



# Access to Justice Review

Submission by Good Shepherd Australia New Zealand  
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Good Shepherd  
Australia New Zealand

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## About our organisation

### Good Shepherd Australia New Zealand

This submission has been prepared by Good Shepherd Australia New Zealand, a community services organisation that aims to disrupt the intergenerational cycle of disadvantage with a focus on women and girls. We achieve this through services that address social and economic exclusion. A central part of our mission is to challenge the systems that entrench poverty, disadvantage and gender inequality. We do this through research, advocacy and social policy development.

Our specific expertise is in:

- **Safety and resilience** – supporting women to be resilient provides a buffer between an individual and adversity, allowing them to achieve improved outcomes in spite of difficulties.
- **Financial security** – supporting women to ensure they have access to sufficient economic resources to meet their material needs so that they can live with dignity.
- **Educational pathways** – assisting women and girls to overcome the obstacles in their life that hinder them from achieving their educational/vocational capacity.
- **Research, Social Policy and Advocacy** – needs research into emerging issues, identifying effective change interventions for program design, policy analysis and advocacy.

We provide a range of services and support to people who are experiencing disadvantage in our community. These include:

- Peninsula Family Violence Program – family violence support, including safe refuges, phone and face-to-face counselling, support and referral, case management, outreach and group work for women and their children
- Firmer Foundations – a program dedicated to increasing economic independence for women, including those at risk of family violence
- Family Services West & Family Services Peninsula – service partnerships for ChildFIRST assessment and referral for families with children at risk, providing family support through one-to-one case management and group work for families who experience difficulties that affect their children's safety, stability and development
- St Albans Community House – provides a safe and supportive environment for people of all cultures
- Good Shepherd Community House @ Wallaroo – provides a safe and supportive environment for people to engage with community, learn skills and develop pathways for safety and self-reliance
- Financial Counselling – financial information, advocacy and referral for people experiencing financial stress and/or vulnerability
- No Interest Loans Scheme (NILS®) – in partnership with Good Shepherd Microfinance, no interest loans for eligible people to purchase household goods, health aid or educational costs
- NILS Pathways Loans – specialist no interest loans for women to rebuild their lives after leaving prison or family violence

A central part of our mission is to challenge the systems that entrench poverty, disadvantage and gender inequality. We do this through research, advocacy and social policy development.

We have conducted research into the needs of the communities we work with, exploring the particular issues inhibiting people's ability to live a life with dignity and to achieve greater social and economic participation and well-being. These reports include:

- Restoring Financial Safety: Legal Responses to Economic Abuse (2015)
- Economic Abuse: Searching for solutions (2013)
- Spotlight on Economic Abuse: A literature and Policy Review (2012)
- Microfinance and the Household Economy: Financial inclusion, economic and social participation and material wellbeing (2011)
- Filling the Gap: Integrated post crisis response to women and children who have experienced family violence (2011)
- The Sudanese Scoping Project: The needs of the Sudanese refugees in Yarra and Brimbank (2010)
- Researching the Gaps: The needs of women who have experienced long-term domestic violence (2009)

We have also provided the following submissions on Federal and Victorian state policy:

- Submission to the Interim Report of the Reference Group on Welfare Reform to the Minister for Social Services (2014)
- Enquiry into domestic violence in Australia: submission to the Finance and Public Administration References Committee (jointly with Wyndham Legal Service Inc.), (2014)
- Submission to the Senate Economics References Committee Affordable Housing Enquiry (2014)
- Submission to the Senate Standing Committee on Community Affairs (2012)
- Submission to comments on Exposure Draft Australia's National Human Rights Action Plan (2012)
- Submission to the Action Plan Consultation Framework for Addressing Violence Against Women and their Children (2012)
- Submission to the Review of the Human Rights Charter (2011)
- Submission to Family Violence and Social Security Inquiry (2010)
- Submission to Parliamentary Inquiry Social Housing (2010)
- Submission to the Changes to the Public Housing Segmented Waiting List (2010)
- Submission to the Homelessness 2020 Strategy Discussion Paper (2009)

Our submission is informed by this practice and research background.

## Introduction

Good Shepherd Australia New Zealand welcomes the Victorian Government's review of current access to justice arrangements. We support the review objective of ensuring the most disadvantaged and vulnerable in our community receive the support they need when engaging with the law and the justice system. We are pleased to have the opportunity to provide a submission on these issues.

Good Shepherd Australia New Zealand believes that access to justice is critical to an inclusive and fair society. According with human rights protections that demand the right to a fair hearing and access to legal representation, we consider it essential that vulnerable and disadvantaged members of the community receive equal treatment before the law and have equitable access to quality information, support and services whenever they interact with the law and justice system. In line with our organisation's mission and practitioner experience, this submission primarily focuses upon the justice needs and experiences of women and children who are disadvantaged within these systems. In particular we seek to raise awareness of the unique impediments to justice confronting women at risk of, or with experience of family violence. In considering these issues, our submission touches predominantly on the below terms of reference:

- TOR 1: Availability of easily accessible information on legal assistance services and the Victorian justice system, including advice on resolving common legal problems
- TOR 6: The availability and distribution of funding amongst legal assistance providers by the Victorian and Commonwealth governments to best meet legal need

## Availability of legal information and access to legal assistance services

Current figures relating to relationship breakdown and family violence have been widely reported: approximately one in three Australian marriages end in divorce; a similar proportion of women have experienced physical violence, most often at the hands of a previous partner; and one in six women have experienced violence from a current or former partner.<sup>1</sup> One woman is killed nearly every week due to family violence.<sup>2</sup> Intimate partner violence is the greatest risk factor for premature death, disability and illness in Victorian women aged between 15 and 55 years.<sup>3</sup>

In this context, it is unsurprising that the areas of greatest legal need for Australian women are centred in the family law and family violence justice systems. By natural extension, there is a pronounced need for free and accessible legal information in these realms.

Comprehensive and effective responses to the prevalent problem of family violence – responses that minimise the risk of harm to women and children - require that caution be exercised in the dissemination of that information. In particular, where that information is made available with a view to facilitating legal self-help, there is a need to ensure that women and other vulnerable groups are not inadvertently disadvantaged and that existing prejudices within the justice system are not perpetuated. Moreover, there is a need to ensure that opportunities for early intervention are acted upon and the dangers facing women and children leaving violent relationships are not exacerbated.

Women have experienced a long history of discrimination and systemic disadvantage in the legal system.<sup>4</sup> The reasons for this are various. Historically, financial barriers have inhibited their ability to access information and advice and a lack of information has meant that many are unaware of how to enforce their rights.<sup>5</sup> Dominant powers in the justice system have failed to recognise and been unresponsive to the particular needs of women, trivialising their experiences of such crimes as family violence and causing women to fear seeking the protection of the law. Caring responsibilities have sometimes also impeded the capacity of women to utilise legal processes.<sup>6</sup> The experience of additional factors of disadvantage, such as disability, homelessness, financial hardship, cultural or linguistic diversity or ill-health, have significantly compounded barriers faced by individuals seeking access to justice, and women who from Aboriginal and Torres Strait Islander communities have also encountered substantial impediments.

Female survivors of family violence, in particular, experience difficulties in safely accessing legal information, advice and support. Where they remain in family violence situations they can be reluctant to enforce their legal rights due to the debilitating impact of that violence

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<sup>1</sup> VicHealth, (2013) *National Community Attitudes Towards Violence Against Women Survey – Research Summary*, p5 <<https://www.vichealth.vic.gov.au/media-and-resources/publications/2013-national->

<sup>2</sup> Domestic Violence Resource Centre Victoria (2015) *Living in Fear*

<sup>3</sup> Ibid.

<sup>4</sup> Commonwealth of Australia, (1995) *The Justice Statement*, Attorney-General's Department

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

on their self-confidence.<sup>7</sup> Fear of retribution from abusive partners and ex-partners can inhibit their desire to seek assistance. They can also be dissuaded from taking action by negative societal attitudes that cause women to fear they will not be believed should they seek legal recourse. A recent survey of Victorians, for example, found that more than half of all respondents believe that women fabricate cases of family violence in order to advance their prospects in family law cases.<sup>8</sup> Other studies have described women being discouraged from raising the issue of violence, apprehensive that their actions will be understood as an attempt to deny the father's access to children.<sup>9</sup> Those who do take action can often feel inadequately protected by the law - male perpetrators can too easily avoid immediate consequences by consenting to orders, and penalties for breach, many argue, are frequently too light.<sup>10</sup>

It is noted that many positive advances towards overcoming these barriers have been instituted in recent decades. Funding has been directed to the provision of advice and referral for women via specialist women's legal services; relevant members of the judiciary have received gender awareness and family violence training.<sup>11</sup> Yet despite these advances and the growing community awareness of the gendered nature and pervasiveness of family violence in our society, women still encounter significant impediments when seeking support for legal matters and can struggle to achieve fair and just outcomes when they do utilise legal processes. Disparity unfortunately remains between the levels of access to justice achievable by women as compared to men.<sup>12</sup> Some legal professionals, including judges, lawyers and independent family report writers continue to demonstrate limited understandings of post-separation family violence and the complex power dynamics involved.<sup>13</sup> There continue to be calls, including from senior members of the judiciary, for additional resourcing to support improved consideration of matters involving family violence and to ensure disparities in power relations between separating parties in these cases do not impact negotiated settlements.<sup>14</sup> And it unfortunately remains the case that when separating from a violent man and in attempting to bring legal finality to that separation, women and children are in particular danger. The amplified risk of violence, abuse and homicide during and post separation has been extensively documented.<sup>15</sup>

Women need considerable information during this period but they also require significant

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<sup>7</sup> R Cumberland & Y Lay, (2015) *Submission to the Royal Commission into Family Violence Victoria*, Good Shepherd Australia New Zealand

<sup>8</sup> VicHealth, (2013) *National Community Attitudes Towards Violence Against Women Survey – Research Summary*, <<https://www.vichealth.vic.gov.au/media-and-resources/publications/2013-national-community-attitudes-towards-violence-against-women-survey>>

<sup>9</sup> Leesa Hooker, Rae Kaspiew, Angela Taft, (2015), *Domestic and family violence and parenting: Mixed methods insights into impact and support needs: State of knowledge paper*, ANROWS Landscapes

<sup>10</sup> R Cumberland & Y Lay, (2015) *Submission to the Royal Commission into Family Violence Victoria*, Good Shepherd Australia New Zealand

<sup>11</sup> Judicial College of Victoria, (2015), *2015 Prospectus*, Melbourne: Judicial College of Victoria.

<sup>12</sup> R Cumberland & Y Lay, (2015) *Submission to the Royal Commission into Family Violence Victoria*, Good Shepherd Australia New Zealand

<sup>13</sup> Leesa Hooker, Rae Kaspiew, Angela Taft, (2015), *Domestic and family violence and parenting: Mixed methods insights into impact and support needs: State of knowledge paper*, ANROWS Landscapes

<sup>14</sup> Ibid.

<sup>15</sup> Marianne Hester, (2011) *The Three Planet Model: Towards an Understanding of Contradictions in Approaches to Women and Children's Safety in Contexts of Domestic Violence*, *British Journal of Social Work* 41

support. It is therefore critical that in making information available to women at risk of, or experiencing family violence, access to those supports and relevant services is enhanced and not undermined – that the information becomes an opening or conduit to (rather than a substitute for) individual support. It is particularly important to be alert to the specific danger, in the context of family violence, that in making information freely available, opportunities for early identification and intervention are overlooked. It is increasingly recognised that a significant burden falls to women seeking safety in the post separation period by the current federal system which sees states having responsibility for family violence and child protection but matters arising from relationship breakdown dealt with federally.<sup>16</sup> Care must be taken to ensure that women do not feel isolated in their efforts to traverse these difficulties – that they are not overburdened and harnessed with responsibilities for their own, and their children’s welfare and legal outcomes.

Avenues for information dissemination must also carefully contemplate that women with legal needs pertaining to family violence, may initially make almost imperceptible attempts at seeking information, advice and support. Furthermore, the routes via which she may reach out for that assistance are likely, at least in the earliest instances, to be non-legal.<sup>17</sup>

Navigating the legal and welfare responses to family violence, particularly where there are children involved, is exceedingly complex – family law, family violence, child protection and child contact systems operate with separate cultures, histories, laws, professional discourses and sets of professionals.<sup>18</sup> As a result there are significant systemic contradictions in the welfare and justice systems that intersect around separating families where family violence has been an issue and children are involved.<sup>19</sup> Cohesive and coordinated approaches become exceedingly difficult to achieve and the outcomes are likely to be contradictory for the individual women caught between these systems - mothers in particular can feel both formal and informal pressures from these disparate systems, required to make impossible choices about how they might or ought to act to safeguard their own, and their children’s safety.<sup>20</sup>

These issues highlight the need for robust and integrated responses to clients with complex needs. Access to quality legal information must be judiciously provided and must constitute one element in a suite of responses that envelope the client, rather than fostering the notion that self-help is the preferred approach. Free and low cost specialist family law and family violence legal services must also be at the heart of these responses. Funding to the community legal sector must recognise the escalating need for specialist advice programs of this type.

Community legal centres are best placed to respond to the legal needs of low income, disadvantaged and otherwise vulnerable members of our community. These centres play a

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<sup>16</sup> Leesa Hooker, Rae Kaspiew, Angela Taft, (2015), *Domestic and family violence and parenting: Mixed methods insights into impact and support needs: State of knowledge paper*, ANROWS Landscapes

<sup>17</sup> Sophie Clarke and Suzie Forell, (2007) *Pathways to Justice: The Role of Non-Legal Services*, Law and Justice Foundation of NSW

<sup>18</sup> Marianne Hester, (2011) *The Three Planet Model: Towards an Understanding of Contradictions in Approaches to Women and Children’s Safety in Contexts of Domestic Violence*, British Journal of Social Work 41

<sup>19</sup> Ibid

<sup>20</sup> Ibid

significant role in preventing legal problems from escalating and in aiding clients to navigate inherent inequities in the justice system that are intensified by the experience of compound disadvantage, including gender bias. The sector is however, struggling to meet the increasing demand. The opportunity for survivors of family violence to achieve fair and just legal outcomes is negatively influenced by shortcomings in the family law system. This system, which, we acknowledge, is largely beyond the scope of this review, fails to serve the needs of women separating from their partners and engaged in property settlement disputes where the asset pool between the parties is small.<sup>21</sup> Legal costs, filing fees and formal court procedures render courts inaccessible or unsuitable for many in this situation. The problem, is however, compounded by the dearth of free or low cost services to assist in bringing finality to the relationship between former partners. Where family violence has been involved, and in particular economic abuse (below), the ramifications for female survivors can be significant. To resolve these issues, we have previously supported calls<sup>22</sup> for the establishment of an alternative low-cost court or tribunal be established to deal with small property claims between disputing parties.<sup>23</sup> We argue that failing this, there exists a substantial need for parties who do not have the resources to afford comprehensive legal advice, to be able to access specialised community legal services able to give general guidance or conduct independent fairness assessments of property settlements negotiated out of court.

In a recent collaborative study undertaken by Good Shepherd and Wyndham Legal Service economic abuse was identified as a pervasive yet often unidentified problem aggravating the trauma hardship experienced by victims of other forms of family violence.<sup>24</sup> It is a problem that substantially undermines efforts towards achieving financial independence.<sup>25</sup> It is estimated that between 50 and 90 per cent of women who seek assistance for family violence have also experienced economic abuse<sup>26</sup> and that approximately 1.86 million Australian women have been victims of economic abuse in their lifetime.<sup>27</sup> Problematically, our research highlighted that economic abuse, despite being identified as a specific form of family violence within the *Family Violence Protection Act 2008* (Vic), continues to be a less readily understood and recognised form of abuse. Both victims and generalist legal professionals can fail to identify its presence.

When leaving an abusive relationship, female survivors of family violence are often socially isolated, have reduced self-esteem and experience emotional trauma that can impair their

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<sup>21</sup> O Camilleri, T Corrie, and S Moore, (2015) *Restoring Financial Safety: Legal Responses to Economic Abuse* Good Shepherd Australia New Zealand

<sup>22</sup> By Women's Legal Service. (2013), *Access to justice arrangements: Submission to the Australian Productivity Commission*, Melbourne, Women's Legal Service.

<sup>23</sup> O Camilleri, T Corrie, and S Moore, (2015), *Restoring Financial Safety: Legal Responses to Economic Abuse* Good Shepherd Australia New Zealand

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> MacDonald, F. 2012 *Spotlight on Economic Abuse: A Literature and Policy Review*, Good Shepherd Youth & Family Service and Kildonan Uniting Care: North Collingwood

<sup>27</sup> O Camilleri, T Corrie, and S Moore, (2015), *Restoring Financial Safety: Legal Responses to Economic Abuse* Good Shepherd Australia New Zealand

capacity to achieve financial independence.<sup>28</sup> In order to remain safe from violence and because of the inadequacies of the mechanisms to support them, victims often leave the relationship with few financial resources. Remedies to address financial issues through the Family Court are often inaccessible because of the cost associated with representation. It becomes a circular problem: to recover financially victims require access to the very financial resources they are being denied.<sup>29</sup> Resultantly, female victims are more likely to be reliant on income support after experiencing family violence<sup>30</sup> and to have significantly reduced assets post-separation.<sup>31</sup> Even where abuse has not been a factor, women exiting a relationship can find it takes up to six years to recover financially, whereas men tend to recover far more quickly from relationship breakdown and divorce.<sup>32</sup>

The combative nature of legal proceedings can be a particular issue for women in family law matters where family violence has been a factor. Current legal process options available to parties in this situation tacitly facilitate the use of legal proceedings to:

- further victimise a partner
- inflict financial pain upon a partner (by exhausting limited financial resources to prevent her from gaining access to any of these resources)
- frustrate a partner, driving her to emotional exhaustion and thereby forcing her into unjust settlements (see case study below)
- manufacture opportunities to contact a partner post separation (often as a means to continue intimidatory behaviour)

Specialist family violence practitioners have thorough understandings of these and other abuse tactics engaged by perpetrators of family violence at the time of separation and are thereby able to better support survivors to obtain positive outcomes.

### ***Case study: Forcing an unfair settlement***<sup>33</sup>

*When Merris and Fred separated, Fred went out of his way to avoid any kind of property settlement, giving Merris minimal offers of \$5,000 in an attempt to delay matters and force her into a less than fair agreement. Given that Merris and Fred co-owned their own home and an investment property, and had a joint mortgage, \$5,000 was clearly an inadequate amount.*

*Merris knew that ownership in the properties was split unevenly, with Fred owning 70 per cent and Merris owning 30 per cent. Fred was forcing Merris to give him her money in order to maintain the mortgage even though she was no longer living in the home. Merris gave*

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<sup>28</sup> A Moe and M Bell, (2004), *Abject Economics: The Effects of Battering and Violence on Women's Work and Employability*, 10 (1) Violence Against Women

<sup>29</sup> O Camilleri, T Corrie, and S Moore, (2015) *Restoring Financial Safety: Legal Responses to Economic Abuse* Good Shepherd Australia New Zealand

<sup>30</sup> N Sharp, (2008) *'What's Yours is Mine': The Different Forms of Economic Abuse and its Impact on Women and Children Experiencing Domestic Violence*, United Kingdom: Refuge,

<sup>31</sup> R Braff and I Barrett Meyering, (2011) *Seeking Security: promoting women's economic security after family violence*, Sydney: University of New South Wales

<sup>32</sup> M Gray, D de Vaus, L Qu and D Stanton, *Divorce and the wellbeing of older Australians*, Australian Institute of Family Studies (2010) <<https://aifs.gov.au/publications/divorce-and-wellbeing-older-australians>>

<sup>33</sup> From O Camilleri, T Corrie, and S Moore, (2015), *Restoring Financial Safety: Legal Responses to Economic Abuse* Good Shepherd Australia New Zealand

*Fred the money to avoid the situation escalating, even though she could not afford it. She used her credit card to transfer \$3,000 to Fred. As it turns out, Fred was not using the money for the mortgage but to go out to nightclubs.*

*The delay in the property settlement was keeping Merris tied to her former partner and was making it extremely difficult for her to remove him from her life. Merris eventually dropped her property settlement and intervention order and decided to move to New Zealand with her brother. She was largely concerned that there wouldn't be enough equity in the houses to meet legal fees as she had received an arrears letter from the mortgagee. She also hoped Fred might transfer the car to her name so that she could sell it and clear some of her debts. He did follow through with this.*

Where legal services fail to identify specific types of abuse such as economic abuse - where they fail to fully understand the complex relationship dynamics surrounding family violence - the risks to women and children can be overlooked, or even exacerbated.<sup>34</sup> Interventions to improve survivors' access to justice must address the need for an increase in specialist legal services and practitioners with specific family violence expertise within the community legal sector. Moreover, these service responses must be coordinated. Opportunities to integrate and embed legal, welfare, financial and social services within community service hubs need to be supported.

Good Shepherd also notes that fifty community legal centres currently operate across Victoria to provide free legal services to disadvantaged community members. There is concern that the recent amalgamations of some of these services. Whilst delivering apparent cost-benefits and efficiencies of scale, these amalgamations mean that issues of conflict of interest and accessibility may more frequently arise as a barrier to access for people who lack the financial resources to selectively purchase legal advice and representation. As community legal services move away from local centres, there are increased prospects that legal need will be unmet, that legal issues will escalate before assistance is sought and that community legal education will become less accessible.

- **Recommendation 1:**  
Particular care should be taken in the provision of publically available legal information regarding family law where family violence has been an issue. It should be recognised that legal self-help, due to significant complexities in this and related areas of the law, can generate significant negative consequences for women and their children.
- **Recommendation 2:**  
Funding to the community legal sector should recognise the escalating need for family law and family violence specialisation at the local level.
- **Recommendation 3:**  
The interrelationships between the legal and non-legal needs of survivors of family violence should be better recognised and communicated across the community legal sector and

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<sup>34</sup> Leesa Hooker, Rae Kaspiew, Angela Taft, (2015), *Domestic and family violence and parenting: Mixed methods insights into impact and support needs: State of knowledge paper*, ANROWS Landscapes

opportunities for embedding related support services in service hubs should be supported. Efforts should be increased to facilitate improved understandings of the interrelationships between the legal and non-legal needs of survivors of family violence. Collaboration between practitioners delivering services to family violence survivors (including legal advisors and advocates, social workers, child protection services and financial counsellors) must be supported at a systemic level.

Before concluding our response, we would like to avert to the issue of debt management amongst vulnerable community members. The concerns raised above in relation to ensuring the release of legal information does not interfere with opportunities for early intervention and the prevention of matters escalating apply equally in this context. Through our financial counselling programs and involvement in preparing a report on the National Bulk Debt Negotiation Project, we are astutely aware of the need for increased support at the earliest stages for those experiencing financial hardship and in situations of accumulating debt. Systemic issues in the financial services and banking industries have resulted in numerous instances of individuals in debt having insufficient knowledge and capacity to navigate the regulatory and legal frameworks to assert their right to debt waiver or other concessions to their situation of hardship. In one instance a client with mental health issues disconnected his phone – and thereby also contact with his support and health workers - to avoid the calls of debt collectors. Other clients routinely prioritised repayment of their debts above their primary welfare needs, leaving themselves with insufficient funds to afford food and other essentials. These types of case studies highlight the critical need for financially vulnerable community members to receive increased levels support at the earliest stages of any debt or fine related problems. Early intervention, in such cases, can release clients in long-term financial hardship from the burden of unserviceable debt. Legal information made accessible in the public realm should be carefully framed to empower debtors to seek assistance and manage their debts appropriately.

**Recommendation:**

Relevant legal information should be provided at the earliest stages of any debt or fine related problems. Information should be framed to empower financially vulnerable community members to make timely efforts to seek advice or assistance to ensure the effective management of debt problems.

## **Concluding remarks**

Good Shepherd Australia New Zealand strongly advocates for enhancements to the Victorian justice system that recognise women’s rights, respond to the particular needs of women and children and tackle inherent issues of gender-based discrimination in the operation of the law. Addressing the availability and quality of information and advice pertaining to the most common legal problems experienced by women is an important element of progress towards these objectives. Information provision, however, must be specifically tailored in relation to certain types of legal matters to ensure that women are not disadvantaged, on account of their gender or other disadvantage, in their interactions

with the law. It must facilitate rather than discourage timely access to support services. The prevalence of family violence issues and the complex nature of the law and related service systems in this space require increased specialisation in the community legal sector and improved support for women seeking to navigate those systems at a highly vulnerable and traumatic point in their lives.

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