched* (14 April 2021) <https://www.dese.gov.au/schooling/announcements/respect-matters-program-launched>.

10 Lloyd (n 5).

11 Australian Government (n 9).

12 In Queensland there is the Respectful Relationships Education Program (RREP). In New South Wales some schools use the LoveBites program. In Western Australia the Respectful Relationships Teaching Support Program (RRTSP).

13 On page 30 of the Draft plan the four focus areas are; Prevention continues to underpin the foundation of our long-term strategy to stop violence against women and children and other individuals and groups impacted by gender based violence in all its forms, before it starts; Strengthen positive, equal and respectful relationships between and among women and men, girls and boys, in public and private spheres; Empower Aboriginal and Torres Strait Islander voices; and work with men and boys.

14 Claudia Garcia-Moreno, Alessandra Guedes and Wendy Knerr, 'Understanding and addressing violence against women: Intimate partner violence' (2012) World Health Organisation.

15 Christine Coumarelos, 'Quantifying the legal; and broader life impacts of domestic and family violence' (Paper No 32, Justice Issues, Law and Justice Foundation of New South Wales, June 2019)

16 Women's Safety and Justice Taskforce, *Hear her voice: Report one* (Report, 2021).

17 Ibid.

18 Not now, not ever (n 2).

19 Legal Aid Queensland and Queensland Law Society, *Domestic and Family Violence: Best Practice Framework for Legal and Non-Legal Practitioners* (Report, October 2020) 2 ('Best Practice Framework').

20 Ibid.

21 Council of Attorneys-General Family Violence Working Group, *Options for improving the family violence competency of legal practitioners: Consultation Paper* (Consultation Paper, 30 September 2019) ('Consultation Paper'). Consultation Paper (n 7).

22 Ibid.

23 Not now, not ever (n 2) 38.

24 Best Practice Framework (n 19) 6.

25 Ibid.

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