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House of Representatives Standing Committee on Social Policy and Legal Affairs  
PO Box 6021  
Parliament House  
Canberra ACT 2600

**By email:** [spla.reps@aph.gov.au](mailto:spla.reps@aph.gov.au)

Relationships Australia welcomes the opportunity to make a submission to the Committee's inquiry into family, domestic and sexual violence. This submission is made on behalf of the eight State/Territory Relationships Australia organisations, and complements our submission to the Joint Select Committee on Australia's Family Law System (for your convenient reference, that submission can be found at <https://www.relationships.org.au/about%20us/submissions-and-policy-statements/joint-select-committee-on-australia2019s-family-law-system-2013-relationships-australia-national-office-submission>).<sup>1</sup>

## **The work of Relationships Australia**

Relationships Australia is a federation of community-based, not-for-profit organisations with no religious affiliations. Our services are for all members of the community, regardless of religious belief, age, gender, sexual orientation, lifestyle choice, living arrangements, cultural background or economic circumstances.

Relationships Australia has, for over 70 years, provided a range of relationship services to Australian families, including individual, couple and family group counselling, dispute resolution, services to older people, children's services, services for victims and perpetrators of family violence, and relationship and professional education. We aim to support all people in Australia to live with positive and respectful relationships, and believe that people have the capacity to change how they relate to others and develop better health and wellbeing.

Relationships Australia State and Territory organisations, along with our consortium partners, operate around one third of the 66 Family Relationship Centres across the country. In addition, Relationships Australia Queensland operates the national Family Relationships Advice Line and the Telephone Dispute Resolution Service.

The core of our work is relationships – through our programs we work with people to enhance and improve relationships in the family (whether or not the family is together), with friends and colleagues, and within communities. Relationships Australia believes that violence, coercion, control and inequality are unacceptable.

We respect the rights of all people, in all their diversity, to live life fully and meaningfully within their families and communities with dignity and safety, and to enjoy healthy relationships. A

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<sup>1</sup> Appendix A sets out the key themes traversed in the Relationships Australia National submission to the Parliamentary Joint Committee on Australia's Family Law System.

commitment to fundamental human rights, to be recognised universally and without discrimination, underpins our work. Relationships Australia is committed to:

- Working in regional, rural and remote areas, recognising that there are fewer resources available to people in these areas, and that they live with pressures, complexities and uncertainties not experienced by those living in cities and regional centres.
- Collaboration. We work collectively with local and peak body organisations to deliver a spectrum of prevention, early and tertiary intervention programs with older people, men, women, young people and children. We recognise that often a complex suite of supports (for example, family support programs, mental health services, gambling services, drug and alcohol services, and housing) is needed by people affected by family violence and other complexities in relationships.
- Enriching family relationships, and encouraging clear and respectful communication.
- Ensuring that social and financial disadvantage is no barrier to accessing services.
- Contributing our practice evidence and skills to research projects, to the development of public policy, and to the provision of effective and compassionate supports to families.

This submission draws upon our experience in delivering, and continually refining, evidence-based programs in a range of family and community settings with diverse identities, including:

- younger and older people
- people who come from culturally and linguistically diverse backgrounds
- Aboriginal and Torres Strait Islander people
- people who identify as members of the LGBTIQ+ communities
- people affected by intergenerational trauma, and
- people affected by complex grief and trauma, intersecting disadvantage and polyvictimisation.

## SUMMARY OF PROPOSALS

### LEGISLATION

#### **Structural**

1. Establish a Family Wellbeing and Family Law Commission, with responsibilities to:
  - a. monitor performance of legislation, policies and programs
  - b. conduct referred and own motion inquiries
  - c. manage accreditation of services
  - d. establish a national death review mechanism
  - e. inform and educate professionals
  - f. establish a Children's and Young People's Advisory Board
  - g. develop a Cultural Safety Framework, and
  - h. develop a workforce capability plan. [**see** section E.8 of the response to paragraph (a) of the Terms of Reference]
2. Establish a national database of all court and tribunal orders related to family violence, child protection and abuse of older people. [**see** section C.1 of the response to paragraph (a)]
3. Enable cross-jurisdictional orders for all court and tribunal orders related to family violence, child protection and abuse of older people. [**see** section C.2 of the response to paragraph (a)]
4. Improve enforcement mechanisms and funding for enforcement, to complement post-order/post-agreement services. [**see** section D of the response to paragraph (a)]

#### **Family violence**

5. Repeal the presumption of shared parenting. [**see** section A of the response to paragraph (a)]
6. Amend the definition of 'family violence' in the *Family Law Act 1975* (Cth) to:
  - a. replace 'assault' with 'an act that causes physical harm or causes fear of physical harm'
  - b. replace 'repeated derogatory taunts' with 'emotional or psychological harm'
  - c. add 'including requiring the family member to transfer or hand over control of assets, or forcing the family member to sign a document such as a loan or guarantee' to paragraph 4AB(2)(g)
  - d. add 'including unreasonably withholding information about financial and other resources' to paragraph 4AB(2)(h)
  - e. add reproductive coercion to section 4AB
  - f. add 'community or religion' to subparagraph 4AB(2)(i)
  - g. add to the definition in section 4AB two new examples:
    - i. using electronic or other means to distribute words or images that cause harm or distress; and
    - ii. non-consensual surveillance of a family member by electronic or other means

- h. add 'fear' to 'cause harm or distress' to the first of the preceding examples for technology-facilitated abuse, and add '(including, but not limited to, remotely operated aircraft)' to the second of these
- i. amend the definition of 'family violence' in the Act to include misuse of courts and family dispute-related processes as a form of abuse in family law matters and to clarify court powers to impose consequences for misuse
- j. include 'medical neglect' within the definition of family violence, and
- k. include dowry and forced marriage, as Victoria has done in its *Family Violence Protection Act 2008*. [**see** section A.2 of the response to paragraph (a)]

## **Children**

- 7. Establish a specialist tribunal for children's matters, supported by a Counsel Assisting. [**see** section E.3 of the response to paragraph (a)]
- 8. Urgently fund Children's Contact Services (CCS) to offer parenting education and other services. [**see** section E.6 of the response to paragraph (a)]
- 9. Require accreditation of Children's Contact Services and private family report writers. [**see** section E.6 of the response to paragraph (a)]
- 10. Require that, where proceedings involve an Aboriginal or Torres Strait Islander child, a cultural report should be prepared, including a cultural plan. [**see** section A of the response to paragraph (h)]
- 11. Require that, where concerns are raised about the parenting ability of a person with disability in proceedings for parenting orders, a report writer with specialist skills should provide the court with a report and recommendations. [**see** section C of the response to paragraph (h)]
- 12. Clarify the Act to make clear that the children's best interests are paramount not only in parenting disputes, but also in property and finance matters. [**see** section A of the response to paragraph (a)]

## **Financial**

- 13. Amend the Family Law Act to merge provisions for married and *de facto* spousal maintenance. [**see** section A.4 of the response to paragraph (a)]
- 14. Simplify superannuation splitting provisions. [**see** section A.3 of the response to paragraph (a)]

## **SERVICES**

### **Structural**

- 15. Replace the Family Law System with a Family Wellbeing System, integrating services across the lifespan and offer families holistic support through three pillars:
  - a. physical and virtual Family Wellbeing Hubs
  - b. decision-making mechanisms that centre on sharing parenting responsibilities to maximise child wellbeing and promote child development, and that are not geared to binary win/lose outcomes as between parents, and

- c. nationally-integrated funding model that ensures a stable and enduring funding base for public services. [see section E.4 of the response to paragraph (a)]
- 16. To support gender equity in the family violence, child protection, family law and human services workforces - roll 'Equal Remuneration Order' supplementation payments into ongoing base funding. [see section E.10 of the response to paragraph (a)]
- 17. Accept that maximum therapeutic benefit, and cultural transformation, both require investment of effort and of time to build enabling relationships. [see section A of the response to paragraph (h)]

### **Service innovation and expansion**

- 18. Fund, on a national basis, legally-assisted FDR, including legally-assisted and culturally appropriate FDR. [see section B.1 of the response to paragraph (a)]
- 19. Fund legally-assisted dispute resolution (LADR) services to provide to families two LADR sessions of two hours each for re-location matters. [see section F.1 of the response to paragraph (h)]
- 20. Increase funding for services tailored for men. [see section E.6 of the response to paragraph (a)]
- 21. Guarantee ongoing funding for Family Law Pathways Networks. [see section C.3 of the response to paragraph (c)]
- 22. Fund legal aid commissions to provide litigation representative services to people with disability who are involved in family law proceedings. . [see section C.2 of the response to paragraph (h)]
- 23. The Commonwealth Government should work with the National Disability Insurance Agency should consider how the NDIS could be used to fund appropriate supports for eligible people with disability to access family violence, family law and relationship services, and how professionals outside disability services could refer clients to the NDIA. . [see section C.3 of the response to paragraph (h)]
- 24. Improve the quality and accessibility of family services for Aboriginal and Torres Strait Islander people. [see section A of the response to paragraph (h)]
- 25. Expand professional education opportunities for Aboriginal and Torres Strait Islander people. [see section A of the response to paragraph (h)]
- 26. Fund Family Advocacy and Support Services (FASS) to be provided nationally, on an ongoing basis. [see section D of the response to paragraph (a)]
- 27. Develop and fund specialised service responses for older women affected by sexual violence. [see section B of the response to paragraph (e)]

### **Resources**

- 28. Commission further resources to help parents co-parent safely. [see section B.2 of the response to paragraph (a)]
- 29. Commission tailored 'Kids in Focus' seminars for identified cohorts. [see section A.2 of the response to paragraph (l)]

## BY AND/OR FOR COURTS

### *Specialist lists*

- 30. Establish an ongoing general 'high risk list', with national electronic filing, universal risk screening, triage and the option for national online hearing. [**see** section C.2 of the response to paragraph (a)]
- 31. Establish an Indigenous List. [**see** section C.3 of the response to paragraph (a)]
- 32. Provide a fast track for urgent interim spousal maintenance applications. [**see** section F of the response to paragraph (h)]

### *Children*

- 33. Prioritise hearing children's voices, by providing mechanisms to enable the voices of children and young people to be heard in matters affecting them. [**see** section A of the response to paragraph (l)]
- 34. Develop a national template for a summary of child protection department or police involvement with a child and family which could be given to family courts. [**see** section C.8 of the response to paragraph (a)]
- 35. Revive use of Less Adversarial Trial provisions across all registries. [**see** section C.7 of the response to paragraph (a)]
- 36. Establish post order / post agreement services to help families implement orders and agreements, through models such as Parenting Coordination. [**see** section C.7 of the response to paragraph (a)]

### *Family Dispute Resolution*

- 37. Implement a rigorous approach to issuing s60I certificates. [**see** section C.7 of the response to paragraph (a)]
- 38. Continue to conduct periodic blitzes (including judicious use of conciliation and arbitration processes), focused by subject matter and/or location. [**see** section C.7 of the response to paragraph (a)]

### *Procedural*

- 39. Discard the requirement to present all affidavit material before a first hearing in the Federal Circuit Court. [**see** section C.7 of the response to paragraph (a)]
- 40. Maintain capability to hold online hearings, including by supporting infrastructure necessary to provide safe, reliable, affordable internet services for people across Australia. [**see** section D of the response to paragraph (a)]
- 41. Subject to COVID-19 restrictions, increase circuiting of first instance judges and locating registry staff in state and territory courts with family violence and child protection jurisdictions. [**see** section D of the response to paragraph (a)]
- 42. Resource courts in states and territories (including by funding and training) to exercise family law jurisdiction when families come before them with other matters, including family violence and child protection orders. [**see** section D of the response to paragraph (a)]



43. Require people to seek leave to appeal:
  - a. orders from the Federal Circuit Court
  - b. orders made by first instance Judges of the Family Court, and
  - c. interim orders. [**see** section D of the response to paragraph (a)]
44. Provide:
  - a. a single point of entry into the family court system and a single first instance court
  - b. a single set of rules of court
  - c. registry practices that are nationally consistent
  - d. a single set of court forms
  - e. a single interface through which to transmit and enter user data
  - f. use of Easy English to provide court users with comprehensive, accurate and up-to-date information about the courts, and
  - g. consistent processes across all registries of the Family Court of Australia and the Federal Circuit Court. [**see** section D of the response to paragraph (a)]
45. Develop practice notes explaining the duties that litigation representatives have to the person they represent and to the court. [**see** section C.2 of the response to paragraph (h)]

### ***Information sharing and collaboration***

46. Give relevant professionals in the family violence and child protection systems access to the Commonwealth Courts Portal. [**see** section C.8 of the response to paragraph (a)]
47. Provide ongoing judicial training of *all* family court judges (not only those involved in the Lighthouse Project or the proposed High Risk List) in family violence and risk assessment. [**see** section C.7 of the response to paragraph (a)]
48. Co-locate services wherever possible; where this is not possible, foster robust multi-directional referral pathways. [**see** section E.6 of the response to paragraph (a)]

### **RESEARCH**

49. Undertake research into abuse of older people, including:
  - a. older people with impaired cognition, in residential aged care facilities, and
  - b. sexual violence against older women,to complement existing research being undertaken into abuse of older people in the community. [**see** section C of the response to paragraph (e)]
50. Commission longitudinal research to better discern how shared parenting arrangements support children's attachment, developmental and other needs [**see** section A.2 of the response to paragraph (l)]

## GLOSSARY

**Family Law Act** means the *Family Law Act 1975* (Cth)

**AGD** means the Commonwealth Attorney-General's Department

**AIFS** means the Australian Institute of Family Studies

**AIHW** means the Australian Institute of Health and Welfare

**ALRC** means the Australian Law Reform Commission

**ALRC DP 86** means the Discussion Paper on the Review of the Family Law System, published by the Australian Law Reform Commission (2018)

**ALRC IP 48** means the Issues Paper on the Review of the Family Law System, published by the Australian Law Reform Commission (2018)

**ALRC Report 131** means the report *Elder Abuse – A National Legal Response*, published by the Australian Law Reform Commission (2017)

**ALRC Report 135** means the ALRC *Family Law System Review – Final Report*, published by the Australian Law Reform Commission (2018)

**CCS** means Children's Contact Services, including those not funded by the Commonwealth Government

**FamCA** means the Family Court of Australia

**FASS** means the Family Advocacy and Support Services program funded by the Commonwealth Government

**FCC** means the Federal Circuit Court

**FCWA** means the Family Court of Western Australia

**FDR** means Family Dispute Resolution

**FDRP** means Family Dispute Resolution Practitioner

**FLC** means the Family Law Council

**FRC** means Family Relationship Centre

**ICL** means Independent Children's Lawyer

**LACA FDR** means legally-assisted and culturally appropriate FDR

**MBCP** means Men's Behaviour Change Programmes



**SPLA Inquiry 2017** means the inquiry undertaken by the House of Representatives Standing Committee on Social Policy and Legal Affairs into *A better family law system to support and protect those affected by family violence* (2017)

## RESPONSES TO TERMS OF REFERENCE

**Term of Reference (a) Immediate and long-term measures to prevent violence against women and their children, and improve gender equity**

Family violence is not a discrete phenomenon; it is generally accompanied by a constellation of complex co-morbidities.<sup>2</sup> For example, a national study of FDR outcomes conducted by Relationships Australia involved approximately 1700 participants, of whom:

- nearly a quarter (23%) presented with high levels of psychological distress, and
- 68% reported experiencing at least one form of abuse, with verbal abuse being the most common (64%).

A large proportion (72%) of parenting participants in the Study also reported significant child exposure to verbal conflict between parents, including yelling, insulting and swearing.

An audit of data collected by Relationships Australia South Australia found that clients reported concerns about mental health, violence and harm to children. The audit analysed over 3,200 files from 2013-2018; its findings are summarised in the following table.

DOOR 1 wording*	Clients saying 'Yes'	Sample size	Risk indicator
In the past 2 years, have you seen a doctor, psychologist or psychiatrist for a mental health problem or drug/alcohol problem?	33.9%	3232	Mental health problem
Have things in your life ever felt so bad that you have thought about hurting yourself, or even killing yourself?	18.8%	3189	Mental health
If yes, do you feel that way lately?	9.5%	599 (Yes only)	Suicide risk
In the past year, have you drunk alcohol and/or used drugs more than you meant to?	10.3%	3245	Alcohol or drug abuse
In the past year, have you felt you wanted or needed to cut down on your drinking and/or drug use?	9.4%	3177	Alcohol or drug abuse

<sup>2</sup> See, eg, Family Law Council, *Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems – Interim Report* (2015).

Does your young child(ren) have any serious health or developmental problems?	10.5%	1452	Developmental risk (child <5 years)
In the past 6 months, has any professional (teacher, doctor, etc.) been concerned about how your young child(ren) was doing?	14.0%	1411	Developmental risk(child <5 years)
Does your child(ren) have any serious health or developmental problems?	20.6%	2107	Developmental risk(child >=5 years)
In the past 6 months, has any professional (teacher, doctor etc.) been concerned about how your child was doing?	33.7%	2028	Developmental risk (child >=5 years)
Have any child protection reports ever been made about your child(ren)?	13.1%	3095	Child abuse
As a result of the other parent's behaviour, have the police ever been called, a criminal charge been laid, or intervention/restraining order been made against him/her?	28.4%	3228	Family violence (victimisation)
Is there now an intervention/restraining order against other parent?	5.1%	3131	Family violence (victimisation)
As a result of your behaviour, have the police ever been called, a criminal charge been laid, or intervention/restraining order been made against you?	14.3%	3244	Family violence (perpetration)
Is there now an intervention/restraining order in place against you?	4.5%	3130	Family violence (perpetration)

\*DOOR 1 was developed by J E McIntosh

This table emphasises that family violence is rarely present in isolation from other issues such as substance abuse, mental health problems or personality disorders.<sup>3</sup> Further, family court judges rarely have the luxury of being asked to decide between one option that is safe for the

<sup>3</sup> See, for example, the submission of Relationships Australia South Australia in response to ALRC IP48 (submission 62), 4.

child and one that is not safe. Too often, judges must identify a parenting arrangement that is merely *relatively* safer than other alternatives.<sup>4</sup>

For too long, families with complex needs, including family violence, have been indiscriminately funnelled through courtroom doors in the family law, family violence and child protection systems, in the hope that their social and emotional problems can be solved by legal analysis. This approach has been amply demonstrated as a failed response to families' needs. It ignores structural issues including social and cultural determinants of health, as well as offering inadequate responses to the particular problems experienced by individual families. Persistence with such a response endangers children and their parents.

Thus, policy and programme development cannot narrowly focus on family violence alone; to be effective, service providers must take a holistic view of each family's circumstances, and policy makers must examine and address systemic and structural factors from which those circumstances emerge.

Poverty is a common thread. There is a strong negative association between poverty and children's developmental outcomes. The negative effects associated with low income and poverty carry a significant cost for individuals, families, and the broader community. There are also clear costs associated with children's development and wellbeing - the impacts of which are likely to be amplified later in life for the children who experienced poverty.<sup>5</sup>

Relationship breakdown can be both a cause and an effect of poverty and hardship. The stress of poverty can have a negative effect on relationship quality and stability, and cause greater risk of relationship breakdown. In turn, relationship breakdown can increase the risk of poverty for both children and adults.<sup>6</sup>

Further, in the experience of Relationships Australia, the loss of financial resources can have serious socio-economic impacts on all children, not only those in the poorest or most disadvantaged families. For example, parental separation can:

- require children to move away from known and familiar suburbs (perhaps into two new suburbs for shared care)
- require children to leave private schooling due to disputes about fees

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<sup>4</sup> See also Bretherton et al, 2011, 541.

<sup>5</sup> Warren, D, *Low Income and Poverty Dynamics - Implications for Child Outcomes*. Social Policy Research Paper Number 47 (2017). Available at <https://www.dss.gov.au/publications-articles/research-publications/social-policy-research-paper-series/social-policy-research-paper-number-47-low-income-and-poverty-dynamics-implications-for-child-outcomes>. See also Joan B Kelly, 'Children's Adjustment in Conflicted Marriage and Divorce: A Decade Review of Research', 39 *J. A M. ACAD.CHILD & ADOLESCENT PSYCHIATRY* 963 (2000). Relationships Australia notes that 84% of Australian single parent families are single mother families. In 50% of single parent families with dependants, the age of the youngest child is between 0-9 years of age: Australian Bureau of Statistics (2012), *Labour Force, Australia: Labour Force Status and Other Characteristics of Families*, Cat. No. 6224.0.55.001.

<sup>6</sup> Stock, Corlyon et al, *Personal Relationships and Poverty: An Evidence and Policy Review*, a report prepared for the Joseph Rowntree Foundation by the Tavistock Institute of Human Relations, 2014. Data shows that it is resident mothers and children who are at greater risk of falling into persistent poverty.

- require children to leave known schools, perhaps with the consequence of losing contact with friendship groups
- require children to withdraw from costly or inconvenient extra-curricular activities
- lead to loss of, or reduced coverage by, private health care, and
- mean that one or both parents may need to work more hours, leading to a loss of physical and emotional availability to their children at an already fraught time.

In short, if children are involved, a property dispute is never just about property – it will always affect children’s development, wellbeing and relationships, too. Accordingly, Relationships Australia considers that the Act should make clear that the children’s best interests are paramount not only in parenting disputes, but also in property and finance matters. For this reason, too, property/finance disputes should be dealt with in a way that identifies and addresses family violence through a trauma-informed lens,<sup>7</sup> to ensure (for example) that such disputes are not being used to perpetuate violence, or that the resolution of disputes does not occur in such a way as to exacerbate safety risks. This would align with the views expressed by this Committee in its 2017 report, *A better family law system to support and protect those affected by family violence* (see Recommendation 18, to which the Government agreed in part).<sup>8</sup>

## **A Immediate measures - legislative**

There is a range of provisions in the Family Law Act that, in the view of Relationships Australia, exacerbate safety risks, including by facilitating perpetuation of family violence. In this part of our submission, we canvass these, and suggest alternative approaches.

### **A.1 Repeal the presumption of shared parenting**

Relationships Australia supports proposals to repeal the presumption of shared parenting. Further, in our submission responding to ALRC DP86, we observed that

Relationships Australia agrees that the presumption of shared responsibility has been widely misunderstood as a presumption of equal shared time; this has been our consistent practice experience since the 2006 amendments. Relationships Australia would support reforms to clarify that provisions about shared responsibility or shared decision-making have no relation to shared time. We further support consolidating relevant provisions in the one place, to enhance accessibility and comprehensibility.<sup>9</sup>

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<sup>7</sup> See Fallot and Harris, 2006, for the five principles of trauma-informed practice: safety, transparency and trustworthiness, choice, collaboration and mutuality, and empowerment.

<sup>8</sup> See p 13 of the Government’s response at [https://www.aph.gov.au/Parliamentary\\_Business/Committees/House/Social\\_Policy\\_and\\_Legal\\_Affairs/FVlawreform/Government\\_Response](https://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/FVlawreform/Government_Response)

<sup>9</sup> <https://www.relationships.org.au/about%20us/submissions-and-policy-statements/australian-law-reform-commission-review-of-the-family-law-system>, at p 27. We note, in this regard, the Private Member’s Bill introduced by Mr Graham Perrett MP: the Family Law Amendment (A Step Towards a Safer Family Law System) Bill 2020, introduced on 15 June 2020: [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=r6508](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6508).

## A.2 Amend the definition of *family violence* in the Family Law Act

We further suggest that the definition of ‘family violence’ in the Commonwealth Family Law Act should be amended to:

- replace ‘assault’ with ‘an act that causes physical harm or causes fear of physical harm’
- replace ‘repeated derogatory taunts’ with ‘emotional or psychological harm’
- add ‘including requiring the family member to transfer or hand over control of assets, or forcing the family member to sign a document such as a loan or guarantee’ to paragraph 4AB(2)(g)
- add ‘including unreasonably withholding information about financial and other resources’ to paragraph 4AB(2)(h)
- add reproductive coercion to section 4AB
- add ‘community or religion’ to subparagraph 4AB(2)(i)
- add to the definition in section 4AB two new examples:
  - using electronic or other means to distribute words or images that cause harm or distress; and
  - non-consensual surveillance of a family member by electronic or other means.

Relationships Australia would also propose to add ‘fear’ to ‘cause harm or distress’ to the first of the preceding examples for technology-facilitated abuse, and to add ‘(including, but not limited to, remotely operated aircraft)’ to the second of these.

Relationships Australia supports the suggestion, made by the Royal Australian and New Zealand College of Psychiatrists, to include ‘medical neglect’ within the definition of family violence. The College gives the example of

...obstructing access to medical or psychological care for the child or refusing to attend appointments when the child is in their care.<sup>10</sup>

Relationships Australia also supports expanding the definition of ‘family violence’ in the Family Law Act to include dowry and forced marriage, as Victoria has done in its *Family Violence Protection Act 2008*.<sup>11</sup>

Finally, we would support amending the definition of ‘family violence’ to:

- include misuse of courts and family dispute-related processes as a form of abuse in family law matters (for example, by including ‘use of systems or processes to cause harm, distress or financial loss’<sup>12</sup>), and
- clarify court powers to impose consequences for misuse.

This Committee previously recommended that ‘abuse of process in the context of family law proceedings’ be included in the list of example behaviours in subsection 4AB(2) of the Family

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<sup>10</sup> Submission 18 to the ALRC inquiry, 4.

<sup>11</sup> Relationships Australia notes support for inclusion of ‘dowry-related extortion’ by the Royal Australian and New Zealand College of Psychiatrists: submission 18, 4.

<sup>12</sup> ALRC DP86, proposal 8-3.



Law Act.<sup>13</sup> Existing court powers to manage unmeritorious or abusive use of the courts, in isolation of other parts of the 'family law system' appear to be insufficient to deter or sanction such misuse. Furthermore, the current provisions are confined to conduct in relation to court or tribunal proceedings. Powers to identify and respond to abuse of systems and processes need to recognise the multiplicity of systems and processes that can be used, in concert or in succession, to perpetuate abuse, control, intimidation and coercion.

Fragmentation of the family law, child protection, domestic violence and child support systems allows significant scope to someone who wishes to engage in such behaviour without adverse consequences. Responses to misuse of systems and processes cannot be confined to consideration of what happens in legal proceedings before the court, but must also encompass conduct outside the court, but that is connected to the dispute.

Relationships Australia would encourage further consultation in developing provisions to identify and respond to such misuse. Not all misuse of processes and systems constitutes family violence.<sup>14</sup>

The characteristics described by the High Court in *Rogers v R*<sup>15</sup> would remain relevant.

### A.3 Simplify superannuation splitting

Relationships Australia supports amendments of the Family Law Act to simplify superannuation splitting.<sup>16</sup>

Relationships Australia is concerned that the rarity of superannuation splits may spring from the complexity of provisions allowing for superannuation splitting, which can be overwhelming to parties already suffering the stress of family separation. This tends to produce harsh outcomes for the economically weaker party to the relationship.<sup>17</sup>

Relationships Australia notes this Committee's 2017 recommendation that the Attorney-General develop 'an administrative mechanism to enable swift identification of superannuation

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<sup>13</sup> See Recommendation 8; the Government noted this recommendation in its response: see [https://www.aph.gov.au/Parliamentary\\_Business/Committees/House/Social\\_Policy\\_and\\_Legal\\_Affairs/FVlawreform/Government\\_Response](https://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/FVlawreform/Government_Response), p 9.

<sup>14</sup> In its submission to the inquiry of the Senate Legal and Constitutional Affairs Committee into the Family Law Amendment (Parenting Management Hearings) Bill 2017, the Law Council of Australia noted that 'It is widely acknowledged that the AAT child support jurisdiction has come to be used by perpetrators of family violence as a means of committing further family violence by exploiting the opportunity to take legal proceedings against the victim.' (Submission 20, p 18, paragraph 51). This, in the respectful view of Relationships Australia, underscores the need to legislate to recognise that systems misuse, by parties to family dispute, can be achieved by a number of routes outside the family law courts.

<sup>15</sup> *Rogers v R* [1994] 181 CLR 509.

<sup>16</sup> ALRC 135, recommendation 17.

<sup>17</sup> See David De Vaus et al, 'The Economic Consequences of Divorce in Australia' (2014) 28(1) *International Journal of Law, Policy and the Family* 26.

assets...leveraging information held by the Australian Taxation Office'.<sup>18</sup> While measures were announced in 2018, these have not been introduced to Parliament at time of writing this submission. This facilitates ongoing perpetration of abuse of the financially weaker party to the relationship – generally, this will be a woman.

Relationships Australia notes that the Assistant Minister for Superannuation, Financial Services and Financial Technology has advised that introduction has been delayed by COVID-19.<sup>19</sup> Regrettably, as indicated elsewhere in this submission, COVID-19 is having gendered impacts; this, it seems, is one of them, and should, we respectfully submit, be remedied as a matter of high priority.

#### **A.4 Merge spousal maintenance provisions**

We respectfully suggest amending the Family Law Act to merge provisions for married and *de facto* spousal maintenance.

### **B Immediate measures - services**

Over the past few years, a great deal of work has been done by policy-makers and service providers to offer people affected by family violence therapeutic and supportive services that are trauma-informed and family violence literate. In this section, we consider how services could be further enhanced to offer prevention, early intervention and recovery services.

#### **B.1 Fund legally-assisted FDR**

The purpose of providing legal assistance in FRCs is to:

- assist clients to better understand their legal obligations and responsibilities
- empower them to resolve their disputes outside the court system, where that is safe
- increase the FRCs' flexibility in how they provide services to separated or separating clients
- increase the likelihood that clients will be able to utilise legal assistance in FRCs in a timely and non-adversarial way, and
- help maximise client safety, as clients go through separation and divorce.

Legally-assisted FDR is particularly useful where there are limited options for low cost legal services. It can offer families continuity of service provision in the same location (which is highly valued by clients who don't wish to be confronted with new faces at every appointment and obliged to re-tell their stories), who will be less likely to 'fall through the cracks' in moving between services. In the experience of Relationships Australia, clients also benefit significantly from having a meeting with their lawyers before and after FDR sessions. The ALRC supported

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<sup>18</sup> Recommendation 15, to which the Government agreed in principle:

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/House/Social\\_Policy\\_and\\_Legal\\_Affairs/FVlawreform/Government\\_Response](https://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/FVlawreform/Government_Response), p 12.

<sup>19</sup> Reported statement by the Assistant Minister: see <https://www.abc.net.au/news/2020-07-23/superannuation-scheme-to-protect-domestic-violence-survivors-no/12473102>

increased use of legally-assisted dispute resolution for families experiencing property and finance disputes.<sup>20</sup>

Clients of legally-assisted FDR include not only separating or separated parents, but also significant family members, such as grandparents.

Since June 2009, legal professionals have been able to provide a range of legal assistance to clients at FRCs, including during FDR. This has facilitated a more integrated and collaborative family law system, whilst ensuring that the best interests of the child remain the primary focus of FDR. The Protocol for legally-assisted FDR<sup>21</sup> was updated in 2017 to enable legal practitioners to continue to act for a client in litigation in circumstances where FDR has not been successful. The Protocol has been prepared to assist FRCs and practising legal professionals with the provision of legal information and advice to FRC clients. The Protocol should be adopted by individuals involved in the provision of legal assistance in FRCs, and is in addition to the standard professional duties and obligations required of legal professionals, FDR practitioners, and other FRC staff.

When supporting their clients in an FDR process conducted at an FRC, legal professionals agree to work collaboratively with FRC staff and FDR practitioners in a non-adversarial process to negotiate a fair resolution without litigation, where possible and appropriate. In doing this, lawyers agree to work with FDR practitioners to ensure and maintain the integrity of the FDR process including the requirements of honesty, disclosure and genuine effort.

## **B.2 Commission further resources for parents**

Existing tools, such as *Parenting orders: what you need to know*, published by the Australian Government, should be complemented by an additional resource focusing on child development. These resources must be regularly reviewed to ensure that they are up-to-date. Such resources help parents to make safe and sustainable agreements, and build their capacity to communicate and problem-solve issues that may arise with implementation of agreements and orders.

## **C Immediate measures – the family law courts**

In our submissions to the Australian Law Reform Commission and the Parliamentary Joint Committee into the Family Law System, we supported establishment of a suite of specialist pathways in the family courts,<sup>22</sup> to enable optimal use of specialist expertise and offer families flexible and proportionate dispute resolution options.

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<sup>20</sup> Citing Kaspiew et al, 2015.

<sup>21</sup> See <https://www.ag.gov.au/families-and-marriage/publications/protocol-provision-legal-assistance-family-relationship-centre>. The Protocol was further updated in 2019, in light of additional funding for mediation services in relation to property.

<sup>22</sup> Specifically, we supported establishment of an Indigenous list, a small property claims list and a general high risk list, in response to Proposals 6-3 to 6-7 inclusive set out in ALRC Discussion Paper 86: see <https://www.relationships.org.au/about%20us/submissions-and-policy-statements/australian-law-reform-commission-review-of-the-family-law-system>. We expressed our support for the Small Claims Property Pilot, announced by the Attorney-General, the Hon Christian Porter MP, in our submission to the Parliamentary Joint

We commend the Family Court of Australia for establishing, in response to advice from women's legal services,<sup>23</sup> the COVID-19 urgent list. This has demonstrated the capacity of the family courts and the legal profession to act rapidly in a crisis. Key features of this list, and the procedures supporting it,<sup>24</sup> are:

- operation across the Family Court of Australia and the Federal Circuit Court, applying common processes
- national electronic filing, and
- national triaging and allocation of cases, preventing backlogs accumulating in particularly hard-pressed registries while maximising the capacity of other registries.

Relationships Australia also supports the recently-announced Lighthouse Project,<sup>25</sup> which we consider offers a substantive, practical response to concerns raised by Relationships Australia, and many other system users, service providers and researchers, over several years, through elements such as:

- risk screening and early identification
- tailored court processes
- single entry point with a specialised list
- improved case management, and
- encouragement of ADR.

In addition to these initiatives, and in alignment with the principles that underpin them, Relationships Australia recommends the following immediate measures be taken.

### **C.1 Enable the family courts to continue the COVID-19 list indefinitely**

The arrangements established in Joint Practice Direction 3/2020 should be continued indefinitely, to be available immediately in response to COVID-19 outbreaks and restrictions, whether widespread or highly localised. This recognises the extraordinary impact COVID-19 will continue to have on daily life, which is compounded if parents are living separately and co-parenting.

### **C.2 Establish an ongoing general 'high risk list'**

We have advocated such a list in our submissions to the Australian Law Reform Commission and the Joint Parliamentary Committee inquiring into Australia's family law system, and we recommend it be established across all family court registries. As noted previously, family violence is rarely present in isolation from other complexities such as substance abuse, mental

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Committee on Australia's Family Law System: <https://www.relationships.org.au/about%20us/submissions-and-policy-statements/joint-select-committee-on-australia2019s-family-law-system-2013-relationships-australia-national-office-submission>.

<sup>23</sup> <http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/about/news/mr260420> (media release concerning the list).

<sup>24</sup> Set out in Joint Practice Direction 3 of 2020: <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/covid/covid-list/jpd032020> (JPD3/20).

<sup>25</sup> See <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/family-law-matters/family-violence/lighthouse-project/lighthouse-project>

health problems or personality disorders.<sup>26</sup> Relationships Australia Western Australia, for example, reports that families presenting with complex needs are prevalent in the Family Court of Western Australia. This Court has been proactive in providing annual family violence training to judicial officers and family consultants. In addition, staff from the Department of Communities are co-located in the Court to assist in managing cases with these complexities. However, Relationships Australia Western Australia considers that co-locating, in courts, professionals from different disciplines would be preferable to establishing a specialist list for the Court's core demographic.

Families presenting with a combination of high risk/low protective factors need accelerated access to specialist support, legal assistance and judicial resolution of issues. The presence of family violence, and other complex needs, do not *per se* render FDR unsuitable. People who have experienced family violence, and who generally report not feeling safe with their partners, may prefer FDR to litigation. Set out below are comments from the FDR Outcomes Study conducted by Relationships Australia:

**Participant:** ...they were really supportive in that you know, if either of us wanted to call time out or if we weren't feeling safe just to let [the mediator] know, and I felt like that support was there for both of us. They weren't more inclined to give the support to the boys' mum, they weren't more inclined to give support to me. It was a very neutral, but very supportive process, yes.

**Participant:** I can't talk to my ex-husband, because he would scream at me. So I've got a situational anxiety based on him and his behaviours, which our mediator was aware of and...[the mediator] was very diplomatic and there was no bias or anything like that. He was just aware of any triggers and escalation from dad's side and smoothed things over really well....<sup>27</sup>

Eligibility for inclusion on a general high risk list should be determined by reference to a combination of high risk and low protective factors, and through a multi-disciplinary lens, supported by DOORS-Triage (a bespoke model of FL-DOORS).<sup>28</sup> Criteria for listing could include:<sup>29</sup>

- the existence of AVOs and non-contact orders (or situations where such orders cannot be served)
- if the family has been assessed as not appropriate for FDR

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<sup>26</sup> See, for example, the submission of Relationships Australia South Australia in response to ALRC IP48 (submission 62), 4.

<sup>27</sup> A recent study undertaken by AIFS also confirmed the effectiveness of FDR: see Qu, *Family Dispute Resolution: Use, Timing and Outcomes* (2019), <https://www.onlinelibrary.wiley.com/doi/10.1002/anfz.1349>

<sup>28</sup> See McIntosh, 2011.

<sup>29</sup> See Relationships Australia submission to the Parliamentary Joint Committee on Australia's Family Law System, at <https://www.relationships.org.au/about%20us/submissions-and-policy-statements/joint-select-committee-on-australia2019s-family-law-system-2013-relationships-australia-national-office-submission>, pp 34, 38-39.



- whether only supervised contact is allowed with children or where a child has not had contact with a parent for a substantial period of time:
  - pursuant to interim orders made on the basis of (as yet) untested allegations, or
  - because a child has been prevented from having contact with a parent in contravention of an existing order or agreement
- the presence of financial abuse
- the presence of systems abuse broadly (ie not just misuse or abuse of court processes)
- whether child protection authorities have been engaged with the family
- whether there have been suicide threats or attempts
- whether mental health problems or personality disorders are known to exist in the family
- whether there is an application in respect of a special medical procedure for a child
- whether there is an urgent application for interim spousal maintenance; this is of particular importance to women who are unable to access social security benefits because of, *inter alia*, migration status
- whether there has been, or is an imminent risk of, unlawful relocation of a child, whether domestically or internationally, or unlawful retention of a child,<sup>30</sup> and
- where a person with parental responsibility becomes terminally ill, and previous orders or agreements need urgent review, to facilitate the making of appropriate arrangements.<sup>31</sup>

All of the professionals in these roles should have specialist family violence knowledge and experience, as well as expertise in trauma-informed practice and child inclusive practice.<sup>32</sup>

### C.3 Establish an Indigenous List<sup>33</sup>

We note the success of the Indigenous List in Sydney and support its practices which we understand to include:

- a case management model
- short breaks between court events, to support swift resolution
- a closed court
- allocated time to hear the list, and

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<sup>30</sup> In this regard, we note the 'hot pursuit' remedy provided by The Hague *Convention on the Civil Aspects of International Child Abduction*. We are also mindful, however, that Australian children are not infrequently removed to countries which are not parties to this Convention and that, even where bilateral arrangements are in place (eg for Egypt and Lebanon), the prospects of retrieving a child, or even maintaining contact, can be very bleak indeed. Accordingly, where risk screening flags this possibility, it would be optimal for the Court to be in a position to bring a matter on quickly.

<sup>31</sup> Relationships Australia South Australia has provided specialist mediation services to such families, where those families were unable to have matters brought on quickly in the courts.

<sup>32</sup> This proposal derives from Proposal 6-7 of ALRC DP86.

<sup>33</sup> This proposal is derived from Proposal 6-3 in ALRC DP86.



- the attendance, outside the court room, of relevant service providers who can then be called upon by the judge to come into the court room so that referrals can be arranged on the spot.

Relationships Australia Northern Territory sees a great need for advisors to work closely with communities and Aboriginal organisations to educate and make explicit the differences between family law and other law as it pertains to child protection and domestic violence. There is very little understanding of the differences of jurisprudence between types of courts and great suspicion towards agents and instruments of the law.

Relationships Australia welcomed Government funding that enabled reinstatement of positions in selected family court registries for Aboriginal and Torres Strait Islander people.

#### **C.4 Implement universal risk screening across all family court registries**

Relationships Australia commends to the Committee FL-DOORS,<sup>34</sup> which is a validated tool to screen for risk factors. It is a three-part framework to be used by frontline workers to identify, evaluate and respond to a variety of risks in separated families. The risks targeted by FL-DOORS are

...key historic and current factors associated singly or in combination with increased risks for perpetration or victimization in domestic violence and risks to parent, infant, and children wellbeing.<sup>35</sup>

The universal use of such tools by family relationship service providers guards against clients underreporting risk factors.<sup>36</sup> Using the tool with *all* clients – namely, universal screening – means no client is unfairly targeted; for example, by being asked questions about risk because of gender. Importantly, all clients are asked all risks about victimisation, perpetration and harm to self and to children. Asking clients to self-report gives them permission to disclose risks and gives permission to staff to ask about risk. Skilled practitioners then explore risk with a view to promote safety and wellbeing without needing to investigate allegations, which neither federal family law courts nor service providers are equipped to do.

Wells, Lee et al, 2018, observed that use of FL-DOORS for paired partners yielded responses that corresponded closely; ie that people gave responses about risk factors that corresponded with their partners' responses about those factors. Thus, more widespread use of FL-DOORS by diverse professionals in the system could enable reliable identification of where risk lies and families who could most benefit from targeted services. Use of this tool, at early contact with

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<sup>34</sup> McIntosh, 2011.

<sup>35</sup> Wells Y, Lee J, Li X, Tan S E and McIntosh J E, (2018) 'Re-Examination of the Family Law Detection of Overall Risk Screen (FL-DOORS): Establishing Fitness for Purpose', *Psychological Assessment* <http://dx.doi.org/10.1037/pas0000581> Factors targeted by the tool include negative emotions about separation, coping, substance use, infant and child distress, self-safety concerns, whether others are worried about the respondent's safety, whether police have been called, family violence, unemployment, financial hardship, child support, legal problems, housing issues, feelings of isolation, illness/disability, lack of access to transport. See Table 1 of Wells, Lee et al.

<sup>36</sup> See O'Doherty et al, 2015.

service providers, would reduce the entrenchment, through protracted legal proceedings, of untested allegations, and enable tailored and more efficient service provision.

### C.5 Revive use of Less Adversarial Trial provisions across all registries

The 2006 reforms:

- introduced mandatory family dispute resolution for children's matters
- established Family Relationship Centres and Family Law Pathways Networks
- emphasised the need for both parents to be involved in their children's lives, and
- introduced the Less Adversarial Trial provisions in Division 12A of Part VII of the Family Law Act.<sup>37</sup>

These reforms acknowledged that adversarial legal processes play a part in exacerbating parental conflict and inhibiting the development of parenting capacity. They have, over the years, successfully diverted many families away from the win/lose landscape of expensive and lengthy court battles.<sup>38</sup>

The Less Adversarial Trial processes emerged from the pilots of the Children's Cases Programme in Sydney and Parramatta.<sup>39</sup> This Program was initiated by then Chief Justice Nicholson and was positively evaluated. Over time, however, the Less Adversarial Trial provisions fell into disuse. The Family Court has attributed this to insufficient numbers of family consultants, and insufficient court time.<sup>40</sup> The ALRC observed that:

...properly resourced and implemented, [the LAT provisions] largely correspond with the essential components of the multi-disciplinary panels or tribunals proposed in submissions...they are expressly child-focused, quasi-inquisitorial, focused on safeguarding children and parties from family violence, designed to promote cooperative child-focused parenting, and are to be conducted without due delay.<sup>41</sup>

Relationships Australia notes the power conferred by s69ZR of the Act, which enables early fact finding. On balance, we consider early fact finding hearings as being potentially beneficial. They could support early prioritisation of safety issues,<sup>42</sup> and help to avoid entrenchment of unfounded allegations. Currently, successive interim orders, covering lengthy time spans, can

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<sup>37</sup> See the *Family Law (Shared Parental Responsibility) Amendment Act 2006*.

<sup>38</sup> By way of illustration, KPMG's analysis reported that FRCs were attended by 80,000 people per annum.

<sup>39</sup> The Children's Cases Programme was established by the then Chief Justice of the Family Court, the Hon Alastair Nicholson, drawing from inquisitorial processes used overseas; see also the Hon Diana Bryant AO QC in the Foreword to the *Less Adversarial Trial Handbook*, 2009.

<sup>40</sup> Submission 400 to the ALRC inquiry, cited at ALRC Report 135, paragraph 5.150.

<sup>41</sup> Paragraph 5.151 of ALRC Report 135. ALRC includes use of both family consultants and court appointed assessors.

<sup>42</sup> See submission 55 to the ALRC inquiry, the Australian Psychological Society, 25.

entrench interparental conflict and acrimony, which harms children.<sup>43</sup> Early fact finding hearings might also narrow issues to enable faster resolution.

A further potential benefit of early fact finding hearings would be in creating additional and earlier opportunities to direct families to access supportive specialist services; for example, children's contact services, or parenting order programs. Timely access to a CCS and Parenting Orders Programs could enable safe *ongoing* contact between children and both parents while waiting for a hearing. Parenting Orders Programs can facilitate communication about the children and help parents to separate their emotions and focus on the needs of their children. This is particularly beneficial for young children and recently-separated families, where periods of time away from parents/caregivers can have significant developmental impacts on children. At present, delayed access to CCS can mean that children initially lose contact with a beloved parent, then may have supervised contact when a CCS place becomes available, get used to the parent over six visits, and then can lose contact for weeks or months before the court orders large amounts of unsupervised contact.

Families whose matters go to an early fact finding hearing should be given (in a format appropriate for their needs) information assuring them that, regardless of findings in an early hearing, they can still access the full suite of supportive services. Also, because circumstances can change after early fact finding, risk assessment should be dynamic so that complacency does not set in and service providers rely on early, and potentially outdated, findings.

Accordingly, family law courts should be resourced to employ family consultants to write reports earlier in proceedings, and to ensure those family consultants are properly trained and supervised; alternatively, a community or independent statutory agency<sup>44</sup> could assume this function.<sup>45</sup> Relationships Australia notes Recommendations 20, 21 and 26 of this Committee's 2017 report on family violence reforms, and the Government's response. We take the Government's point that, in the United Kingdom,

...cooperation between child protection authorities, the children's and family law courts and the police is more easily facilitated [by an agency such as CAFCASS] as they operate under a unitary model....differences [arising from Australia's federated system] would require careful consideration to successfully implement a child safety service in the family law courts.<sup>46</sup>

The Government's response also points to a range of 'existing services and arrangements in Australia that collectively perform functions similar to the CAFCASS model', referring to:

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<sup>43</sup> Noting too the observations in the PwC report, 2018, that interim orders are a proxy for final orders and, to a considerable extent, drive court workloads. If early fact finding hearings can reduce the number and operation of interim orders, then this could benefit families and courts. See also submission 25 to the ALRC inquiry, Australian Association of Social Workers, p 7.

<sup>44</sup> Such as a child protection agency, or a statutory agency modelled after the CAFCASS in the United Kingdom.

<sup>45</sup> In this connection, Relationships Australia notes Recommendation 7 of this Committee in its 2017 report on reforms to the family law system, and the Government's response to that recommendation.

<sup>46</sup>

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/House/Social\\_Policy\\_and\\_Legal\\_Affairs/FVlawreform/Government\\_Response](https://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/FVlawreform/Government_Response), at p 14.

- the FASS pilot
- independent children's lawyers, and
- family consultants.

But the future of the FASS pilot is uncertain, and an array of reports over the past decade has noted consistently that, due to a combination of factors, ICLs are unable reliably to fulfil the vital function of representing children's best interests.<sup>47</sup> Family consultants can charge prohibitively high fees, and there is a lack of oversight over private report writers (noting, in this regard, Recommendations 22 and 20 made by this Committee in its 2017 report, and the Government's response). Moreover, this aspect of the Government's response to the Committee's past recommendations underscores how entrenched is the official tolerance for fragmentation of services for distressed and vulnerable Australians, and the assumption that the burden of navigating this fragmentation can remain displaced onto struggling families.

In light of these difficulties, it may be preferable (and more practical) to establish such a combined children's service outside the courts, as a complement to the Child Dispute Services in the Family Court. This would also have the merit of being more accessible to the large proportion of families who do not seek a judicial resolution, but who may nevertheless be affected by family violence and other risks. Such a service could readily be accommodated by the Family Wellbeing Hubs model, described in section E.6 below.

The ALRC's Final Report acknowledged stakeholders' insistence on 'the need for improved measures to support highly conflicted parties to implement parenting arrangements and develop positive post-order communication.'<sup>48</sup> Recommendations 38 and 39 are intended to go some way to address this, but overlook innovations that do not require expensive court resources.

Post-order and post-agreement services, outside the court setting, should be available.<sup>49</sup> In this section, we respectfully draw to the Committee's attention to service models that could prevent families from having to endure repeat court events (whether for interim orders, appeals or enforcement applications).<sup>50</sup> A study of court files published by AIFS in 2015 '...showed a high rate of repeat litigation in children's matters, with nearly four in ten judicially determined cases having previously been before the courts.'<sup>51</sup>

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<sup>47</sup> See, for example, Kaspiew et al, *Independent Children's Lawyers Study – Final Report*, 2014; Carson et al, *Children and Young People in Separated Families: Family Law System Experiences and Needs – Final Report*, 2018.

<sup>48</sup> ALRC report 135, paragraph 11.1

<sup>49</sup> Relationships Australia also notes existing resources, such as that *Parenting orders: what you need to know*, published by the Australian Government.

<sup>50</sup> See ALRC DP86, paragraphs 6.71, 6.80ff.

<sup>51</sup> Kaspiew et al, 'Court Outcomes Project (Evaluation of the 2012 Family Violence Amendments)' (Australian Institute of Family Studies, 2015) 49. See also Family Law Council, *Interim Report: Penalties and Enforcements* (March 1998) and *Final Report, Child Contact Orders* (June 1998).

## C.6 Give children a safe hearing

Australia still lags behind other countries in supporting the participation and consultation of children in matters concerning them; this warrants early attention. We respectfully submit that this is inconsistent with Australia's obligations under the Convention on the Rights of the Child. Relationships Australia notes the findings of AIFS' study of the needs and experiences of children and young people in the family law system, including that:

- half of the interviewees indicated that their views were not acknowledged by family consultants/report writers
- most of the interviewees described feeling negatively towards the court process, the family consultants/report writers and the ICLs
- a substantial proportion of the interviewees felt that 'the approaches adopted by service professionals with whom they interacted operated in a way that limited their practical impact or effectively marginalised their involvement in decision-making about parenting arrangements'
- several participants were distressed by perceived inaction by professionals, when they raised safety issues (for themselves, parents and siblings)
- most interviewees wanted parents to listen more to their views and for their views to be taken seriously by family law and related services, and
- interviewees indicated that they would like more information about various aspects of the legal process (including timeframes and outcomes).<sup>52</sup>

The Children's Dispute Service being established by the Court will contribute to addressing these concerns. We also suggest that the Courts work closely with the National Children's Commissioner, who has done a considerable amount of work in this area, to further develop and refine information currently available to children on the websites of the Family Court of Australia and the Federal Circuit Court.<sup>53</sup>

Children have asked for, and the Convention on the Rights of the Child supports, access to more reliable and transparent mechanisms of making their views known to decision-makers. In the absence of legislative amendment, the Courts could look at options such as the new Scottish Form 9 (child court intimation form), adopted in 2019.<sup>54</sup>

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<sup>52</sup> Carson *et al*, *Children and young people in separated families: family law system experiences and needs*, 2018, who further noted that 'Limited Australian research is available in relation to the practices of family consultants/family report writers and in relation to the conduct and quality of family reports/single expert reports in particular.' (<https://aifs.gov.au/publications/children-and-young-people-separated-families-family-law-system-experiences> at p 56; see also p 92).

<sup>53</sup> See our submission to the Parliamentary Joint Committee on Australia's Family Law System, pp 89-90.

<sup>54</sup> For discussion of the new Form 9, see <https://www.lawscot.org.uk/members/journal/issues/vol-64-issue-05/new-form-f9-worth-the-wait/>.



Further discussion of the participation of children and young people is set out in our response to paragraph (l) of the Committee's Terms of Reference.

### C.7 Enable family law courts to focus on legal issues

Relationships Australia expects that the Lighthouse Project will more fully leverage the expertise and resources of therapeutic services to assist families with complex needs by:

- identifying co-morbidities early in a family's journey through the courts
- providing referrals to expert therapeutic services, and
- distilling, at the earliest opportunity, genuine legal issues needing judicial scrutiny and resolution.

However, the Lighthouse Project is a three-year pilot, and confined to three registries: Adelaide, Brisbane and Parramatta.

The safety and wellbeing of families, and the capacity of the family courts to dispose expeditiously of legal issues, would be enhanced if all registries:

- (a) immediately implement a rigorous approach to issuing **s60I certificates**. Currently, if families receive s60I certificates, there may be missed opportunities to refer to therapeutic services, including family violence services,<sup>55</sup> to offer maximum therapeutic benefit. We are also concerned that s60I certificates are provided too readily, so that cases languish on court lists even though they could, in fact, be resolved through FDR. This has been demonstrated by blitzes in matters previously declared to be not amenable to FDR and therefore requiring judicial resolutions, and which have nonetheless yielded high rates of resolution.
- (b) undertake periodic **blitzes** (including judicious use of conciliation<sup>56</sup> and arbitration<sup>57</sup> processes<sup>58</sup>), focused by subject matter and/or location<sup>59</sup>
- (c) re-commit to use of the **Less Adversarial Trial provisions** in Division 12A of Part VII of the Act, including vigorous use of section 69ZR<sup>60</sup>

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<sup>55</sup> And also mental health alcohol and drug counselling, gambling counselling, men's behaviour change programmes, and parenting programmes.

<sup>56</sup> Relationships Australia also supports the consideration of conciliation services in both parenting and property disputes. In conciliation, practitioners provide advice on the matters under discussion, drawing from their expertise in the content under discussion.

<sup>57</sup> Noting the Family Court's Information Notice, published in May 2020, concerning the National Arbitration List.

<sup>58</sup> See Relationships Australia submission to the Parliamentary Joint Committee on Australia's Family Law System, at <https://www.relationships.org.au/about%20us/submissions-and-policy-statements/joint-select-committee-on-australia2019s-family-law-system-2013-relationships-australia-national-office-submission>, pp 12. Relationships Australia Victoria has been involved in providing services to the Court in this context.

<sup>59</sup> Eg for cases which cannot be heard online.

<sup>60</sup> See Relationships Australia submission to the Parliamentary Joint Committee on Australia's Family Law System, at <https://www.relationships.org.au/about%20us/submissions-and-policy-statements/joint-select-committee-on-australia2019s-family-law-system-2013-relationships-australia-national-office-submission>, pp 12, 18.



- (d) discard the requirement to present all **affidavit material** before a first hearing in the Federal Circuit Court; this acts as a perverse incentive to be as aggressive as possible from the earliest point of engagement and, as a consequence, can cause so much emotional damage as to stymie any hope of a negotiated resolution
- (e) establish **post order / post agreement services** to help families implement orders and agreements, through models such as Parenting Coordination<sup>61</sup>), and
- (f) ongoing **judicial training** of *all* family court judges (not only those involved in the Lighthouse Project or the proposed High Risk List) in family violence and risk assessment.

We also consider that encouraging the use of costs orders, as contemplated by Joint Practice Direction 1 of 2020, will be valuable in addressing this concern.<sup>62</sup>

### C.8 Promote timely sharing of information between family violence, child protection and family law systems

We welcome the establishment of the Evatt List in the Federal Circuit Court as a complement to the Magellan List in the Family Court of Australia, and ongoing trials of embedding child protection officials in family law courts. In combination with the use of DOORS-Triage in the Lighthouse Project, these initiatives can go a long way to give judges vital information as early as possible.

We consider that urgent action is needed in other jurisdictions to enable a timely and bi-directional flow of information between the federal courts and state and territory courts. This has been raised as a concern frequently and over a lengthy period of time, and considerable work done on potential solutions. These have not, regrettably, taken root.

We agree with the Law Council of Australia that

The family courts would be assisted by having any relevant information from police and child welfare agencies before them *on the first return date* as happens in the Family Court of Western Australia, which is a state court and where there are protocols in place to ensure family consultants can gather this information and provide same to the judicial officer.<sup>63</sup> [emphasis added]

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<sup>61</sup> Relationships Australia Western Australia continues to work with the Commonwealth Attorney-General's Department on a potential trial of Parenting Coordination, based on its experience with this model in collaboration with the Family Court of Western Australia. See also our submission to the Parliamentary Joint Committee on Australia's Family Law System, at <https://www.relationships.org.au/about%20us/submissions-and-policy-statements/joint-select-committee-on-australia2019s-family-law-system-2013-relationships-australia-national-office-submission>, pp 12, 22ff.

<sup>62</sup> In our submission to the Parliamentary Joint Committee on Australia's Family Law System, Relationships Australia agreed with the Law Council of Australia that more frequent use of costs orders should be encouraged (at pp 12, 19-20 of the submission).

<sup>63</sup> See our submission to the Parliamentary Joint Committee on Australia's Family Law System, p 10; see also Submission 43 to the ALRC inquiry, paragraph 357.

The family courts should give relevant professionals in the family violence and child protection systems access to the Commonwealth Courts Portal to enable them to have reliable and timely access to relevant information about existing federal family court orders and pending proceedings.<sup>64</sup> Further, state and territory authorities should work with the federal family law courts to allow federal judges access to information about services accessed by families. For example, we note the recent finding by ANROWS that

When a DFV case is before them, judicial officers have limited access to information about which (if any) perpetrator interventions have previously been used with a perpetrator.<sup>65</sup>

The Australian Government and state and territory governments should develop a national template for a summary of child protection department or police involvement with a child and family which could be given to family courts.<sup>66</sup>

Relationships Australia considers that governments should work together to require child protection agencies to share with family courts their recommendations, as well as information they have about the nature and degree of risk. Relationships Australia respectfully draws to the Committee's attention Judge Harman's comments about the value of the 'Person History' that can be provided under New South Wales child protection legislation.<sup>67</sup>

#### D Other court-adjacent proposals

	Proposal	Summary of intended benefit to families
1	<p>(a) Where possible, maintain capability to hold online hearings<sup>68</sup></p> <p>(b) Subject to COVID-19 restrictions, increase circuiting of first instance judges and locating registry staff in state and territory courts (including magistrates' courts and specialist domestic violence courts).<sup>69</sup> This will become increasingly necessary to cope with population growth in rural and regional areas.</p>	Foster improved collaboration; increasing accessibility by families in regional, rural and remote communities, as well as (for example) in outer suburbs of major population centres where it is difficult and expensive to get to city court precincts

<sup>64</sup> ALRC DP 86, Proposal 11-6.

<sup>65</sup> See ANROWS, *The views of Australian judicial officers on domestic and family violence perpetrator interventions: Key findings and future directions*, 2020, 1.

<sup>66</sup> ALRC DP 86, Proposal 11-9. See references in notes 77 and 78 to paragraph 11.72.

<sup>67</sup> See paragraph 11.71 of ALRC DP86.

<sup>68</sup> Noting, however, the effects of the digital divide; treating online hearings as a panacea may further entrench disadvantages affecting many families.

<sup>69</sup> Submission 43 to the ALRC inquiry, paragraph 112.

	<p>Relationships Australia strongly encourages facilities being made available that promote safety for families, court staff, practitioners and others who attend premises (for example, having two entrances and separate waiting areas).</p> <p>(c) Resource courts in states and territories (including by funding and training) to exercise family law jurisdiction when families come before them with other matters<sup>70</sup></p>	
2	<p>Implement recommendation 40 of ALRC Report 135, which would require people to seek leave to appeal interim orders</p>	<p>Reduce court caseload, increasing efficiency for families waiting for hearings.</p> <p>Reduce misuse of expensive court resources for unmeritorious appeals, freeing judicial time for other families</p> <p>Reduce potential for appeals to be used as vehicles for perpetration of abuse</p> <p>Provide more certainty around implementing interim orders</p>
3	<p>Require leave to appeal from the FCC, or first instance judges of the Family Court</p>	<p>Reduce appellate caseload</p> <p>Reduce misuse of expensive court resources for unmeritorious appeals, freeing judicial time for other families</p>
4	<p>Amend the <i>Family Law Act 1975</i> (Cth) ('the Act') to recognise supported (vs substitute) decision making.<sup>71</sup> Reform to the Act in this respect was widely supported by submitters to the ALRC inquiry. This would align with the Convention on the Rights of the Child and Article 12 of the</p>	<p>Enhance accessibility of the courts for children, as developmentally appropriate</p> <p>Enhance accessibility of the courts for older people and people living with a disability</p>

<sup>70</sup> Eg child protection or family violence.

<sup>71</sup> See ALRC Report 135, paragraph 12.76. See also recommendation 46, p 379.

	Convention on the Rights of People with Disability <sup>72</sup>	
5	<p>Improve enforcement mechanisms and funding for enforcement,<sup>73</sup> to complement post-order/post-agreement services proposed elsewhere in this submission (we respectfully draw to the Committee's attention the recently announced research project to be undertaken by AIFS, <i>Compliance with and Enforcement of Family Law Parenting Orders</i>)<sup>74</sup></p> <p>Improve enforcement mechanisms and funding for enforcement,<sup>75</sup> to complement post-order/post-agreement services proposed elsewhere in this submission (we respectfully draw to the Committee's attention the recently announced research project to be undertaken by AIFS, <i>Compliance with and Enforcement of Family Law Parenting Orders</i>)<sup>76</sup></p>	<p>Reduce the volume of repeat court events for families who are experiencing difficulties in understanding and/or complying with agreements and orders. This would assist in easing the caseload for family law courts and consequently reducing delays.</p> <p>Ensure that agreements and orders are given effect according to their terms, thus supporting the integrity of the system as a whole.</p>
6	<p>Other reforms which could simplify and streamline court processes include:</p> <ul style="list-style-type: none"> <li>• a single point of entry into the family court system and a single first instance court</li> </ul>	<p>Streamline and simplify court processes, increasing access to justice, maximising efficiency of court resources, and minimising the trauma to families of long-running litigation</p>

<sup>72</sup> Noting, however, Australia's interpretative declarations and the UN Committee's comments on these.

<sup>73</sup> Relationships Australia notes the submission from the then Chief Justice of the Family Court of Australia, the Hon Diana Bryant AO, to the Senate Legal and Constitutional Affairs References Committee, 28 March 2014, in relation to responses from the Australian Federal Police to referrals made by the Court when a possible breach of a Commonwealth law is suspected.

<sup>74</sup> See <https://aifs.gov.au/projects/compliance-and-enforcement-family-law-parenting-orders>

<sup>75</sup> Relationships Australia notes the submission from the then Chief Justice of the Family Court of Australia, the Hon Diana Bryant AO, to the Senate Legal and Constitutional Affairs References Committee, 28 March 2014, in relation to responses from the Australian Federal Police to referrals made by the Court when a possible breach of a Commonwealth law is suspected.

<sup>76</sup> See <https://aifs.gov.au/projects/compliance-and-enforcement-family-law-parenting-orders>

	<ul style="list-style-type: none"> <li>• a single set of rules of court<sup>77</sup></li> <li>• registry practices that are nationally consistent<sup>78</sup></li> <li>• a single set of court forms</li> <li>• a single interface through which to transmit and enter user data</li> <li>• use of Easy English to provide court users with comprehensive, accurate and up-to-date information about the courts, and</li> <li>• consistent processes across individual judges and registries.</li> </ul> <p>Relationships Australia notes that this Committee made recommendations, consistent with these proposals, in its 2017 report on family law system reforms.<sup>79</sup> We further note elements of the recently-announced Lighthouse Project that are consistent with these recommendations.</p>	
7	<p>Roll out FASS facilities nationally, and allocate ongoing funding; in its 2017 report on <i>A Better Family Law System to Support and Protect those Affected by Family Violence</i>, this Committee recommended (subject to a positive evaluation) that this program be extended to a great number of locations, including in rural and regional Australia</p>	<p>Support families' safety, accessibility, flow of relevant information, and timely diversion to therapeutic services.<sup>81</sup></p>

<sup>77</sup> Harmonisation of court rules was suggested in the PwC report, 2018, 59; see also pages 73-74, 80. Streamlining the court system was supported by Family Law Committee of NSW Young Lawyers, submission 108 in response to ALRC IP48, 3. See also submission 35 in response to ALRC IP48, from the Hon Diana Bryant AO QC.

<sup>78</sup> See Family Law Committee of NSW Young Lawyers, submission 108 in response to ALRC IP48, pp 4-5, noting that diverse registry practices cause 'confusion and the risk of inconsistency of experience and outcome in the court system.'

<sup>79</sup> See, for example, Recommendation 5, which was noted by the Government in its response to the Committee's report.

<sup>81</sup> For more detailed discussion about FASS, see section E.6 of the response to this Term of Reference.

	(Rec 1). The Government agreed in principle to this recommendation. The pilot did receive a positive evaluation. <sup>80</sup>	
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## E Long term measures

Relationships Australia welcomes the Committee's invitation to take a long-term view of measures to prevent violence against women and children. We have previously expressed our dismay at the short-term nature of many funding arrangements for family relationship and legal assistance services. Relationships Australia acknowledges that funding packages must be accounted for to taxpayers within the Budget cycles of three to four years, and that budget processes and rules flow from that. Pilots and trials are necessary to genuinely test the relative merits of different models and approaches. But they are too often used as a short-term panacea to sidestep impetus and advocacy for enduring reform. Further, serial short-term pilots generate waste and inefficiency through their repetitive cycles of establishment, operation, evaluation, termination, and then birth of a new short-term pilot to meet needs that don't expire when funding does. Most pilots last for only three years. In this time, it is assumed that:

- staff can be employed
- premises and other assets secured
- enabling relationships cultivated, and
- the piloted service can be run and refined along the way to reflect emerging data,

so that at the end of three years Government has a useful idea of whether the pilot is worth rolling out.

Even positively evaluated and successful pilots are discontinued.

Pilots offer false economy:

- funding is fleeting
- relationships with communities – vital to ensure that services can help those communities - cannot be built; conversely, trust is eroded when service providers are on the ground for short, apparently random bursts of activity, only to leave when funding ends
- appropriately qualified and experienced staff are difficult to recruit for short terms (especially for rural, regional and remote areas) and where pilots are extended, this decision is often made so close to the end of the funded work that, by the time services are advised of extensions, skilled staff have left to pursue other opportunities, taking with them skills and program knowledge (in one example, advice of extended funding was provided only two weeks from the end of contract date)
- the cost of infrastructure (eg leasing premises) for short periods, borne by service providers, can be prohibitively expensive – and a potential barrier to entry for innovators, and

<sup>80</sup> See the report by inside policy, *An evaluation of the Family Advocacy and Support Services: final report* (<https://www.ag.gov.au/sites/default/files/2020-03/fass-final-evaluation-report.pdf>).



- evaluation is confined to a relatively brief period of operation, which substantially diminishes the potential for sound data to be collected and evaluated to establish whether the piloted service was, or could with more time or modifications or both, be effective.

In the context of this inquiry, it should also be noted that the precarity of funding arising from the over-reliance on short-term pilots has a disproportionate gendered effect, because of the proportion of the workforce that is female.

Programs that are place-based, and intending to effect change at a cultural or intergenerational level, need stable funding over long periods of time. A concerted emphasis on capacity building will eventually reduce the community need for expensive tertiary services, but such a shift might not be discernible for 7-10 years. This is very challenging from a budgetary / public accountability / political cycle standpoint. It requires commitment from leaders to accept, communicate and persuade as to the benefits of such longer commitments as are needed to disrupt cycles of entrenched disadvantage and dysfunction and reap the far-reaching and multidimensional socio-economic benefits of doing so.

Australian governments must develop processes that enable funding of trials and pilots that run for a sensible length of time (to allow for adjustments as data emerges) and the funding of services over longer periods of time (up to 10 years). It really should not be beyond the ingenuity of governments to facilitate this, and also to facilitate the taking into account of downstream savings from investment in primary and secondary interventions to justify short-term expenditure.

The impulse to rely on announcing short-term pilot programs to respond to crises or sporadic public attention, and then de-funding such services (whether evaluated as successful or not, or not evaluated at all) undermines providing effective services, hinders employment and retention of skilled and experienced staff, and investment in infrastructure.

### **Case study – Men’s Behaviour Change Program, Relationships Australia New South Wales**

Funding levels are insufficient to meet accreditation requirements. State funding over the past three years has been patchy and based on undertaking pilots (previous to this there was no State funding). Very recently, in response to the Federal Government’s COVID-19 funding initiatives, MBCP has received significant boost to its funding through Women’s NSW – but only for six months.

Several other grants - state and federal - have also been affected by ‘dribble’ funding, short term and last-minute extension of funding (or not) (eg Family Referral Service, Family Advocacy Support Service, Justice Engage). This creates issues around the potential loss of staff and their program knowledge and skills as the expiry date approaches. Then once re-funded, the program needs to ramp up again, resulting in a risk of discontinuity of service to clients, wasted time and inefficiencies.

Clients and community groups frequently express disappointment at the ‘here today/gone tomorrow’ approach which characterises short-term funding commitments. The electoral cycle is

three years, and the budget cycle somewhat longer, but a precondition of transformational change in family and community well-being is trusting relationships between users and services. This does not occur according to a timetable; nor does transformational change happen in a linear way.

One of the most difficult questions in social and economic policy concerns the tension between the urgency of tertiary services (and the consequences of not providing them) and the benefits of providing universal and preventative/early intervention services. This tension, like the Budget process rules, reflects what in behavioural economics is termed present bias and time-inconsistency in temporal choice. That is, the relative over-valuing of short-term, immediate results and the concurrent discounting of longer-term results.

Funding arrangements should be liberalised to allow service providers to direct scarce resources to emerging and changing priorities (ie shift them between universal and targeted service), as required and without penalty (eg spending more time on targeted client groups without fear of the numbers dropping in future reports to funders).

Relationships Australia would not support diverting more funding to targeted services if to do so would undermine the effectiveness and reach of current universal programs.

Evidence supports the value of co-existence of universal and targeted services, linked by well-designed and effective bi-directional pathways. Universal services may be seen by families as less stigmatising than targeted services, and a 'soft' entry that invites, rather than deters, help-seeking. Well-designed pathways, offering a seamless continuum to targeted services, can then offer more tailored responses.

## **E.1 The need for cultural transformation of legal systems to prevent family violence**

The national reach of Relationships Australia, and the comprehensive range of services we have, over many years, provided, affords us a particularly long-term and profound view of family and relationship dynamics, and the underlying societal and systemic circumstances from which these dynamics emerge. Against that background, we are of the view that the inherently combative nature of Australia's family law system, which treats as the 'gold standard' a judicial resolution in an adversarial framework:

- entrenches and exacerbates family violence
- enables systems abuse
- provides additional opportunities for coercive control
- deters help seeking, and
- prolongs trauma.

The family law system crowns one parent a winner and designates the other a loser --and although most separating families do not end up before a judge, the atmospherics of that prospect pervade and distort all other steps and services with which parents engage. Accordingly, Relationships Australia's response to this Term of Reference demonstrates that the binary win/loss outcomes delivered by the current family law system endanger children and disempower parents from being the best parents they can be.

In this section, we also:

- offer suggestions to divert more families away from win/loss systems at earlier points
- where court involvement is unavoidable – offer suggestions to reduce the potential harm of win/lose frameworks, and
- identify options to help families safely and successfully implement agreements/orders.

## E.2 Why we have a system that pits parents against each other

In 1979, the first Chief Justice of the Family Court criticised adversarial processes, which produce win/lose outcomes, as being ‘destructive of morale and [likely to] create bitterness for all.’<sup>82</sup> Successive Parliaments – and courts – have periodically sought to soften the harsher edges of the inherently combative structure baked into the 1975 Act. Yet the history of the family law system, from debates on the 1975 Bill onwards, is marked by recurrent, but ultimately unsuccessful, attempts to:

- minimise conflict between parents
- minimise ‘lawyer-led’ processes and structures
- reinforce focus on children’s best interests and better provide for expression of children’s fears, hopes and concerns, and
- minimise legal, bureaucratic and other system barriers to support safe and healthy families, whether intact, separating, separated or blended – or all of these at different stages.

In 1997, ALRC Report 84 reported that children believed that the family law system was ‘dominated by legal strategizing by competing parties to maximise their chances of winning the case...The interests of the child often get lost between the warring parties.’<sup>83</sup> Regrettably, reforms to fix this have been forcefully resisted by those in favour of the *status quo* (but not by parents or by practitioners with expertise in conflict, violence or mental health). Australians know that the current system – designed to make winners and losers of parents – is not only not working, but is actively harming children and their parents.<sup>84</sup>

From the binary win/loss outcomes that litigation is designed to produce flow all manner of serious and sometimes irreparable harm to children and their families:

- entrenching and deepening violence and conflict between parents
- incentivising litigation tactics such as burning off and making unfounded allegations
- incentivising other misuse of court processes and other legal systems and facilitates coercive controlling behaviour, and
- incentivising aggressive behaviours intended by one parent to incapacitate the other parent from co-parenting effectively.

This cannot be allowed to continue.

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<sup>82</sup> Evatt, E, ‘The administration of family law’, *Australian Journal of Public Administration*, 38(1), 1, at 10.

<sup>83</sup> ALRC report 84, *Seen and heard: priority for children in the legal process*, paragraph 4.25. See also Marrickville Legal Centre, submission 137, 3.

<sup>84</sup> The Law Council of Australia seems also to recognise this – see submission 43, paragraph 162 and paragraphs 381-382.

Our society, through its elected governments, has a responsibility to current and future families to reject win/loss models and foster decision-making models that support, encourage and expect co-parenting. After 40 years, it does not appear that a traditional family law system can achieve this. More radical change is necessary.

### E.3 Limitations of a lawyer-led win/lose system

In Anglo-Australian common law, a court cannot make its own inquiries, and must rely only on the evidence brought by the parties. Each party must present such evidence as supports their case and challenge evidence put by other parties to the dispute. For parties represented by expert advocates, who oversee and conduct their clients' litigation, this process has been historically accepted as reliably delivering outcomes which, while not always representing perfect justice, have enabled workable resolution of disputes between government and governed, between businesses, between businesses and their customers, and among other kinds of litigants.

Disputes arising from family separation, however, are very different:

- increasingly, people represent themselves, and struggle to collect and present evidence that is admissible and probative
- there is an imperative, enshrined in law, to support children's ongoing relationships with parents and other people with whom they have a meaningful relationship; where children are involved, parents and caregivers (for example) will often need to co-operate over several years in co-parenting or enabling children to enjoy those relationships, and
- in disputes involving children<sup>85</sup> - the fundamental issues are:
  - not the relative rights of the parties who are in front of the judge, but about the rights of children who are *not* parties and may not have anyone, even the chronically over-stretched Independent Children's Lawyers, speaking exclusively for their interests, and
  - the future safety, wellbeing and healthy development of children - which is not a question of law which can be usefully determined by legal analysis.

Further, the future arrangements meant to safeguard and promote children's best interests for the future are likely to require far more nuance than can be delivered by a win/loss judgment. There is, therefore, a dissonance between what parties to the dispute have been led to expect by the win/loss nature of litigation and the actual nature of the judgment which then has to be implemented by a parent who sees themselves (with a judge's 'stamp of approval') as a winner and a parent who sees themselves as having been – wrongly - branded a loser.

Difficulties in identifying probative and admissible evidence mean that family disputes which proceed to judicial determination are unnecessarily drawn out. The quality and timeliness of judicial decisions could be significantly enhanced by better evidence being made available to courts in a more timely and coherent manner.

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<sup>85</sup> Including disputes which are nominally about property, but where the needs of children are considered as part of property matters. If children are involved, a property dispute is never just about property – it will always affect children's development, wellbeing and relationships, too.

In summary, deficiencies of the current landscape include:

- institutionalising and rewarding parental conflict (eg setting up contests of ‘who can make their former partner look worse relative to them’?)
- decision-makers relying on evidence put before them by parents, who may be self-represented and otherwise ill-equipped to gather probative evidence and present it in a cogent form
- the Constitutional limitations on the capacity of Chapter III courts to undertake investigation
- lengthy delays which entrench conflict, and produce multiple court events (interim and post-final order), in turn producing poor outcomes for children<sup>86</sup>
- numerous court events that parties need to attend (and may need to travel long distances to do so – sometimes only for their matter not to be reached that day because of excessive and unrealistic listing)<sup>87</sup>
- the need for, and barriers to, legal representation, particularly for vulnerable users and where there is a disabling imbalance of power between the parties; this need manifests itself many ways, including complex and technical information, forms and processes, and
- court processes (and physical facilities) that enable perpetuation of family violence.

Parental conflict predicts poor wellbeing outcomes for children. Mitcham-Smith and Henry (2007) observed that the win/loss nature of litigation in the family law courts can:

- entangle children in perpetual turmoil, as parents navigate through complex, expensive, emotionally, intimidating and too-often prolonged processes
- diminish the role of parents as legitimate protectors of their children
- complicate the child’s role identity
- teach ineffective conflict-resolution skills, and
- embed shame and self-blame by children if ongoing parental conflict relates to parenting matters, including contact arrangements and child support.

Processes and services that de-escalate violence and conflict and address oppositional behaviour between parents are vital to harm prevention and supporting healthy child development in the context of parental separation. This is the most fundamental failure of the current court-centric system. It expects that children’s best interests can be protected by a winning parent and losing parent emerging, emotionally scarred and financially bruised (if not broken) from the prolonged turmoil of affidavits and cross-examination.

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<sup>86</sup> PwC report, 2018, 28. See also submission 80 from the Bar Association of Queensland to the ALRC inquiry into the family law system. That submission observes that ‘...we speak of the horrible and long-term impacts on children where mum and dad cannot agree on a thing; where children pick up on the mega-messages of each parent....children can be negatively affected *even when the proceedings only involve property proceedings.*’ (emphasis added) See also ALRC DP86, paragraph 6.51, noting submissions 142 (R Hainsworth), 40 (Women’s Law Centre of WA), 23 (Domestic Violence Victoria), 7 (Fitzroy Legal Service and Darebin Community Legal Centre), 129 (Relationships Australia Victoria), 126 (Interrelate), 118 (For Kids’ Sake), 55 (Australian Psychological Society).

<sup>87</sup> The PwC report, 2018, 32-33, attributes this difference largely to the pre-trial case management practices in the FamCoA; in the FCC, the judge manages this process from the point of filing. The PwC report suggests (conservatively) that on a party/party basis, litigants can spend more than \$100,000 per matter in the FamCoA; in the FCC, this is closer to \$25,000. (see p 67). This estimate is expressed as excluding events such as transfer between courts, appeals of interim orders, time away from work, conferences with lawyers, and expert reports.



The situation for many children, enmeshed in their parents' disputes, is dire and long-lasting. In too many instances, its repercussions will echo throughout their lives, bleeding into their relationships with their own partners and children. It is imperative for governments to break this cycle. An advanced society should not fail to protect its children because of blind insistence, in the face of all evidence, on a model that institutionalises and rewards parental conflict by offering only win/lose outcomes.

Finally, it should be noted that each well-intentioned attempt to pare back the legalism and combative nature of family law proceedings, even those which initially achieve their objectives, has been gradually eroded as problematic features and dynamics are re-asserted. The efforts to retrofit a lawyer-led win/lose system with problem-solving and multi-disciplinary features, have failed.

A different model is needed.

Relationships Australia has proposed the establishment of a specialist tribunal, supported by a Counsel Assisting.<sup>88</sup> Piloting such a model was suggested by the Family Law Council (although limited to cases where parties were unrepresented).<sup>89</sup> Even where family members were legally represented, the judge would have far better access to relevant, probative evidence.

Relationships Australia acknowledges the Constitutional barriers impeding implementation of an inquisitorial system at the federal level,<sup>90</sup> and considers these to give additional weight to the argument that state and territory courts should be better positioned – and including by adequate resourcing shared between the Commonwealth, states and territories – to exercise family law jurisdiction.

The hurdles faced by self-representing litigants would readily be addressed by a counsel assisting approach (including cross-examination of or by vulnerable individuals). This approach would better support ongoing safe and healthy co-parenting than locking parents into win/lose dynamics.

#### **E.4 From combat to co-parenting – supporting safe and healthy relationships into the future**

Relationships Australia recommends:

- establishment of a holistic, joined up Family Wellbeing System
- universal screening for risk factors
- requiring pre-filing FDR for property matters
- increasing the availability of Men's Behaviour Change Programs, and
- encouraging conciliation as an alternative to help people resolve their disputes without going to court.

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<sup>88</sup> See, for example, our submission to the Parliamentary Joint Committee currently inquiring into Australia's family law system.

<sup>89</sup> As noted in ALRC IP48, paragraph 118.

<sup>90</sup> See, for example, concerns raised by the Opposition in its dissenting report on the Parenting Management Hearings Bill, 26 March 2018.

Existing arrangements should be replaced by a Family Wellbeing System designed around families, not lawyers and legal culture. It would include the following *co-equal* pillars:

- multi-disciplinary and integrated wraparound services, delivered through a combination of physical and virtual Family Wellbeing Hubs<sup>91</sup>
- decision-making mechanisms centred on child wellbeing and promote child development, and that are not geared to binary win/lose outcomes as between parents, and
- a nationally-integrated funding model that transcends existing funding and bureaucratic silos,<sup>92</sup> ensuring a stable and enduring funding base for public services that are essential to support healthy families and resilient communities.

Relationships Australia has previously proposed, in its submission responding to ALRC IP48, that matters about children should be dealt with in an inquiry-like proceeding before which parents or caregivers would be witnesses, not parties, and in which counsel assisting would assist decision-makers by finding and presenting evidence about the nature of the best interests of the child/ren and how those interests can best be promoted.

Prolonged family conflict can utterly deplete the emotional, physical, social and financial resources of families, drive them into hopeless cycles of debt, inhibit productive workforce and social participation, and cause intergenerational conflict and welfare dependency. We know that prevention and early intervention can stop this cycle. There is, therefore, every reason for society to take all possible steps to shift social expectations that judicial resolution is the 'gold standard' for family dispute resolution, or offers publically-sanctioned vindication for aggrieved adults.

## **E.5 Family Wellbeing System - Underlying principles**

The proposed Family Wellbeing System should be designed according to the following principles:

- the safety, well-being and healthy development of children is paramount and prevails over the rights and interests of adults
- parents should be supported and empowered by services to co-parent safely, promoting healthy child development
- the needs of families should drive design, not existing legal, jurisprudential, administrative, funding or single-disciplinary structures, distinctions and hierarchies

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<sup>91</sup> Hub models are increasingly being used for delivery of suites of services: see, for example, the Orange Doors established to implement recommendations of the Victorian Royal Commission on family violence; Wellspring hubs such as that run by the Micah Project in Queensland; the New Zealand Multi-Disciplinary Family Harm Prevention Hubs; the Collaborative Service Pathway pilot (emerging from a collaboration between the Association of Child Welfare Agencies, the New South Wales Government, the University of Sydney and the Parenting Research Centre), and the Family Support Services in Queensland, which link schools with family services. Well-established hub models include the Collingwood Neighbourhood Justice Centres and, in fact, FRCs themselves.

<sup>92</sup> Perhaps delivered in a national partnership agreement.

- the aim of all services (including decision-making mechanisms) must be to respond to families' relationship needs, and acknowledge the enduring, rather than 'one off', nature of many family conflicts
- services must be available on the basis of universal service and accessibility,<sup>93</sup> emphasising prevention and early intervention
- services must be proportionate to families' needs and resources (ie not a 'one size fits all' journey with court as the ultimate and most highly valued destination), and
- there must be no wrong door and one door only - service integration and collaboration must happen at the organisational level, invisible to users.<sup>94</sup>

The Family Wellbeing System would be supported by legislative amendment, court reforms and a national, integrated funding model. Its services would incorporate features of existing FRCs, CCSs, health justice partnerships and domestic violence units and would be delivered through service delivery hubs.

To achieve this, Relationships Australia recommends the introduction and passage of a new Act of Parliament, not to be called the Family Law Act, but to have a title reflecting that legislation and judicial decisions are equal pillars of an overall network of support for families, separating and intact, and thus sit alongside an array of services and decision-making pathways. Legislation should establish simplified decision-making pathways that are proportionate to families' needs and resources, and that accord safety, and children's wellbeing, central importance.

## **E.6 Family Wellbeing System - Family Wellbeing Hubs**

Relationships Australia suggests that the first 'gatekeeper' in a Family Wellbeing System<sup>95</sup> should be Family Wellbeing Hubs. These should conduct universal screening, risk assessment and safety planning, and initial triaging (with strong referral pathways into the courts as needed). Risk assessment could then travel through the system with the family, obviating the need to re-tell the story multiple times to multiple people.

Services (including court facilities) should be co-located wherever possible. This would enhance their accessibility for families, including in regional, rural and remote communities, as well as (for example) in outer suburbs of major population centres where it is difficult and expensive to get to city court precincts. In the absence of Hubs, more family support services, including child protection services, should be co-located within court facilities.

A current example of integrated service delivery is provided by the pilot of Family Advocacy and Support Services, which can:

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<sup>93</sup> In this connection, we refer to our comments on the KPMG final report, noting that '...FL [Family Law] services have successfully provided services to clients with high rates of disadvantage within a universal framework....Without universal access, a proportion of higher income clients will end up in court, and many of these families will end up disadvantaged by the end of this process.' This would undermine policies focused on encouraging timely decision-making.

<sup>94</sup> See the Family Law Council's recommendations in its 2016 final report, especially recommendation 1.

<sup>95</sup> See section A of the response to paragraph (e) of the Committee's Terms of Reference.

- assess social needs and make appropriate referrals to services that can assist – this could be counselling or family therapy, parenting courses, supervised contact services, housing, victims services, Centrelink, etc
- provide information, non-legal advocacy and court support during Family Court processes
- providing advocacy with organisations such as the police, public housing authorities and victims' services, and especially in relation to ADVOs
- undertake risk assessment and safety planning
- help with Court Safety Plans, and
- refer to behaviour change programs and other assistance, if appropriate.

### **Relationships Australia New South Wales and its FASS for Men**

Relationships Australia New South Wales provides the FASS for men in the Wollongong, Sydney, Parramatta and Newcastle family court registries. The service refers to Men's Behaviour Change programs, anger management, navigation, and counselling. Staff have worked effectively with men to reduce their emotional valence and support attendance at courses to reduce their potential to use family violence – and to have it used against them. However, the capacity to offer services to men is confined, in the Pilot, to one day per week (in contrast to the women's FASS, which is available throughout the week). The service does have additional funding for 12 months during 2019-2020 and is receiving a steady stream of referrals from judges, lawyers and men themselves.

In addition, the Safer Pathways programme run by RANSW services 21 coordination points across NSW. This service also supports male victims of family violence (in the period 2015-17, this service received 129,810 inquiries from the Central Referral Point).

Our data projections indicate significant increases in demand over the coming 12 months.

The 'hub concept' is flexible and deliberately non-prescriptive - hubs must take whatever forms best meet the needs and circumstances of the communities which they serve (and, now, within the constraints flowing from the COVID-19 pandemic). They could be housed in bricks and mortar premises; they may be online; they may exist by virtue of robust and effective cross-professional collaboration, or they may combine any or all of these. The essential characteristics of 'hubs' in this submission, are:

- one door only/no wrong door
- ease of access, physically, online or in combination
- a continuum of assistance, from simply providing information, through navigation, to intensive case management, and
- integration and collaboration between services dealing with the family in a way that is seamless for, and invisible to, the family.

Relationships Australia envisages that the Hubs would extrapolate from the original concept of Family Relationship Centres as front doors,<sup>96</sup> and some of them could well be located in existing FRC or CCS sites, where infrastructure, community relationships and professional linkages and partnerships are established and have been evaluated as working effectively, having taken FRCs way beyond the initial 'front door' concept.<sup>97</sup> This will be particularly important in communities that have been affected by complex trauma, where significant time and effort has already been invested in developing relationships that can have therapeutic benefit. The location of future sites should be informed by demographic data.

### *Physical hubs*

It is important to emphasise that Hubs, as conceptualised by Relationships Australia, would not necessarily require services to move into the Hubs, but could (for example) involve outposting staff in the Hubs, as occurs at the Neighbourhood Justice Centre in Collingwood. However, they are implemented, Families Hubs should:

- focus on safety and wellbeing of children and families (including through ensuring appropriate protection for users such as separate doors, dynamic security, safety rooms, conference rooms, and safe and appealing children's areas)
- emphasise collaborative and joined up service delivery
- offer resources to de-escalate family conflict
- be accessible, including for children and families, and
- build community trust.

The physical hubs could incorporate space which could, on a visiting basis, host court hearings, along the lines of the Collingwood Neighbourhood Justice Centre. That is, the court would be an ancillary service located in a general services space. They could be totally or partially co-located with existing services, such as FRCs, CCSs or CLCs, or be within or adjacent to places of social significance and ease of access, such as schools, hospitals and health centres, or shopping precincts. Like the Collingwood Neighbourhood Justice Centre,<sup>98</sup> physical Hubs could also offer space after hours for community activities, enhancing their value as community resources.

### *Virtual hubs*

For some communities, and in some situations (such as the current COVID-19 pandemic), a physical hub may not be practical, resource-efficient or helpful to serve the community, and its purposes will be better achieved by virtual and online services, or other flexible means of collaboration. For example, in some smaller communities, people will often need a choice of services to counteract actual or perceived conflicts of interest and to offer appropriate assurance as to privacy and confidentiality. Recruitment and retention of specialised professionals to live and work in particular areas can also pose significant challenges. To

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<sup>96</sup> Originally intended as a 'front door', rather than a 'one stop shop', although many FRCs now have extensive service offerings well beyond simply a 'front door'.

<sup>97</sup> Depending on data as to need and existing service offerings; see DP 86, paragraph 4.35.

<sup>98</sup> Or, in the context of multicultural services, Access Gateway in Queensland:  
[https://www.accesscommunity.org.au/the\\_gateway](https://www.accesscommunity.org.au/the_gateway).



varying extents, these considerations are currently addressed through the ways in which various FRCs and FLPNs provide collaboration, joint training and service provision.

### *What kinds of services could the Hubs deliver?*

The services offered at and through particular Hubs should reflect the needs of the people who live in the community. Potentially, they could include:

- universal risk screening, triage, warm referrals and safety planning as required
- children's advocacy centre (CAC) or Barnahus-type facilities for children who have been affected by violence or sexual abuse<sup>99</sup>
- enhanced children's contact services
- case-management for families with co-occurring needs
- Aboriginal and Torres Strait Islander workers
- CALD workers
- mental health services
- legal practitioners to provide early advice and urgent legal/safety responses
- legally-assisted FDR
- social workers
- child development professionals
- psychologists
- financial counsellors<sup>100</sup>
- addiction counselling
- behavioural change programmes
- housing assistance
- an embedded Centrelink presence
- existing FRC services (including FDRPs and Family Group Conferencing)
- police services
- space for supervised contact and parenting capacity building
- space for relationships and personal education programmes to be conducted
- space for circuiting courts – courts visiting the hubs should be in a position to exercise multiple jurisdictions, including: federal family law; State/Territory child protection and

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<sup>99</sup> For more information, go to: <http://www.dcac.org/>. Of particular note in the CAC model is (a) the one-time interview of children who may have been abused, which interview is witnessed and recorded from a secure site, and (b) the wraparound services. Potentially, this aspect could also have an investigative capacity, provided by co-located child protection workers. A common complaint about the family courts, from members of the public, is that they do not carry out investigations; however, Ch III courts are unable to carry out such functions. For more information on the Barnahus model, adapted from the US children's advocacy models which developed from the 1980s, see for example <https://www.childrenscommissioner.gov.uk/wp-content/uploads/2017/06/Barnahus-Improving-the-response-to-child-sexual-abuse-in-England.pdf>; and <https://childcircle.eu/2018/02/27/launch-of-renewed-action-to-promote-the-barnahus-model-in-europe/>.

<sup>100</sup> In 2015, Women's Legal Service Victoria completed a pilot in which financial counsellors were involved in the support of family violence survivors, from the initial contact with the service. The pilot, described in the 'Stepping Stones' report, demonstrated that early access to financial counselling can markedly improve the speed and degree by which survivors can recover, financially and psychologically, following separation from abusers.

welfare law; drugs courts and criminal law,<sup>101</sup> children's court jurisdictions and adult guardianship and mental health jurisdictions<sup>102</sup>

- space for circle courts
- facilities for service users to access, in safety and privacy, online information and online services (including online services), and
- information-sharing databases for professionals, allowing them real time access to relevant information, especially about safety, from any Australian jurisdictions.

It would be optimal to out-post specialist workers not only in the proposed Families Hubs, but also in courts (especially in FASS facilities, where available).

### *Relationship between Hubs and existing FRCs and CCSs*

There are several options that Government could consider and employ in different ways to meet the needs of particular communities. These include expanding the scope of services at existing FRCs and CCSs, as well as establishing new facilities in areas with emergent needs that do not currently have the benefit of FRCs, CCSs and/or FLPNs to provide access to multidisciplinary services. Relationships Australia recommends that, given the substantial investment by Governments in the infrastructure of FRCs and CCSs, enhancing the range and depth of services provided by those facilities might be an efficient way to implement the proposed Families Hubs.

The only absolute is that families have easy access to seamless services that meet their needs, in a place that works for them.

Relationships Australia envisages that the Hubs would extrapolate from the original concept of FRCs as front doors,<sup>103</sup> and some of them could well be located in existing FRC sites, where infrastructure, community relationships and professional linkages and partnerships are established and have been evaluated as working effectively, having taken FRCs far beyond the initial 'front door' concept.

### *Services for children and young people*

As gatekeeping services, Families Hubs should also provide, as a primary function, universal risk screening, triaging and service referrals to children and young people. This would:

- remind parents that children's best interests are the paramount consideration, not just an assessment of which parent is the better or less risky

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<sup>101</sup> An example of a useful jurisdiction to exercise when making a personal protection order might be victims of crime compensation legislation, to provide a person leaving a violent situation with an amount of money to establish themselves (eg cover a rental bond). Other examples might be to deal with breaches of a personal protection order.

<sup>102</sup> All of these courts would still exist in their current forms. However, courts could visit physical hubs because that is where people with complex needs, only one subset of which is legal need, can go for their services. Where practicable for the community in question, this is an example of client-centred system design.

<sup>103</sup> FRCs were conceived to be critical entry points or gateways to the broader family law and family support system. They are targeted to 'strengthening family relationships, helping families stay together and supporting families through separation' (FRC Operational Framework 2014).

- allow early intervention as required to support children's healthy development
- allow a baseline assessment of children's wellbeing and development which can be repeated at intervals to check that the children are benefiting from existing parenting/caregiving arrangements and service referrals, as applicable.

Families Hubs should offer accessible child care and family-friendly spaces extending to 'all age' children. Lack of child care is often a barrier to newly-separated and single parents accessing services. Youth workers and child consultants must play key roles in the design and operation of the proposed Hubs.

Families Hubs have the potential to be of particular value to children and young people. In its recent study of the needs and experiences of children and young people, AIFS found that children and young people highly valued tailored services that allowed them both to vent and to be coached in strategies of self-care amidst and beyond family violence and parental separation.<sup>104</sup> One respondent said that post-settlement counselling

...strengthened my relationships with my brothers and probably with our mum....I think it helped us to understand my dad's perspective more... (Phoebe, 15+)<sup>105</sup>

Peer support was also valued by respondents to the AIFS survey, and Hubs could offer facilities to accommodate that, both organically and in a structured way.<sup>106</sup>

### *Fostering child-parent relationships – re-imagining Children's Contact Services*

CCSs are intended to provide a safe, child-focused and neutral place for changeover or independently supervised visits for children who are potentially, or known to be, at-risk (including of being affected by family violence). When well-designed and resourced, CCSs support healthy relationships between children and their parents. They can offer support in response to a crisis (eg by providing supervised contact opportunities in circumstances of high family conflict) and, as families stabilise, support parents to (re-)establish healthy relationships with their children (eg with education and referrals to appropriate support services).

Government-funded services have safety standards as part of their funding agreements, but these services cannot meet current demand, either in terms of existing locations or in terms of emerging locations with a need for a CCS. This is partly attributable to increased awareness, and identification, of risk, and families needing supervised (rather than unsupervised) contact for longer periods.

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<sup>104</sup> See for example, Carson et al, 2018, 33, 44. At p 44, Carson et al noted that 'Counsellors were nominated by participating children and young people as a key means by which their views and experiences were acknowledged...'.  
<sup>105</sup> Carson et al, 2018, 49.  
<sup>106</sup> Carson et al, 2018, 49.

There is general agreement among providers and users that existing CCSs are desperately underfunded:

- causing unacceptable delays in accessing services, often to the point of preventing parents from spending any time with their children, despite the courts having ordered that contact be facilitated – this is a source of deep pain and frustration and undermines parents and courts
- preventing Commonwealth-funded CCSs from realising their full potential as enablers of healthy and resilient parenting, and
- incentivising the use of unsupervised providers of uncertain quality and safety.

By definition, each child referred to a CCS has already faced many adverse childhood experiences, yet this service stream is perhaps the most inadequately funded, innovated and researched. The outcome of this is that the most vulnerable children are the ones most at the mercy of facilities that, because of resource constraints, are barely able to carry out the most minimal of their intended functions. This cannot be allowed to continue.

CCSs could provide greater value by assisting families to build capacity, rather than acting narrowly as monitors or supervisors of contact. For example, CCSs could – with adequate funding – be re-positioned to offer more interactive opportunities for parents to learn and enhance parenting skills, as well as offering warm referrals to other specialist services. There are already CCSs that seek to do this, and have had success in moving families from ‘high vigilance needs’ to ‘low vigilance needs’ through, for example, facilitating Supportive Parenting Groups. A further concern relates to the absence of regulation for children’s contact services, which has the potential to put children at risk. There are models in other sectors, including (for example) the child care National Quality Framework.<sup>107</sup>

Even if the Proposal to establish Families Hubs, incorporating CCSs, is not implemented, we would vigorously urge Governments, as a matter of urgency, to fund CCSs to move beyond providing supervised contact to services that support parenting, with gradual reductions in services to families as their parenting capacity is supported and promoted by the CCSs. This would involve considerable expenditure; however, the current pattern of spending money on short-term supports for fragile families in crisis only guarantees an ongoing need for recurrent spend into the next generation. It does not enable the community to reap the benefits of healthy families (separated or intact) or enjoy the downstream savings delivered by lower expenditure on health and intergenerational social welfare dependency.

Properly funded and re-conceptualised CCSs, whether as part of Hubs or post-order supportive services, would:

- collaborate with other specialist services
- manage transitional arrangements for families, and
- offer long-term support for higher needs families with complex needs (something not addressed by current CCSs operating as standalone services).

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<sup>107</sup> For more information, see <https://www.acecqa.gov.au/nqf/about>.

We vigorously urge the Commonwealth, as a matter of urgency, to fund these services to not only provide timely supervised contact, but also to offer parenting education and other services. This would enable service provision to tapering off as parenting capability grows.

Properly-funded CCSs would:

- proactively transition families from high to lower need, and ultimately, to self-management, and
- offer longer-term support for higher needs families with complex needs (something not addressed by current CCSs operating as standalone services).

Regardless of whether a facility is government or privately funded, all facilities operating as a CCS must be required to meet certain regulatory standards, to safeguard children. We are deeply concerned by waiting times for CCS appointments, which can exacerbate the difficulties of already fragile and vulnerable families.<sup>108</sup> We know that these waiting lists have led to the establishment of private facilities offering these services. Such facilities are under no obligation to comply with good practice or safety requirements. Relationships Australia strongly supports the imposition of high – and uniform – standards for CCSs, which serve some of Australia's most fragile and complex families. Children's Contact Services should be subject to an accreditation process, which would include a requirement that all staff:

- hold valid Working with Children Checks<sup>109</sup>
- hold qualifications such as a Certificate IV in Community Services or a Diploma of Community Services, and
- be equipped to provide referrals to other specialist services. These would include, for example, services offering coaching in relationship enhancement between parent and child, and training to manage co-parenting and parallel parenting.

Relationships Australia Northern Territory suggests that professionals also have:

- training in child development and child development needs, particularly the key risks and considerations for children 0-4 years of age. This is not intended to enable all professionals to act as experts, but to equip them to be aware of when collaboration with another professional may be helpful, and
- the ability to identify and respond to appropriately to risk should also include mental health and depression.

There should be a mechanism by which to recognise prior experience for existing CCS staff – or additional funding provided to cover the costs of staff who must complete training to continue their employment. If existing staff do need to complete training, new requirements should be implemented in such a way as to not exacerbate existing wait times to access these crucial services.

Were Government minded to enhance the capability of CCSs, then it should consider requiring qualifications above the Certificate IV level, so that staff would have the necessary knowledge and skills to provide a fuller array of services in-house. This would ease the burden on fraught parents to travel to attend multiple services, and reduce the risk of some families 'falling through

<sup>108</sup> See also FMC (now 'Better Place'), submission 135 to the ALRC inquiry, 13.

<sup>109</sup> ALRC DP86, Proposal 10-7.



the cracks' in moving between services. It would, however, require investment of funding to attract staff with the higher qualifications.

### **Case study – value-adding in children's contact services**

The four CCS' run by Relationships Australia New South Wales have implemented a process in which parents who have undertaken an approved parenting course (eg 'Parenting After Separation' or 'Circle of Security'), and who have attended the CCS for six months, may be selected to attend a low vigilance service. These services have a reduced ratio of staff to children, and included ongoing parent education sessions held before and after the children attend. The topics for the parenting education are developed by the parents themselves, in partnership with staff. Having the capacity to move parents to a low vigilance service has contributed to reduced waiting times and transformed the relationship between staff and parents to one which is described by parents as more collaborative. Most important, parents have been supported, through development of improved parenting and communication skills, to move towards self-management of contact with their children.

#### *Services tailored for men*

Hubs should offer services tailored for men, including parenting services. The Parenting Centre has reported on data about how fathers seek help and advice about parenting, with a view to developing parenting services targeted to fathers. This research brief noted that, in a survey of over 1000 fathers, 18% reported that they had experienced symptoms of depression and 19% reported symptoms of anxiety since becoming a parent.<sup>110</sup>

Research indicates that well-designed men's behaviour change programs can change attitudes: (see Peacock and Barter, 2014). Peacock and Barker concluded that successful interventions include affirming language, allowing clients to reflect on hegemonic masculinity, are evidence-based, recognise diversity among clients, recognise the wide range of factors involved in family violence and use a range of social change strategies. Of crucial importance is engaging men as fathers, rather than as perpetrators. That being said, Relationships Australia recognises that these programs are under-evaluated and hard to evaluate (see Westmarland, Kelly and Chalder-Hills, 2010).

More funding needs to be applied to men's support services. Where these are available, they have a strong positive impact. Relationships Australia provides services for Male Victims of Domestic Violence, as well as the New South Wales Family Advocacy and Support Service.

### **Stories from the FASS Men's Service – Relationships Australia New South Wales**

The FASS male service has received a steady stream of referrals from judges, lawyers and direct approaches from clients. Additional support for these programs has the potential to change our society by reducing the incidents of men reoffending or being victims. Examples

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<sup>110</sup> Parenting Research Centre, *Focus on Fathers: How are fathers faring and what affects their parenting?*

of how Relationships Australia New South Wales involvement in the FASS pilot has benefited men include:<sup>111</sup>

### Richard

Richard was shouting and swearing at court staff. On speaking with the FASS Men's Support Worker, he said that he was angry with the advice he was given to attend mediation before court proceedings. He stated that he was not being supported fairly because he was a man and that there is no help for males.

The FASS Men's Support Worker sat with Richard and listened to his frustrations, responding non-judgementally and not providing affirmations or advice. The Men's Support Worker challenged his belief that males are not supported by explaining what the FASS men's service is and that he was here to support men.

Richard calmed down considerably upon his frustrations being heard. The resistance towards listening to the legal advice previously provided was defused as his belief of men not being supported was defused. An openness to family dispute resolution options became apparent when he asked 'What mediation options are there?'

### Sam

Sam had issues with homelessness, unemployment and social isolation. His family lives overseas and he had no mobile/contact number. He was distressed with frequent tears and difficulty sitting still. Sam had recently separated from the other party whom he reported was domestically violent towards him. He was couch-surfing with a friend and had been referred by his lawyer who was helping him with parenting matters.

The FASS Men's Support Worker connected him with accommodation services, including an appointment with a case manager. He referred Sam to Centrelink to claim benefits for Newstart and a crisis payment, to assist with his immediate financial difficulties. He was connected to counselling services through victim services, to get help in dealing with social isolation and distress on an ongoing basis.

Sam acted on advice that he obtain mobile phone and a pre-paid sim card. He was linked with accommodation services, received case managed support, and started to receive Centrelink benefits.

Sam subsequently presented with a positive attitude and stated 'he felt like everything was coming together'. He expressed confidence in positive change in his near future. He was able to prepare for accommodation that will be suitable for visits from his children. Furthermore, he is receiving ongoing emotional and psychological support through counselling services.

### Geoffrey

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<sup>111</sup> Names attached to these case studies have been chosen at random and are not the names of the clients.

Geoffrey was referred to the FASS Men's Support Worker at court by the Legal Aid Duty Lawyer. He was self-represented and presented as being well-educated in his legal matter. Geoffrey's matter was approaching final hearing and he was seeking time with his children whom he had not seen for over a year. Geoffrey identified himself as a perpetrator of domestic violence in the relationship before separation. He was unemployed. Furthermore, Geoffrey stated he had chosen to be homeless because he wanted to save what money he had for his children.

The FASS Men's Support worker provided Geoffrey with information about supportive services and discussed the concerns raised by the Court in relation to safety concerns for the children. Geoffrey presented these as concerns about his domestically abusive behaviour, financial instability and lack of acceptable accommodation for the children. These were individually addressed with the Men's Support Worker by discussing available services and making appropriate referrals.

With the assistance of the Men's Support Worker, Geoffrey engaged in the Men's Behaviour Change program, *Taking Responsibility*, and moved into accommodation that would be appropriate for his children. Geoffrey is now receiving additional financial support from Centrelink, and food staples from services near his new accommodation.

The Court made orders allowing Geoffrey to have his children in his care four nights a fortnight, with an increase to 50/50 custody progressively over a two year period. On following up with Geoffrey, he told the FASS Men's Support Worker that he intends to engage in additional supports, including parenting programs.

### Bryan

Bryan presented as agitated, with difficulty sitting or standing still. He stated that the court is against him and he is not afraid to say it. Prior to this, Bryan's legal matter was adjourned to a later date due to his disruption in court. Bryan yelled out during his hearing and swore at court staff.

Bryan was on a mental health plan and regularly seeing a counsellor for his anxiety disorder. He further stated that when he is stressed, he loses control, swearing, yelling and breaking things. Bryan says he doesn't want to be this way, but he was brought up to stand up for himself and not be weak.

The FASS Men's Support Worker linked Bryan into anger management services to provide him with strategies and the capacity to manage his emotions while at court.

At his next court date, the Men's Support Worker was able to provide a safe space for Bryan to manage his emotions and give him confidence to practise the strategies learned in the anger management sessions. Bryan was able to successfully cope throughout the day, allowing his matter to progress.

### Henry

Henry presented as anxious and alert. He was self-represented and was awaiting a single expert report with recommendations involving parenting. Because Henry was self-represented, and there were concerns that the report could trigger significant distress, the Court ordered the report to be released to him by the FASS Men's Support Worker, so that appropriate support would be readily available.

The FASS Men's Support Worker sat with Bryan in the safe room for men and they read the report together. At regular intervals, reading was paused to debrief, process emotions and assist with coping. Tears were shed by Bryan on occasion and could be expressed due to the safety and privacy of the location within the court.

Upon completion of reading the report and expressing his feelings safely, Bryan felt calm and ready to move forward with his matter. The FASS Men's Support Worker provided him with a referral to counselling for ongoing support and organised for him to receive some legal advice from a legal aid duty lawyer at the court to assist with the next step in his legal matter.

### *The right service at the right time for families*

Relationships Australia considers that early responses by multi-disciplinary services can be an effective circuit breaker to prevent families being consumed by a downward spiral of conflict which, ultimately, is only halted – some years later - by judicial resolution. The right service at the right time:

- maximises benefit to families and family members
- minimises costs and trauma, and
- keeps legal solutions for legal problems, not social or health problems – you don't go to your GP when you have a dispute with your plumber, your neighbour or your telco.

Referring families to a service should not be a 'one off' practice. People's experience of family and conflict does not, generally, focus on a single instance of conflict followed by separation. Nor does recovery from family conflict or separation occur in a linear fashion. As families' needs are complex and non-linear, so will be a system which responds to them. Accordingly, Relationships Australia suggests that court staff and FDRPs be not only trained to continually assess for risk and safety, but also be empowered to refer families with particular characteristics and needs directly to appropriate pathways in the courts (eg fast track processes) and to other providers as the need arises.

Australians should not have to end up before a family court judge to access mental health services.

*Hubs must meet the needs of the local community*

Existing FRCs and Family Law Pathways Networks, as well as the community, should be involved in the co-design of Hubs that respond to community need.<sup>112</sup> In some communities (particularly regional and remote communities), physical hubs will not be viable. Existing service centres could be expanded to provide Hub services, and technology may also assist (always recognising that there are communities in which safe, reliable and private access to technology is unavailable).

Providers of services for older members of the community must be included in designing Family Wellbeing Hubs.

The design of services and activities offered by the Families Hubs could help to reduce the still-persistent stigmas around asking for help. Stigma (or perceived stigma) can be a particular barrier to access for men and members of particular CALD communities, among whom accessing post-separation support services can be taboo. Like the Collingwood Neighbourhood Justice Centre, Hubs could offer community education classes and be a focus of other community activities.

Staff should include bi-cultural workers, Aboriginal and Torres Strait Islander workers and workers with lived experience of disability, as well as people from LGBTIQ+ communities. It is important to emphasise that workers should not be recruited primarily on their 'cultural representation', but instead recruitment and induction processes should articulate and demonstrate a particular interest in attracting workers from diverse populations.

There is an urgent need to improve the understanding, among health care professionals, of how to engage with relationship services for the benefit of their patients. For example, our practitioners advise that Medicare-funded mental health services often struggle with the complexities of separated families in conflict. They may have little understanding of the implications of requests by a parent to see a child without the consent of the other parent, for instance. Families Hubs would be able to provide case management with family separation as core business, and enable practitioners to focus on providing their specialist services.

*Navigation*

Navigation services could helpfully operate at several points along a continuum of intensity, depending on need and capacity. They might include:

- intake, screening and triaging
- warm referrals (and, where applicable, safety planning)
- ongoing support and case management through a family's time in 'the system', and
- post-engagement follow-up.

There have been some good examples of services that aim to help people to work out where they need to go and what services and help are available to them (such as the Kiosks in some

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<sup>112</sup> See ALRC DP86, proposal 4-4.



family courts).<sup>113</sup> Elements of navigation support can be seen in existing services within Relationships Australia,<sup>114</sup> and in services operating in other environments, such as the Collingwood Neighbourhood Justice Centre and the Access Gateway in Logan, Queensland.

The Family Safety Model developed by Relationships Australia Victoria, for example, uses a whole of family integrative case management service model to address risk issues for women, men and children, and provide a continuum of services through an inter-agency approach and a curriculum of programs for whole of family group service provision.<sup>115</sup>

### *Ongoing rather than one-off service delivery*

Legal systems are traditionally based on working towards a single point in time service – the dispute is adjudicated on, remedies granted or denied, and the parties move on. This is not the case with family disputes, particularly in the context of modern expectations of ongoing co-parenting.<sup>116</sup> However, the ‘one off’ event model continues to shape funding models for alternative dispute resolution in family law, and other intra-family,<sup>117</sup> disputes. For a range of reasons, families participating in FDR often need multiple sessions to process emotions, develop realistic expectations, and negotiate a workable agreement.

The services offered and the performance measures applied should be premised on models which allow engagement with services in non-linear ways, reflecting the non-linear emotional and psychological experience of family conflict and child development. In multiple session models currently used, clients can trial an agreement for a few weeks, or a month, before attempting to extend the agreement beyond that timeframe. This affords opportunities to re-establish safe and respectful communication, and to acknowledge the important role that the other parent may play in the children’s lives. Where possible, a multiple session approach also enhances opportunities for children to have a say in how they are managing the separation of their caregivers.

Relationships Australia urges funding for, and mechanisms to ensure early and ongoing screening and risk assessment for families to enable decision-makers to have access, as early as possible, to high quality information about safety concerns of all kinds. Many professionals in the system, including judges, have expressed serious concern that allegations of family violence are not properly dealt with until final hearing, entrenching conflict. Ongoing screening<sup>118</sup> and risk assessment may assist both in defusing conflict caused by delayed

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<sup>113</sup> For example, the South Australian Family Law Pathways Network funds such a kiosk in Adelaide. This service is well-used by judges and lawyers who direct litigants to the kiosks to seek help with referrals.

<sup>114</sup> For example, the Family Safety Model run by Relationships Australia Victoria, and described in Relationships Australia’s submission to this Committee’s 2017 inquiry into family and domestic violence.

<sup>115</sup> See the response to paragraph (g) of the Terms of Reference for detail about the MBCP run by Relationships Australia Victoria.

<sup>116</sup> See Moloney, Smyth, Richardson and Capper, 2016.

<sup>117</sup> For example, some services available for people affected by abuse of older people focus on a ‘one off’ solution (eg sending a ‘lawyer’s letter’), rather than on providing durable solutions which repair underlying relationship dysfunction.

<sup>118</sup> Noting evidence on pro-disclosure factors: cf Cleak and Bickerdike 2016, citing Spangaro et al 2011, and Bailey and Bickerdike, 2005.

determination of these issues, and in facilitating diversion to relationship services. If the current funding envelope is not expanded, then Relationships Australia considers that a high priority for targeting funding increases would be to assist clients with safety concerns.

### *FDR in a Family Wellbeing System*

FDR is not a 'one size fits all' proposition; services are tailored to meet specific needs; for example:

- case management
- family group counselling to engage a wider circle of people to assist with problem-solving, and
- referral by the court to FDR to support decision-making on specific issues; for example, which school a child will attend, and the amount of time spent with particular adults.

There should be a clear process for reporting back to the courts on FDR outcomes, subject to confidentiality considerations.<sup>119</sup> When ordering families to undertake FDR, courts should make clear that FDRPs are not decision-makers undertaking a judicial function.

If Hubs are not implemented, then more services, including child protection services, should be co-located within court facilities to foster closer working relationships and more collaborative professional cultures. We acknowledge work currently underway to co-locate child protection and family violence support workers at each of the family law court premises, as well as the establishment of multi-disciplinary Family Advocacy and Support Services.<sup>120</sup> Relationships Australia would add that child protection and family violence support workers should also be co-located at the proposed Families Hubs. Co-location has proved a successful mechanism to improve collaboration and information sharing between systems. National Legal Aid has noted that:

The experience of co-location has been transformative. It has enabled improved sharing of information, and a better understanding of perspectives and roles which addresses some of the potential barriers to collaboration occurring.<sup>121</sup>

### *Courts in the Hubs*

We acknowledge the work being undertaken by the Commonwealth Attorney-General's Department with state and territory governments to develop and implement models for co-location of family law registries and judicial officers in local court registries. We consider that this should include local courts in rural, regional and remote locations.<sup>122</sup>

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<sup>119</sup> Relationships Australia understands that California has arrangements for court-ordered mediation without suitability screening. It is conducted within the court precinct for security reasons. This could be considered.

<sup>120</sup> ALRC DP 86, Proposal 11-7.

<sup>121</sup> Submission 163 to the ALRC inquiry into the family law system. We would also respectfully draw to the Committee's attention the limitations and opportunities for improvement in currently operating co-location models, noted by the ALRC at paragraph 11.54 of DP86.

<sup>122</sup> This proposal derives from Proposal 6-8 of ALRC DP86.

There appears to be broad agreement among stakeholders about the burdens imposed on families by physical fragmentation (as well as jurisdictional and other forms of fragmentation),<sup>123</sup> and the burdens it places on vulnerable, fraught families. Relationships Australia supports co-location of family law registries and judicial officers in local court registries (including those in rural, regional and remote locations).<sup>124</sup> There is ample literature demonstrating both the urgent need and the benefits of co-located services for the many Australians who are engaged, simultaneously or consecutively, with multiple court systems. Certainly, a child-focused system needs to embrace co-location, through embedded staff, as a key way in which to prevent children and their families from falling through the cracks.

Services need to be where people actually live their lives, so that they don't need to travel to major population centres to access traditional judicial services. The need to do so raises substantial practical barriers, including safety and availability of transport (public or private), parking, and child care, with all the costs that attend these services in cities. Technology can and should be part of this solution, through virtual courtrooms and other like services, but is not a complete solution. It offers

*...an opportunity to refocus the family law system from being court-centred to 'being seen more as a service rather than a physical venue', to widen access to justice, and to have 'its primary focus on informing and assisting the public in containing and resolving...disputes...with less intervention by a judge.'* [emphasis in original]<sup>125</sup>

## E.7 Family Wellbeing System - measuring effectiveness

Most families can, and do, sort out parenting and property arrangements for themselves.<sup>126</sup> Only around 3% of separating couples require judicial resolution. Those matters that do go to hearing generally involve health or social complexities such as family violence, mental health issues, substance misuse, excessive gambling, or a combination of two or more of these.<sup>127</sup>

The success of interventions in this context should not be measured by whether an agreement was reached in particular families; other measures must be considered, such as whether the family could be referred to another service to assist them (for example, coaching for one or problem-solving for one). Outcomes for family law services have been inherently difficult to define and measure over budget or political cycles, due to the complexity and diversity of family circumstances, the nature of why families seek these services, and how they interact with

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<sup>123</sup> See also submission 55 to the ALRC inquiry, the Australian Psychological Society, 32.

<sup>124</sup> Relationships Australia notes with interest the Australian Psychological Society recommendation to develop a 'rural model for the family law system that better incorporates the use of technology and mobile panels.' (submission 55 to the ALRC inquiry, recommendation 8).

<sup>125</sup> Submission 43 to the ALRC inquiry, paragraph 292, referring to Graham Ross, 'The Online Court – Misunderstandings and Misconceptions when Delivering a Vision for the Future of Justice' (2015) 1 *International Journal of Online Dispute Resolution*.

<sup>126</sup> See Table 4.8, *Experiences of Separated Parents Study* (2012 and 2014), AIFS.

<sup>127</sup> See Table 2.2, p 16, *Complex Issues and Family Law Pathways: Synthesis Report, Evaluation of the 2012 Family Violence Amendments*, AIFS (2016).

services over time (given the non-linear nature of how family members experience and process family separation).

Consistent with our submissions about the paramountcy of children's best interests, Relationships Australia proposes that the effectiveness of relationships services for families with children should be measured by reference to children's development outcomes. That is, compared to children whose families do not separate, children after separation are no worse on social, emotional, physical or education measures over the long-term.

### *Case study - Relationships Australia study of FDR outcomes*

Relationships Australia has undertaken a national study aimed at measuring the outcomes of its FDR services in both parenting and property matters. That survey, of more than 1700 participants, completed a survey at intake appointments for FDR between May and November 2017, and again three months later. These surveys included questions about their dispute and measures of individual wellbeing, conflict (including violence) between separating parties, and children's wellbeing. A twelve-month follow-up survey was also undertaken and we conducted interviews with a subsample of participants.

Although the vast majority of participants in this study (70%) were doing FDR for parenting matters, 23% said at intake that they had a combination of parenting and property/finance issues they wished to resolve. This represented over a quarter of participating FDR clients (28%). More specifically, 377 respondents (22%) reported wanting a property settlement. Three quarters of these 'property clients' were also hoping for a parenting agreement. Conversely, about a quarter (24%) of those reporting parenting issues also wanted to resolve property/finance matters. Excluding those who reported having no shared property to divide, this proportion jumps to 49%. There is considerable overlap of parenting and property clientele, despite the distinction that is reinforced by compulsory attendance for parenting matters only.

### *Value of shared property*

The asset pools of property clients in the sample were greater than those of parenting clients, which is an expected selection effect when property clients (a) have some property to divide, and (b) have had to attend a fee-paying service. Nevertheless, the pools are far from high:

- a quarter (25%) are under \$200,000 (including 8% where the pool is comprised of debt)
- more than half (53%) are under \$500,000, and
- more than ¾ (81%) are under \$1 million.

These values must be considered alongside the cost of going to court. One 2014 estimate was that a more straightforward family law case will cost parties \$20,000-\$40,000, while a complex case can cost in excess of \$200,000 to litigate.<sup>128</sup> For many of

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<sup>128</sup> Productivity Commission 2014, volume I, 853.

the clients in our sample, costs in this range would represent a prohibitive proportion of the total value of the shared assets. For some, the cost of going to court would be greater than the value of the shared property.

### Satisfaction

**Facilitator:** And how would you say that mediation has affected your relationship with your [ex-partner]? **Participant:** Probably made it a lot better to be honest, because we hadn't sat down and spoke about anything for you know, four or five months until we sat down in mediation.

**Facilitator:** Would you say that that the mediation that you did attend has affected your relationship with your ex-partner in any way? Has it changed some things for you?

**Participant:** I think if we hadn't gone there would've been maybe suspicion about why do we need to have this sort of agreement in place...Whereas having been through the mediation process we could see this was just about formalising it for clarity as opposed to using it as you know some way of getting back at each other or something like that. So I think that the process that we went through actually helped to de-escalate emotion that might have been linked to that process if that makes sense.<sup>129</sup>

Among those who had participated in FDR at the 3-month follow-up:

- 80% agreed that 'Overall, I am satisfied with the way my mediation was carried out'
- 63% agreed that 'Overall, I am satisfied with the outcome of my mediation'

Analysis shows that **outcome** satisfaction is related to whether or not an agreement was reached, as might be expected. However, clients' satisfaction with the **process** is independent of whether or not an agreement was reached, with clients expressing appreciation of the professionalism and quality of mediation services.

## E.8 Establish a Family Wellbeing and Family Law Commission with a legislated mandate for systemic oversight and accountability

In Report 135, the ALRC noted the volume and range of public and confidential submissions, and personal accounts, that expressed damning lack of confidence in the family law system, including (perhaps especially) the courts. Relationships Australia supports the ALRC's recommendation to establish a standing body to:

- undertake ongoing and systemic monitoring, and
- conduct inquiries by reference from Government *or* on own motion.<sup>130</sup>

On establishment, the Family Commission should be tasked, as a matter of urgency, to assist government with identifying priorities for a reform plan and performance indicators.<sup>131</sup>

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<sup>129</sup> From interviews conducted during the study.

<sup>130</sup> Recommendation 49, p 388.

<sup>131</sup> ALRC Report 135, paragraphs 13.18 and 13.21.



## E.9 The potential for fathers to mitigate gendered violence

Fathers can have powerful influences on their sons and daughters. Domestic and sexual violence have ‘gendered drivers’ – they are shaped, above all, by gender-unequal norms, practices, and relations.<sup>132</sup> Men who engage positively as fathers are well placed to shift these in their own families. They can encourage strong norms of non-violence and respect, model shared decision-making, and challenge rigid gender roles and gender stereotypes.

Men can play a particularly important role in fostering boys’ gender-equitable identities and behaviours. For example, some research among boys and young men who live in gender-equitable ways finds that for some, an important inspiration for this was having fathers, other male role models, or others who were involved, nurturing, and equitable.<sup>133</sup>

Just as abuse can be passed down from generation to generation, so can nurturance. The sons of involved and nurturing fathers are more likely to be more nurturing and gender-equitable as fathers themselves and less likely to become violent in their intimate partner relationships as men.<sup>134</sup> The daughters of nurturing fathers are more likely to value equitable partner relationships.

There are also more pragmatic reasons to engage men as fathers in anti-violence advocacy. These include the fact that most men are fathers,<sup>135</sup> and the fact that fathering is an important life experience for many men, and fathering therefore provides opportunities to involve men and boys in learning, reflecting and taking action.<sup>136</sup>

Work to engage fathers in prevention of gendered violence should focus on the following:

- the pivotal role that fathers can play in preventing men’s violence against women. Fathers can have a profound and positive impact on children, mothers, families, other fathers, and the wider community.
- the variety of ways in which men can contribute to ending violence against women, and can improve their own fathering.

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<sup>132</sup> Our Watch, ANROWS, and VicHealth, *Change the Story: A Shared Framework for the Primary Prevention of Violence against Women and Their Children in Australia*. 2015, Our Watch: Melbourne.

<sup>133</sup> Barker, G., ‘Gender Equitable Boys in a Gender Inequitable World: Reflections from Qualitative Research and Programme Development in Rio De Janeiro’. *Sexual and Relationship Therapy*, 2000. 15(3): p. 263-282.

16. Coulter, R.P. ‘Boys Doing Good: Young Men and Gender Equity.’ *Educational Review*, 2003. 55(2): p. 135-145.

<sup>134</sup> Tolman, R.M., T.B. Walsh, and B. Nieves, ‘Engaging Men and Boys in Preventing Gender-Based Violence, in *Preventing Intimate Partner Violence*, C.M. Renzetti, D.R. Follingstad, and A.L. Coker, Editors. 2017, Policy Press. p. 71-100; Wells, L., et al., *Engaging Men and Boys in Domestic Violence Prevention: Opportunities and Promising Approaches*. 2013, The University of Calgary, Shift: The Project to End Domestic Violence: Calgary, AB: 8. Levto, R., et al., *State of the World’s Fathers 2015: A MenCare Advocacy Publication*. 2015: Promundo.

<sup>135</sup> The term ‘father’ is used broadly here for any man who has fathered children or who provides care for children.

<sup>136</sup> Wells, L., et al., *Engaging Men and Boys in Domestic Violence Prevention: Opportunities and Promising Approaches*. 2013, The University of Calgary, Shift: The Project to End Domestic Violence: Calgary, AB: 8. Levto, R., et al., *State of the World’s Fathers 2015: A MenCare Advocacy Publication*. 2015: Promundo.

- growing interest in engaging men as fathers.<sup>137</sup> Fatherhood is identified as a key 'entry point' 'that can be strategically leveraged, enhanced and extended to support male engagement around violence prevention'.<sup>138</sup> Key developmental periods for education and outreach among men include the transition to parenthood (during a partner's pregnancy) and men's involvements as parents and caregivers.<sup>139</sup>
- the growing body of violence prevention work with fathers has been shaped by increasing emphases on the primary prevention of violence, the development of policy and programming on father involvement, and the emergence of the 'engaging men' field. Of course, the wider context includes shifts in fathering itself. The last four decades have seen important shifts in social norms of fathering, both in images of fathering and in fathers' own expectations, although fathers' actual behaviours have shifted less.<sup>140</sup>
- the efforts to engage fathers in preventing and reducing domestic and sexual violence and in promoting gender equality that have intensified in the past decade, with the emergence of father support groups, face-to-face education programs, communications campaigns, and policy reform (these primary prevention strategies are complemented by interventions for violent fathers).

We need much more intensive efforts to involve fathers as part of a comprehensive strategy for engaging men in violence prevention. This strategy should include raising the bar for what it means to be a good father. We need to encourage fair divisions of caring and household work, shift traditional norms of care work and masculinity, and foster a culture of positive fathering.

## E.10 The looming gender equity cliff

From June 2021, relationship and other services will have to turn away up to an extra 400 clients per service per year, because of a massive funding cut baked into the Federal Budget since 2012. Failure to stop this cut will undermine progress in addressing a range of key government priorities, including improving:

- service delivery, especially to rural, regional and remote communities
- mental health and reducing suicide rates

<sup>137</sup> Minerson, T., et al., Issue Brief: Engaging Men and Boys to Reduce and Prevent Gender-Based Violence. 2011, Status of Women Canada: Canada.

<sup>138</sup> Wells, L., et al., *Engaging Men and Boys in Domestic Violence Prevention: Opportunities and Promising Approaches*. 2013, The University of Calgary, Shift: The Project to End Domestic Violence: Calgary, AB: 8. Levto, R., et al., *State of the World's Fathers 2015: A MenCare Advocacy Publication*. 2015: Promundo

<sup>139</sup> Tolman, R.M., T.B. Walsh, and B. Nieves, *Engaging Men and Boys in Preventing Gender-Based Violence, in Preventing Intimate Partner Violence*, C.M. Renzetti, D.R. Follingstad, and A.L. Coker, Editors. 2017, Policy Press. p. 71-100.

<sup>140</sup> Flood, M., *Fatherhood and Fatherlessness*. 2003, The Australia Institute: Canberra; Hanlon, N., *Masculinities, Care and Equality: Identity and Nurture in Men's Lives*. 2012: Palgrave Macmillan; Hunter, S.C., D.W. Riggs, and M. Augoustinos, *Hegemonic Masculinity Versus a Caring Masculinity: Implications for Understanding Primary Caregiving Fathers*. *Social and Personality Psychology Compass*, 2017. 11(3): p. e12307-n/a; Flood, M., *Engaging Men and Boys in Violence Prevention*. 2018: Palgrave Macmillan

- women's economic security (including among the predominantly female workforce in the sector), and
- child safety.

We respectfully urge the Committee to strongly recommend reversal of this cut. This will help to ensure that Australian families do not lose access to services that can keep them out of courts, and parent-child relationships intact.

Services to which this cut will apply are integral to providing services to families affected by family violence, providing both alternative dispute resolution and a range of other services to assist families to prevent separation and through and beyond separation. These services have consistently received favourable evaluations. There has been an increase in demand for services and in the complexity of needs to be met, while funding has remained static since indexation was paused for three years in the 2014-15 Budget.

### *Background*

Since 2012, the Federal Government has delivered additional funding on a range of grants in the community services sector in response to the Fair Work Commission's Equal Remuneration Order (ERO), made in respect of the Social, Community, Home Care and Disability Services Industry Award 2010 (SACS Modern Award), in recognition of the substantial gender inequity reflected in disproportionately low remuneration in these sectors. The ERO mandated increases to the award rate of between 23 and 45 per cent over a phase-in period, with the increase to be applied in full by 2020 and beyond.

Acknowledging the significant importance of the ERO, as well as its impact on the sector, Commonwealth funding for SACS supplementation was enshrined in the *Social and Community Services Pay Equity Act 2012*, which established a Special Account from which ERO Supplementation Payments are drawn. Despite the ongoing nature of the ERO itself, the Act, as drafted, will sunset on 30 June 2021, at which time payments into, and out of, the Special Account will cease.

As a result, a great number of organisations in the community services sector will cease to receive ERO Supplementation Payments from July 2021.

For each Relationships Australia state/territory organisation, the total quantum of ERO Supplementation Payment received has fluctuated based on calculations devised by the Commonwealth, as well as variations to the number of relevant Programmes offered and changes to the grant amounts from year to year.

An analysis of the ERO Supplementation Payments received by each Relationships Australia state/territory reveals the financial impact of the ERO Supplementation Payment, resulting in a reduction of between ten and twenty-five percent of funding across affected programs. In dollar terms, this is equal to between \$500,000 for some of the smaller states and territories and over \$2million for others.

The flow on consequences for the services themselves are abundantly clear, resulting in not only a reduction of capacity and therefore service delivery to vulnerable Australians, but also a

loss of jobs. By way of example, the below table demonstrates the likely impact on one Relationships Australia member organisation, based on a conservative reduction of 9% across relevant programs.

Name of program	Client impact Client reduction	Staff impact FTE reduction
Find and Connect Support Services	-371	-0.8
Children and Parenting	-31	-0.1
Family and Relationship Services	-344	-5.0
Specialised Family Violence Services (SFVS)	-17	-0.4
Children's Contact Services	-114	-1.0
Family Dispute Resolution	-18	-0.4
Family Law Counselling (Under FARS)	-304	-1.7
Family Relationship Centres	-653	-8.3
Parenting Orders Program	-18	-0.3

It should be emphasised that a number of organisations are expecting larger reductions (of up to 25%), which would have an even greater impact on their service capacity.

The likely reduction in community service providers' capacity to see clients will lead to longer waitlists for services and the potential for clients to be denied access to crucial services. It is well accepted that these services allow for intervention and support at times of great vulnerability and need, without which, there is a greater risk of Australians becoming trapped in unemployment, homelessness and poverty while at the same time leading to growing demand on our courts and other social institutions.

Evidence and research supports the suggestion that early-intervention, wrap-around services, such as those delivered by Relationships Australia in the affected programs, have a considerable impact on supporting mental health, addressing suicidality, and preserving healthy relationships, which provide a firm foundation from which individuals and families are able to contribute to society.<sup>141</sup>

We urge the Commonwealth, as a matter of utmost importance, to dedicate a specific appropriation in forward estimates to fund an increase to base funding across impacted grant programs. The appropriation must take effect from 1 July 2021 and be sufficient to ensure that services are not impacted by the cessation of ERO Supplementation Payments at that time.

The inclusion of an amount commensurate to the ERO Supplementation Payments within base funding would ensure that funded programs have certainty and stability into the future, thereby guaranteeing the ongoing delivery of services at the necessary levels of expertise.

Relationships Australia recognises that this would require the government to dedicate additional funds for the 2021-2022 financial year and beyond, not currently provided for in the forward

<sup>141</sup> See also FRSA and SEED, *Strengthening Prevention and Early Intervention Services for Families into the Future*, 2017, <https://frsa.org.au/wp-content/uploads/2016/05/FRSA-Research-Report-Printable.pdf>.

estimates. However, the impending funding cliff will have significant and ongoing impact and will result in far greater costs, across a broad range of government funded institutions, well beyond the funding needed to ensure a suitable level of service delivery in the community services sector into the future.

Failure to prevent this cliff would, in itself, be a crushing blow to gender equity in Australia, devastating our society's capacity to provide services to all people affected by family violence.



**Term of reference (c) The level and impact of coordination, accountability for, and access to services and policy responses across the Commonwealth, state and territory governments, local governments, non government and community organisations, and business**

## **A Coordination is out-sourced to stressed and vulnerable families**

Relationships Australia notes that the recent AIFS report on children and young people in separated families reported that parents in their sample had accessed an average of eight services when finalising parenting matters. Practice experience, confirmed by research, indicates that:

- people experiencing physical violence in relationships use at least four wellbeing or family law services before or during separation, compared to 1.4 services used by those with no violence in their relationships and 2.9 services used by those facing emotional abuse<sup>142</sup>
- people reporting physical harm before or after separation are twice as likely to use a counselling, relationship or FDR service than a domestic violence service<sup>143</sup>
- clients are most likely to seek help from a relationship service for:
  - relationships assistance (61.9%)
  - mental health (28.9%)
  - child's coping (26.1%),<sup>144</sup> and
- family and relationship services clients have said that:
  - 34.1% had thought of suicide and 9.5% were currently thinking of suicide
  - 18% had, in the previous year, needed to call police, press criminal charges or have criminal justice system involvement due to behaviour of a partner or ex-partner, and
  - 11.7% were aware of a child protection notification about their family (with 2.8% being currently under investigation).

Coordinating involvement with the various agencies and services in those situations is extremely complex, because of pronounced fragmentation of legislation, funding, policies and programmes. Clients say that they are confused and frustrated by the different privacy and confidentiality arrangements. This may lead to under-disclosure of issues for which help could be sought and given without fear of information being weaponised in litigation.

## **B Sources of fragmentation in legislation and services**

Fragmentation arises from:

- the limits of Commonwealth Constitutional power, and its relationship with State powers to legislate
- separation of powers in the Commonwealth Constitution
- intersecting legal frameworks, including:

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<sup>142</sup> Kaspiew et al, 2015.

<sup>143</sup> Kaspiew et al, 2015.

<sup>144</sup> Lee & McIntosh, 2019.

- child protection and welfare
- criminal law – family violence
- criminal law – other
- adult guardianship law
- mental health, and
- succession law
- professional regulators, including in:
  - social sciences
  - medical sciences and allied therapies
  - law
  - law enforcement
- bureaucratic structures at all levels of government
- budgetary rules and processes – funding grants are often structured to align with bureaucratic divisions, so that one service provider must, in relation to even a single family, administer funding for services from several different government departments, at different levels of government; this imposes substantial administrative burdens and costs without contributing to high quality services for users or cost-effectiveness for taxpayers
- competition between services, driven by unproven assumptions that competitive tendering is a necessary and sufficient pre-condition of innovation and efficiency; typically, however, grants of funding also call on providers of the same, or substantially similar, services to collaborate – artificially creating a competitive dynamic that can undermine achievement of the policy objectives,<sup>145</sup> and
- design of services corresponding to life span phases - rather than focusing on the duration of the family dynamic, and supporting the well-being of families throughout the life span (eg intergenerational conflict, elder abuse, conflict among adult siblings).

Significant attention has been paid, over the past few years, to improve collaboration and information sharing between the family courts and state/territory child protection and family violence systems. The Attorney-General's Department worked with Professor Richard Chisolm AM to develop a best practice framework to improve information flows. An initial report was published in March 2013, after which a taskforce was established to undertake further consideration of the issue. The outcomes can be found on the AGD website.<sup>146</sup> The problem continues to burden Australian families and has, in consequence, received continued attention:

- the Family Law Council's inquiry into families with complex needs and the intersection of the family law and child protection systems<sup>147</sup>

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<sup>145</sup> Relationships Australia, in commenting on the KPMG final report, observed that collaboration is not the only, or always the best or most efficient approach, or something that can be imposed in grant agreements post-tender. In its draft report on mental health services, the Productivity Commission recently acknowledged the legitimacy of concerns about how competitive contracting by government is managed and the potential adverse effects on NGOs and the delivery of seamless, non-duplicative services (concerns expressed by submitters to that process, including Relationships Australia National, the New South Wales Government (submission 551, p 24) and the South Australia Mental Health Commission (submission 477, p33). See Productivity Commission draft report (<https://www.pc.gov.au/inquiries/current/mental-health/draft>) at p 425.

<sup>146</sup> See <https://www.ag.gov.au/FamiliesAndMarriage/Families/Pages/Familylawandchildprotectioncollaboration.aspx>.

<sup>147</sup> <https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Pages/FamilyLawCouncilpublishedreports.aspx>

- the 2017 inquiry into family violence undertaken by this Committee,<sup>148</sup> and
- the ALRC inquiry into the family law system.<sup>149</sup>

However, ‘information sharing is no panacea to the problems caused by the jurisdictional gap.’<sup>150</sup> Accordingly, Relationships Australia recommends:

- enhanced multi-disciplinary training for professionals in the system
- that professionals working in the family law, family violence and child protection systems receive information, training and advice on confidentiality and privacy laws, complemented by an agreement on standardised wording and explanations given to clients (including children, who are being spoken to by counsellors and family assessors) about privacy and confidentiality, and
- where beneficial to users – co-located multi-disciplinary services.<sup>151</sup>

## **C Proposals to enhance co-ordination**

### **C.1 National database of orders**

The Australian Government and state and territory governments should consider continued expansion of the National Domestic Violence Order Scheme to include all categories of order identified by the Family Law Council (ie orders from all family courts, State and Territory children’s courts, State and Territory magistrates courts and possibly State and Territory mental health tribunals).<sup>152</sup> Subsequently, Australian Governments have collaborated so that all domestic violence orders issued in an Australian state or territory, from 25 November 2017, are automatically recognised and enforceable across Australia. Orders made before that date can be declared to be nationally recognised.<sup>153</sup>

### **C.2 Cross-jurisdictional orders**

Relationships Australia supports initiatives to empower, facilitate and appropriately resource State and Territory judges to make orders to help families already before them on other matters

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<sup>148</sup> [https://www.apf.gov.au/Parliamentary\\_Business/Committees/House/Social\\_Policy\\_and\\_Legal\\_Affairs/FVlawreform](https://www.apf.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/FVlawreform)

<sup>149</sup> <https://www.alrc.gov.au/news/family-law-inquiry-final-report-released/>; see Recommendation 2.

<sup>150</sup> ALRC Report 135, paragraph 4.138

<sup>151</sup> ALRC Report 135 expressed concern that co-located services may be unsafe for users where high conflict and/or family violence is present. This overlooks the fact that many existing services already operate safely and successfully, assessing and managing risk as part of their core business. This includes courts, FRCs, CCSs, and community legal centres.

<sup>152</sup> See the 2015 interim report of the Family Law Council; in particular, recommendation 5. See also chapters 5 and 9 of the 2016 final report; Recommendation 6 made by this Committee in its 2017 report on reforms to the family law system.

<sup>153</sup> See <https://www.ag.gov.au/FamiliesAndMarriage/Families/FamilyViolence/Pages/National-Domestic-Violence-Order-Scheme.aspx>

(eg protection order applications and child welfare matters). We note that work is currently underway in this regard.<sup>154</sup>

### **C.3 Multi-disciplinary networks**

Relationships Australia respectfully draws to Committee's attention the highly successful Family Law Pathways Networks, in operation now for over a decade. These Networks are integral in developing and providing information about family law and family law services through websites, service directories, and printed resources. They foster collaborative relationships between individual professionals and practitioners across an array of services (eg police, teachers, GPs, as well as family relationship services providers, lawyers and judges). These resources support professionals to help their clients navigate the 'system'. We recommend that the Committee support ongoing resourcing of these Networks.

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<sup>154</sup> See <https://www.ag.gov.au/About/CommitteesandCouncils/Council-of-Attorneys-General/Documents/Council-of-Attorneys-General-communique-November-2019.pdf>

**Term of reference (e) All forms of violence against women, including, but not limited to, coercive control and technology-facilitated abuse****A Family violence and abuse of older women – the ageism of service segregation**

Relationships Australia would urge the Committee to consider the nexus between family violence and abuse of older women. We commend the Government's initiatives in the context of the *National Plan to Respond to the Abuse of Older People*.<sup>155</sup> We are concerned, however, that a new 'silo' is being built in plain sight and will aggravate existing fragmentation of legislation, policies and services. There is, we consider, a bi-directional relationship between ageism and 'othering' of older women and segregation of older women in an 'aged care system' in which people are cast as homogeneous passive 'care recipients' in residential aged care facilities.

Intergenerational family relationships, and disputes emerging from them, must also be part of the new Family Wellbeing System. The interests and voices of children were not considered part of the system in the 1970s, and this has led to 30 years of retrofitting the Act, and the constellation of services and programmes orbiting around it, to rectify this failure of foresight.

Australia should not repeat such a failure in respect of addressing abuse of older people. Even without robust prevalence data, we know that this is a significant issue in our society. We know it is unacceptable. We know that housing pressures, 'inheritance greed', the problem of longer lives with (sometimes) diminishing capacities, and the increasing availability of superannuation in inheritance, will drive intergenerational conflict. There is an accumulation of anecdotal evidence that, in common with intimate partner violence, abuse of older people has increased during the COVID-19 pandemic.<sup>156</sup> We are also aware that violence against older family members can be a manifestation of decades-old family violence dynamics. There are disputes, too, among adult siblings about the care arrangements for older family members. As a nation, we have a responsibility, in designing new structures, to enable families deal with the pressures and conflicts of which we are increasingly aware, and which can cause such ongoing harm and distress.

We have a blueprint for action. The report by the ALRC, *Elder Abuse – A National Legal Response*,<sup>157</sup> was launched on 15 June 2017, and made 43 recommendations. The Commonwealth Government, with support from States and Territories, has embarked on a range of service pilots and other policy initiatives, such as the National Plan noted above. We also have an ongoing Royal Commission into Aged Care Quality and Safety, which has brought to light a range of other situations in which older members of our community are abused and exploited.

If Government accepts the challenge of transforming the family law system into a Family Wellbeing System, then the opportunity ought to be seized to ensure that older people are not

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<sup>155</sup> <https://www.ag.gov.au/sites/default/files/2020-03/National-plan-to-respond-to-the-abuse-of-older-australians-elder.pdf>

<sup>156</sup> Noting, for example, public comments to this effect by the Age Discrimination Commissioner, the Hon Dr Kay Patterson AO on ABC Radio National, 22 July 2020.

<sup>157</sup> ALRC Report 131, *Elder Abuse – A National Legal Response*.



invisible to, or excluded from, that system. Rather, we propose a holistic ‘whole of lifecourse’ approach to legislation and services designed to support families and to respond to conflict and violence. This work must include:

- advocacy by the Australian Government of an international convention on the rights of older people (we do not consider the CEDAW and the CRPD to provide adequate protection)
- integrated service delivery to older people that:
  - acknowledges the heterogeneity of users of services for older people, and of their carers<sup>158</sup>
  - eschews othering and segregation of older people, while valuing specialist knowledge and skills relevant to meeting the needs of older people
  - rejects stigmatisation of older people and those who work with them
  - enables appropriate safety planning (eg a family violence perpetrator is ordered to leave his partner and children, and goes to live with elderly parents)
  - facilitates access by older people to mainstream services, including recreational, educational and health services, and
  - is not hostage to fragmentation arising from administrative, funding, or vocational boundaries.

### A.1 How Family Wellbeing Hubs could serve older people

FRCs and similar existing services could be funded to expand in scope and geographic reach to provide co-located and multi-disciplinary services within the Family Wellbeing Hubs<sup>159</sup> described elsewhere in this submission<sup>160</sup> and in submissions to other inquiries.<sup>161</sup> Integrating the entry points to aged care into Family Wellbeing Hubs would reinforce and complement strategies to tackle ageism, and the othering and segregation of older people (and those who work with them), while also taking advantage of proximity to a range of multi-disciplinary services that would be useful and appealing to older people. Hubs would enable readier access to face to face, locally knowledgeable service providers.

Hub workers interacting with older people should be:

- trauma-informed
- dementia-literate, and

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<sup>158</sup> In this regard, we support the call by the EveryAGE Counts campaign, in its 2019 submission to this Royal Commission, for the Government to require the Productivity Commission to conduct research into the heterogeneity of the ‘older’ population, and the value of their contributions to society. We would, however, caution that the human rights of older people (like the human rights of anyone else) must not be seen or suggested to be in any way contingent on their contributions, past, present or future.

<sup>159</sup> We note similar suggestions from other sources: see, eg, Health Design Lab, *Dementia in the community report*, 2019, 11, recommending ‘Dementia shopfronts, providing information, counselling, planning, crisis response, case management, transition support, reablement, GP and specialists [sic] clinical services, would bring together many of the services needed for people living with dementia. The shopfronts would support both proactive and episodic care across people’s dementia journey. They would need to include the ability to deal with high needs and emergency cases, which currently tend to go unmet outside acute and sub-acute care settings.’

<sup>160</sup> See section E.6 in response to Term of Reference (a).

<sup>161</sup> At <https://www.relationships.org.au/about%20us/submissions-and-policy-statements>

- able to work with users in a culturally safe way and be culturally safe themselves.<sup>162</sup>

Relationships Australia considers that a necessary element of efforts to defeat ageism is integration of older women in the broader community, so that they are visible as full, and fully valued, participants in our families and communities.

## **B Sexual violence against older women**

The issue of sexual violence against older women has yet to receive the attention it merits, despite the advocacy of survivors such as the late Margarita Solis,<sup>163</sup> and researchers such as Dr Catherine Barrett, founder of the OPAL Institute.<sup>164</sup> Both research and service responses are seriously lacking. This is at least partly because existing research and service responses are not framed with an awareness of the needs, vulnerabilities – and intrinsic value – of older women. Older women seeking to take action in respect of sexual violence against them are too often told that services are not set up for them. We would strongly urge the Committee to engage with Dr Barrett and the OPAL Institute to frame future legislative, policy and service actions to serve older women.

## **C Abuse of older people in residential aged care facilities**

According to the AIHW, 2/3 users of aged care services are women. The AIHW reports that:

The different age profiles of men and women using aged care is particularly pronounced in residential aged care (permanent and respite).

- A higher proportion of women living in residential aged care were in older age groups compared with men. For example, 1 in 9 women living in residential aged care on 30 June 2019 were aged 95–99, compared with 1 in 17 men.
- There were more men than women in younger age groups. For example, 3% of men living in residential aged care on 30 June 2019 were aged 60–64, compared with 1% of women.<sup>165</sup>

The evidence base about prevalence of abuse of older people, risk and protective factors for victims and perpetrators, and the merits of interventions and service responses, is still nascent (internationally and domestically).<sup>166</sup> Current evidence suggests that institutional settings may carry an increased risk of certain forms of abuse, because of:

<sup>162</sup> Mayi Kuwayu and the Lowitja Institute, *Defining the Indefinable: Descriptors of Aboriginal and Torres Strait Islander peoples' cultures and their links to health and wellbeing*, 2019, 28-29.

<sup>163</sup> For Ms Solis' story, see <https://www.opalinstitute.org/margarita.html>

<sup>164</sup> See <https://www.opalinstitute.org/>

<sup>165</sup> As at 30 June 2019: see <https://gen-agedcaredata.gov.au/Topics/People-using-aged-care>

<sup>166</sup> See, eg, Yon et al, 'The prevalence of elder abuse in institutional settings: a systematic review and meta-analysis', *European Journal of Public Health*, vol 29, no 1, 67-74 (2018), referring to Pillemer et al, 'Elder abuse: global situation, risk factors, and prevention strategies', *Gerontologist* 2016; 56:S194-205. See also Chesterman and Bedson, 2017; Castle, Ferguson-Rom, and Teresi, 2015; Dean, 2019 at 9.

- opportunities for resident to resident abuse
- unregulated restrictive practices
- inadequate institutional resources (including numbers of staff, staff qualifications and experience), and
- carer stress, emotional exhaustion and lack of training, education and/or clinical supervision for caregivers<sup>167</sup>

Relationships Australia urges governments to invest in research into abuse of older people:

- in institutional settings
- that includes people with dementia or other cognitive impairment<sup>168</sup>
- that includes sexual violence
- that differentiates between:
  - different types of abuse<sup>169</sup>
  - identifies patterns of co-occurring abuse,<sup>170</sup> and
  - different kinds of perpetrator (eg family members,<sup>171</sup> visitors, formal or informal carers, coercive controlling perpetrators)
- that takes into account the characteristics of institutions, including staffing profiles and ratios
- that takes into account cultural factors that may contribute to recognition, or masking, of abuse of older people, and

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<sup>167</sup> See Dean, CFCA 51, 15.

<sup>168</sup> Dementia and cognitive impairment contribute to dependency, which is recognised as a risk factor for the perpetration of abuse of older people, yet people affected by dementia or other cognitive impairment have seldom been included in research to date: see Bedson and Chesterman, *Are national elder abuse prevalence studies inclusive of the experiences of people with cognitive impairment? Findings and recommendations for future research*, Office of the Public Advocate (for the Australian Guardianship and Administration Council), 2017. Bedson and Chesterman note that people with dementia and other forms of cognitive impairment tend to be actively excluded from samples in prevalence studies (at 17), with only a few exceptions in existing literature (cf p 21; see also Bedson, Chesterman and Woods, 2018). While Bedson and Chesterman note that 'evidence supporting a relationships between dementia and elder abuse is mixed,' (at 8), this is a particular weakness in the evidence base which Relationships Australia considers, given predictions of increasing rates of dementia in the community, must be addressed urgently. See also Bedson, Chesterman and Woods, 'The Prevalence of Elder Abuse among Adult Guardianship Clients', [2018] *MqLawJl* 3; Bedson and Chesterman 2017 noted that 52% of people in Australian RACF have dementia (at 5).

<sup>169</sup> Bedson and Chesterman (2017) note that 'Studies also suggest that aggregating the various types of mistreatment, or seeing physical violence as part of a spectrum...is problematic and may mask risk factors for the various abuse types (at 13). Bedson, Chesterman and Woods (2018) note, in addition to the more widely-recognised types of physical, social, psychological and financial abuse, as well as neglect, other categories can include impairment-related abuse, legal or civil abuse and acts of omission: cf footnote 52 of that article.

<sup>170</sup> A review of case files held by the Victorian Office of the Public Advocate in 2013-2014 'suggested that 71 per cent of elder abuse victims had experienced more than one form of abuse': Bedson, Chesterman and Woods, 2018.

<sup>171</sup> Noting that abuse within the family can be lateral and/or intergenerational. In our experience, too, there are often claims and counter-claims of abuse among multiple family members.

- that identifies protective and risk factors both for older people and for people who are at risk of becoming perpetrators.<sup>172</sup>

**Term of reference (f) The adequacy of the qualitative and quantitative evidence base around the prevalence of domestic and family violence and how to overcome limitations in the collection of nationally consistent and timely qualitative and quantitative data including, but not limited to, court, police, hospitalisation and housing**

Through use of FL-DOORS in Relationships Australia organisations, we have a strong evidence base around prevalence of domestic and family violence, and of co-morbidities which often accompany it. In section E of our response to paragraph (a) of the Terms of Reference, we have identified circumstances that act as barriers to effective service provision, which also act as barriers to collecting nationally consistent and timely qualitative and quantitative data:

- the over-reliance on sporadic and cyclical short-term pilots leads to an accumulation of disparate data sets, and
- fragmentation of legislation and services.

Because of the ways coercion and control can limit the ability of victims to participate in services, the triangulation of worker report with client available data is vital in approaching a representation of the true conditions and circumstances that persist for victims. There are, however, challenges due to effects that have been dubbed ‘researcher’ or ‘worker’ ‘saturation’. This is where the recipient of the information may be overwhelmed to a degree which compromises the recipient’s wellbeing and capacity to respond to the situation.

A recent important development has been the growth of interest in ecological moment assessment techniques which facilitate the collection of data through smart phone or other devices. Such tools, where they can be safely deployed, facilitate the direct collection of data from the victim, providing information about the context of the incident, personal experiences in real time and other vital data. A nationally developed tool made available to victims, might support the ongoing identification of risk as well as potentially enhance the voice of the victim, providing them with a means of connecting back to sources of help at times when other sources of help may be significantly impaired.

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<sup>172</sup> See R Kaspiw, *Elder Abuse: Discussion paper about research on prevalence, dynamics and impact*, 2016; Bedson and Chesterman, 2017, 23-24. Yon et al, 2018, also make detailed recommendations about the design of research into institutional abuse of older people.

**Term of reference (g) The efficacy of perpetrator intervention programs and support services for men to help them change their behaviour**

O'Connor et al recently published a rapid review of men's behaviour change programs (MBCP), and noted 'a limited evidence-base of detailed MBCP evaluations'.<sup>173</sup>

MBCP best practice consists of multiple components of practice that involve 1-1 casework interventions or post program work, partner support casework, group work programs for the men, and support groups for the women. Programs must be responsive to the provision of new initiatives (i.e. working with young people, culturally diverse communities, LGBTQ communities, Aboriginal and Torres Strait Islander communities and responding better to the impact of mental health and drug and alcohol issues).<sup>174</sup>

There are no national MBCP standards. Flexible service delivery for emerging communities is, however, a core part of the New South Wales Compliance Standards. These Standards do not have a minimum length for the MBCP, but strongly focus on the proper assessment of everyone's situation and what is required. The use of standards often raises the bar of what is expected but it is not always accompanied by the required program funding.

A key requirement for evaluating the effectiveness of MBCPs is to obtain regular feedback from men's former and current partners. While partner contact is often linked to men's involvement in the MBCP, there is a strong focus on level and severity of abusive behaviours which does not capture the context of the women's lives. It misses the significance of the controlling behaviours and its impact. Also, a women's sense of safety may differ from their sense of fear. Therefore, this results in the limited collection of longer-term impacts and outcomes data.

We commend to the Committee the 2019 report from ANROWS, *Men's Behaviour Change Programs: Measuring outcomes and improving program quality: key findings and future directions*.

There is a tension in MBCP about avoiding individualising the focus too much or pathologising violence. Gendered violence is a cultural issue, requiring structural cultural change and not just individual change. Vlais *et al* recommend that MBCPs should:

- "adopt best practice principles in adult learning, social education and attitudinal change
- incorporate some of the change processes and mechanisms evident in effective individual and group therapeutic interventions, including those that build a therapeutic alliance
- support, coach and encourage men in their journeys of change, and to address needs in their lives that inhibit the change process or their participation in the program
- scaffold and contribute to (program-level and multi-agency, systemic) accountability processes regarding the men's behaviour, and

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<sup>173</sup> <https://doi.org/10.1177/1524838020906527>

<sup>174</sup> Cf ANROWS, 2019.



- act in solidarity with and as allies to women and children's struggles for dignity and self-determination in the context of the perpetrator's coercive control and limiting of their lives, to sensitively intervene with him on their behalf as the priority clients". (Rodney Vlasis, Ridley, Green, & Chung, 2017, p. 13)

### **Relationships Australia New South Wales analysis of its MBCP**

From 2010-2013, Relationships Australia New South Wales (RANSW) completed a mixed method: quantitative and qualitative analysis of men and their partners who were part of its MBCP called *Taking Responsibility*. It involved clients completing a survey at intake, at the end of the group program, and then at a 6-month follow up. The evaluation used standardised forms that measured level of distress, mastery, self-esteem and gender equity questionnaires. Interviews with men and women occurred at the conclusion of the program. All data was triangulated with the partner feedback. (Gray, Gaffney, Broady, & Lewis, Practice Implications Clinical Forum, 2013).

The overall results were, at intake, the men's level of distress was higher than comparable populations, the level of self-esteem and mastery was lower than comparable populations. Their level of gender equity was lower than comparable populations, meaning that they did not support equality for women. At the program's completion, their level of distress was reduced, compared to intake levels, their level of self-esteem and mastery was higher, however, their level of gender equity did not change. (Gray, Gaffney, Broady, & Lewis, Practice Implications Clinical Forum, 2013). High support for gender equity indicates that a person believes women should possess the same rights, roles, and opportunities in society as men. Low support indicated that women's rights, roles, and opportunities should be inherently different. It is recognised by other MBCPs that the two strongest predictors for violence against women being maintained was the combination of low gender equity scores and being male. (Gray, Gaffney, & Broady, 2014).

Feedback from the RANSW male participants identified that they:

- had difficulty maintaining weekly attendance over 18 weeks
- towards its completion - appreciated the length of the group as being necessary
- fluctuated in their motivation to complete the program
- perceived a negative stigmatisation for men attending MBCPs
- were often distressed by the change process across the program
- valued the course materials
- valued the therapeutic relationships developed with their peers and the group leaders, and
- requested aftercare support after the completion of the group.

A strong correlation for improved behaviour change relies on the development of useful goals and deepening the men's motivation to attend the program. The RANSW research found that motivation is tied to relationship status and other factors like the quality of relationship the man has to his children. Attendance is viewed as indicative of motivation. Relationships often ended during the program, which can be distressing and decrease the man's motivation for change. (Gray, Gaffney, Broady, & Lewis, Practice Implications Clinical Forum, 2013)

Most of the respondents still in contact with their partners/former partners described feeling physically safer since the program completed, but consistent with other literature, felt that other forms of abuse were ongoing: '[There is] less physical violence but at change-over that he was doing more verbal. I try to avoid eye contact. And it's safe, but I just go silent. I don't respond' (Winnie). (Gray, Gaffney, Broady, & Lewis, 2015, p. 77)

When safety is at stake in family situations, the focus on men's behaviour change is secondary to the duty of care towards the women and children who are exposed to violence and abuse. (Gray, Gaffney, Broady, & Lewis, 2015). Women's reports indicated (Gray, Gaffney, Broady, & Lewis, 2015):

- a reduction in physical abuse; however, they also reported an increase in other forms of abuse (psychological and emotional)
- that men completing a MBCP may use the changes they have experienced to put down their partner for not changing too, and
- that they doubted the sustainability of the man's changes and expressed anguish at their children's experiences.

Most of the research participants were parents (27 of 28), with the women expressing feelings of isolation and a lack of 'voice'. They valued the opportunity to provide input (through interview) and requested more therapeutic support. (Gray, Gaffney, Broady, & Lewis, 2013). Through contact with the program, many of the women attended more groups and counselling as, prior to involvement, they had little to no previous contact with other services. They stated that they gained knowledge from this contact and were better able to make decisions about their response to the violence. They also elevated their expectations of the changes that the man was required to make. (Gray, Gaffney, Broady, & Lewis, 2013)

When a qualitative analysis was made of the in-depth interview with the 21 group participants who had completed the program, the participants' perception of their relationship with their children emerged as a key issue. A common theme was their significant expression of love for their children. This served as a 'motivation to stop using violence and to develop alternative ways of relating to all family members' (Gray, Gaffney, Broady, & Lewis, 2015). The research identified the potential of men's relationships with their children as powerful contexts, or points of leverage, through which the impact of their violent behaviour can be realised and confronted. It appears that men may minimise the impact of their violent behaviour. However, the opportunity still exists for men to be challenged and motivated to change through realising the impact of their behaviour on their children's wellbeing and their father-child relationships. By realising the impact that violent behaviour has on their children's wellbeing and fathers' relationship with them, it is argued that intervention programmes can support men to develop safer and more appropriate ways of relating to their children, and thus safeguard children from potential long-term consequences of family violence. (Gray, Gaffney, Broady, & Lewis, 2015)

Common motivations for men attending MBCPs included mandated clients who need to complete the program to avoid breaking court orders, reduce the likelihood of imprisonment and further police involvement. RANSW's research also identified that MBCPs are more likely to be successful in situations where couples want their relationship to be maintained. (Broady, Gaffney, Lewis, Mokany, & O'Neill, 2014). In the RANSW research, one-third of the female partners had strong doubts about their partner's motivation, especially if his motivation

depended on the women's continued engagement in the relationship. Men rarely continued attending post-separation if their motivation depended on continuation of the relationship. When the men shifted their motivation to 'doing it for the family and myself' their purpose and commitment to the program deepened with it being noticed and appreciated by the women. (Broady, Gaffney, Lewis, Mokany, & O'Neill, 2014)

Relationships often ended during the MBCP, particularly when the female partner felt safe enough to leave as their partner was adequately attending the program, being supported and monitored. Professionals working with men who use violence are advised to raise the topic of the client's relationship status, to prevent attrition, and work with them to broaden their motivation for involvement. (Broady, Gaffney, Lewis, Mokany, & O'Neill, 2014). Shifting this motivation from 'other centredness' to being inclusive of their 'own and other' interests is vital to retention and success.

As a result of this research, the following program development changes have been made (Gray, Gaffney, Broady, & Lewis, Practice Implications Clinical Forum, 2013):

- direct focus on participants' gender attitudes
- making overt and challenging the gender narratives amongst the men
- focusing on a man's motivation to be a better father to deepen their motivation to make change a reality
- clarifying that the engagement and attendance at the group is not itself indicative of change; similarly, enhancing an individual's self-esteem may not encourage a significant behavioural change if there is no change in terms of gender equity beliefs (Gray, Gaffney, & Broady, 2014),<sup>175</sup> and
- making former/ current partner contact compulsory.

There are still too few tools that accurately classify MBCP clients into low, medium and high risk. It is a danger to get this assessment wrong. Practitioner focus groups have identified that (Rodney Vlasis, Ridley, Green, & Chung, 2017):

- it was hard for practitioner to manage low levels of readiness for change
- assessment tools are often not fit for purpose
- quality of the program materials affects program integrity
- little consistency about the signposts for change
- feedback from partners is often intermittent
- there is very little window into outcomes, and
- safety planning often requires creativity.

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<sup>175</sup> See also O'Connor et al, 2020, noting that, in 2015, the Council of Australian Governments recognised that outcome measures should also be considered in evaluations of such programs.

## **Relationships Australia Victoria evaluation of its MBCP and Men's Case Management Pilot**

Recently, Relationships Australia Victoria contracted Monash Centre of Health Research and Implementation (MCHRI) to evaluate its Men's Behaviour Change Program and Men's Case Management Pilot. The aim of these programs is to 'enhance and support women and children's safety through men's accountability and responsibility for their use of family violence.

The MBCP is a 20-week group program which operates against the background of a Theory of Change and the RAV Family Safety Model, and complies with Family Safety Victoria Minimum Standards and the No to Violence Implementation Guide. It involves weekly sessions of two hours each.

The Men's Case Management Pilot is a one-on-one program which works closely with the MBCP groups and facilitators as well as the Family Safety Program. Clients are referred to the MCMP if they are affected by additional barriers to accountability including housing and homelessness, mental health concerns, trauma and financial concerns (including unemployment). Case managers may, for example, help clients to navigate service systems (eg by attending appointments relating to health, housing and substance misuse). MCMP can be used to prepare a client for participation in the RAV MBCP or in parallel with a client's participation in the RAV MBCP.

The evaluation showed that there had been significant improvements in clients':

- belief to be able to manage stressful times
- understanding of the impact of their use of violence on their ex/partner and family members, and
- skills to repair the impact of their use of violence on their ex/partner, children and family members.

Trends in clients' data also indicated improvements in their:

- understanding of their own mental and emotional health
- understanding of their ex/partner and family members' needs and feelings
- relationships with their ex/partners and family members, and
- understanding that their behaviour in relationships could improve.

The evaluators identified the following key active elements of the service offerings:

- increasing men's awareness and knowledge of the impact of their use of violence
- practical strategies to manage their attitudes and behaviours
- experienced MBCP facilitators, and
- peer support.

Recommendations from the evaluation canvassed program development, staff engagement (including with recruitment for participation in future research) and ongoing research into the impact of these services on men and their families. The MCHRI has also made suggestions for future evaluations.

## Cultural responsiveness

The *Building Stronger Families (BSF) Program* is a whole of family approach to men's behaviour change developed by Relationships Australia New South Wales and Settlement Services International from 2018 onwards. It includes a men's behaviour change program and a family safety program for the women and children, along with a women's support group called *Women: Choice and Change*. From the experience of developing this program,

...it is important to note 'there is insufficient evidence that any one culture or community, migrant or otherwise, is more or less violent than any other' although men from migrant and refugee communities are often portrayed in the media as more violent. (Murdolo & Quiazon, 2016, p. 5). Explanations for violence against women by men in these communities is often explained through as 'cultural' and it is assumed that non-white cultures are more tolerant of men's violence against women than white cultures. (Murdolo & Quiazon, 2016, pp. 19-20)

In 2011, Relationships Australia Victoria evaluated its program for Vietnamese men, made possible by funding from a Legal Services Board grant. The men were interviewed at three stages during the group process, as were the women (their partners) and there was a detailed analysis of the changes to the men's violent behaviour and the increase in respectful behaviour. Some men made significant changes to their violent behaviour toward their partner; some made more positive changes in their parenting. The women who were not seeing positive changes were better able to separate safely through the assistance of the partner contact worker (who worked in parallel alongside the men's program).

It is important to consider the structures and systems which these women and men occupy. When refugees and migrants settle in a new country, they often experience high levels of trauma, stress and isolation. Experience of systemic discrimination and marginalisation, language barriers and lack traditional support systems often accompanies migrants and refugees. These barriers increase the vulnerability of women and their children, and limit help-seeking. Also, men who use violence can exploit the 'isolation, immigration status, communication barriers, social and economic disadvantage, and other personal circumstances' of these women. (Vaughan, et al., 2016, p. 9)

There is increasing evidence that the influence of male privilege exists on a continuum and depends on each man's background (family history, education, lived experience regarding work/peers/relationships). However, when refugee families arrive in Australia

...women often learn new skills to gain independence, such as driving, budgeting finances and pursuing higher education. Men who are used to working but arrive in Australia with limited English or cannot get their qualifications recognised, struggle to find employment; this contributes to loss of power, stress, boredom and depression. This change in gender roles may lead to resentment among male family members, as they feel powerless over their everyday lives, sometimes triggering them to abuse women in order to regain this power. (ACCESS, 2017).

Children may also experience changes in family roles as they often learn English more quickly than adults do, placing them in a position of great responsibility where they are required to



interpret and make decisions for their parents. This shift in power may lead to domestic and family violence from a disillusioned parent to a child, or child to parent. (ACCESS, 2017)

## Challenges in evaluation

Relationships Australia has been delivering men's behaviour change programs and family violence support services for many years and over this period we have evaluated, reviewed and refined the programs we provide. In developing these programs, we have adopted practice principles based on national and international research. These principles and guidelines are typically an accumulation of practice wisdom and knowledge gained over many decades. As such, they are a valuable resource to ensure safe, high quality service to women and children who experience domestic and family violence. Randomised control trials would theoretically have some benefits. They could confirm that positive client outcomes have occurred and that these changes relate to the program and are not attributable to other concurrent interventions or circumstances, such as the threat of incarceration or the statutory removal of children.

However, the availability of research evidence Australia and internationally is challenged by an array of barriers impeding application of methodologically-rigorous longitudinal research approaches.

The first of these is that ethics committees would not approve generating a control group that prevents those involved from receiving an intervention for violent behaviour. Project Mirabel out of Durham University in the United Kingdom encountered a similar quandary in their research approach – see <https://www.dur.ac.uk/criva/projectmirabal/>.<sup>176</sup> Instead, our research-based evaluations have adopted methods that aim to provide robust insight into changes that relate to the program, without using a control group. In this way, we are satisfied that we have conducted rigorous research without deliberately withdrawing a service offer from a 'control' group of men who would be likely to continue using violence for the duration of the study.

The second barrier relates to the applicability of RCTs to routine practice where the environment is less controlled, and the need for effectiveness studies in community-based settings to assess the program's impact.<sup>177</sup>

The third barrier relates to the difficulty in following up clients over time. For example, in a Relationships Australia longitudinal study in 2011 and 2012 in New South Wales, 89 surveys were gathered at intake, 57 surveys were gathered at completion and only 12 at the three-month follow up time. These rates of attrition are consistent with other quantitative research studies, and we would anticipate that it would be immensely more difficult to follow up men in a control group who were not receiving an intervention.

The fourth barrier is the need to think carefully about what these programs are trying to achieve. The primary goal of our programs is to keep women and children safe, which involves more

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<sup>176</sup> See also Kelly & Westmarland, 2015. In conducting the evaluation of MBCP/Men's Case Management Pilot for Relationships Australia Victoria, MCHRI undertook a rapid literature review, which identified Project Mirabel as unique in its exploration of the impact of MBCPs on women and children's outcomes.

<sup>177</sup> For further discussion about the difference between RCTs and effectiveness studies for practice research, see Petch *et al* (2014).

than reducing recidivism in men. Our practice experience indicates that when women feel safe and supported they are more likely to disclose the full extent of the violence they are experiencing, or have experienced. In terms of a study, this can operate to make it appear like the program has increased the level of violence, as women who feel safe and supported disclose more and more violence over the course of their participation in the program. The outcomes measures need to be clear and target the right question – ie do the programs make a difference and for whom do they make a difference?

Such issues call for greater resourcing to allow for tracking of clients and face-to-face interviewing, to improve response rates and the quality of data. There is also a need for cross-agency research studies. Currently, programs used by different organisations are not standardised or consistent, and this makes cross-organisational comparison challenging. Investment in programs to increase the numbers of clients, and correspondingly the numbers of potential survey participants (the sector cannot meet current demand) would not only increase the impact of the programs through better reach, but enable quicker and more accurate outcomes studies that test the impact and effectiveness of interventions.

The best (and most ethical) approach would be to assume that men who use violence would not change their behaviour or attitudes without intervention and instead undertake an immediate and longer term comparison between programs.

As mentioned briefly above, it is important to recognise that a key reason there has not been more research into men's behaviour change programs in Australia is the sheer cost of such an undertaking. MBCP research participants are difficult to recruit and even more difficult to retain in a research project over time. Proper robust research needs to access outcome data from a number of sources (the men in the program, their former, current and possibly new partners, and others – such as health care workers and police, for example) and track changes in behaviour and attitudes over time. While the expertise to conduct such studies exists in the community sector and academia, we have previously estimated that such a project would cost well in excess of \$400,000 to complete.

We also believe that a men's group program is just one component of a coordinated system of intervention. We need to look at those programs in the context of other interventions, such as law enforcement, prosecution, victim services and probation monitoring, all of which can significantly affect program success. We would recommend an evaluation of the effectiveness of a *perpetrator intervention system* in which men's behaviour change programs are but one part.

Nevertheless, we have been able to generate a better understanding of what works with our current evaluation methodologies, feed that information back into program review and facilitator training, and conduct further evaluations in a continuous improvement loop. These studies also examine the work undertaken concurrently with women (the partners and former partners) and their children.

Finally, we respectfully draw to the Committee's attention the recent report by ANROWS on *The views of Australian judicial officers on domestic and family violence perpetrator interventions*:

*Key findings and future directions*, and the findings and recommendations of that report.<sup>178</sup> In particular, we note the emphasis, in the recommendations, on the need for judges:

- to have better access to information about available interventions
- to have access to information about interventions that a perpetrator of violence has previously undertaken; that information will often be held by state/territory agencies and services and may not be available, for example, to federal family court judges, and
- to have clarity about their role in holding perpetrators accountable for their violence.

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<sup>178</sup> Published June 2020 in Issue 13 of the Research to Policy & Practice series.

**Term of reference (h) The experiences of all women, including Aboriginal and Torres Strait Islander women, rural women, culturally and linguistically diverse women, LGBTQI women, women with a disability, and women on temporary visas**

## **A Aboriginal and Torres Strait Islander women**

Cost, literacy, language, bureaucratic hurdles and lack of confidence in cultural safety can all impede the access of Aboriginal and Torres Strait Islander people to family violence and other services. Policies made in the context of urbanised clients often do not translate well to the situation of Aboriginal people in the Northern Territory, for example.<sup>179</sup> Distrust of government agencies in matters relating to children is also a significant problem, with fears of another stolen generation very present. Additionally, many of our clients suffer from intergenerational and complex trauma and, in some communities, violence has been normalised.

Cultural safety training and trauma informed practices should be mandatory for all those involved in family violence systems. Recommendations from the *Bringing them home* report, the *Little Children are Sacred* report and the report of the Royal Commission into the Protection and Detention of Children in the Northern Territory each offer valuable insights.

### **Aboriginal and Islander Cultural Advisors**

Relationships Australia Northern Territory employs a team of Aboriginal and Islander Cultural Advisors (AICAs) to assist clients to navigate the FDR process. The AICA team has developed its own presentation around the history of colonisation, lateral violence, how trauma can impact behaviour, and reactions to address this normalisation before even beginning to discuss how ongoing conflict can affect children.<sup>180</sup>

Professional education opportunities for Aboriginal and Torres Strait Islander people should be expanded. There have been some programs which offer this, such as the Diploma of Counselling for Aboriginal and Torres Strait Islander Peoples. Regrettably, current resource constraints do not allow Relationships Australia to offer this programme.

A further challenge for some Aboriginal families is navigating the differences and intersections between Aboriginal law, the federal family law system and state/territory domestic violence and child protection law. Often, these families are in all the systems and families may want to discuss the care of the children in a traditional way, but there are difficulties in having that

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<sup>179</sup> For more information on how culturally safe practice is undertaken in South Australia, please see the submission from Relationships Australia South Australia to the inquiry being undertaken by the Parliamentary Joint Committee into Australia's Family Law System. For broader consideration of issues facing Aboriginal and Torres Strait Islander people in engaging with the family law system, see the Family Law Council's 2012 report on Indigenous and CALD clients in the family law system: <https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Pages/FamilyLawCouncilpublishedreports.aspx>, and section 9.3 of the Family Law Council's 2016 report.

<sup>180</sup> See also Ross et al, *Model of Practice for Mediation with Aboriginal Families in Central Australia*, 2010, and the recommendations made by the Indigenous Legal Needs Project, 2016.

recognised in the family law system. Recognition of kinship relationships requires greater consideration be given to the role of Aboriginal grandparents in making decisions for children.

### **Case study – barriers to access for Aboriginal and Torres Strait Islander people and the need for investment in services**

Relationships Australia Queensland operates an outreach of the Far North Queensland Family Relationships Centre on Thursday Island in the Torres Strait. There are several barriers to effective access to services here, including difficulties recruiting suitably trained staff and the impacts of remoteness. Investment is needed to develop, support and train a Torres Strait Islander workforce. The costs of delivering services are prohibitive, and include travel costs, staff costs, accommodation and property expenses, and the costs of providing adequate and culturally appropriate support and development to staff in these regions. Relationships Australia Queensland has invested in working with the community to develop culturally appropriate and responsive service delivery models. However, we recognise that effective and sustainable access to services in the Torres Strait and Northern Peninsula Area requires community capacity-building and community development, so that communities are able to develop, deliver and maintain services that work best for them.

If Indigenous clients cannot see someone they recognise at the service, they will not attend that service. They need and want choice in the practitioners they see. Sometimes they will request an Indigenous worker and sometimes they will request a non-Indigenous worker. If they request the latter, then they are likely to want assurance that this person is trustworthy and supported by Indigenous people. Indigenous community engagement and outreach are crucial to recruiting and retaining Indigenous staff, and providing services to Indigenous clients and building trust.

The profound mistrust attached to mainstream non-Indigenous services adds to well-recognised barriers to participation such as poverty, lack of transport, systems abuse and disengagement experienced by many disadvantaged and vulnerable client groups. However, our services report that even if the vulnerabilities of poverty, violence and addiction were present in both non-Indigenous and Indigenous clients, Indigenous clients would take more time to serve due to their complex problems and the imperative to look after cultural considerations.

Considerable community engagement work takes place out-of-hours through workers attending local sports events, shops or community activities. Children's programs also offer an indirect way of building trust with Indigenous families. Over time, attending and sponsoring local art events and maintaining a presence at the local football club/community group can bring clients into mainstream adult programs. Clients are also supported to get to the service and are helped with paperwork. In one example, the local shopping centre requested some Indigenous art and some of our Indigenous workers got community members involved. Art is a particularly good way of engaging young men, with these types of activities allowing space for relationships to be developed and over time clients trust the service sufficiently to engage. While this work may be done by an Indigenous counsellor, it cannot be counted as a counselling session for reporting purposes.

Our Indigenous clients say 'are you chasing us for numbers?' as other services are chasing the same families as well, due to the pressure to meet targets imposed by Government.



Community relationships and capacity building requires more than getting to know the community elders. It needs real and ongoing commitment to the community and supporting community elders to understand the language, evidence and messages around key social policy issues such as youth suicide and family violence. The elders can then talk within their communities and help people to access the services they need.

Our services report a general level of apathy in relation to accessing services by many of the communities they visit that makes engagement difficult. In remote areas, 'fly in, fly out' services and short-term pilots have created a perception of a lack of long-term commitment by service providers. These types of services are costly to provide and do not allow for trust and much-needed people on the ground building multiple relationships. The ability of the services to maintain an ongoing presence in the community is undermined by short funding contracts, lack of flexibility and insufficient allowance for the real costs of delivering services.

For example, it can take two years to establish a service due to the time needed to build up trust and connection with a community. If the contract is only three years, at the end of the period it may look like little direct service provision was undertaken and the program was (incorrectly) assessed as a failure. The constant rolling out of new, short-term, programs imposes significant administrative burdens and diverts funding from providing services to clients.

These cycles lead to client and worker fatigue. Our Indigenous workers report frustration with the lack of appropriateness in the way services are delivered, but in many cases the delivery of programs is constrained by mainstream requirements, such as (pre-COVID-19) requiring clients to attend a Family Relationship Centre in person to receive a service. For example, Indigenous clients will not phone if they do not have credit or come in to the service if they have no transport; poverty compounds these access barriers. There is still a great deal of stigma associated with mental health problems and education and awareness initiatives are greatly needed. Some Indigenous people still see social services aligned with stolen children (eg. child protection removals). Our services report the support for Indigenous families must be case managed and provided free of charge to enable access.

There is also frustration with the assumed effectiveness of programs that are labelled evidence-based. These programs often work for a population similar to where they were developed, but they may not work in Indigenous communities, or for different Indigenous communities. What is needed is consultation with local workers and Indigenous people *and* the flexibility to adapt the program for the local area. Many government reports have identified this as an issue, but recommendations have not been implemented.

Mainstream programs can often be adapted, through consultation, to make them relevant to Indigenous people. For example, the Non-violent Resistance program, for parents whose young people are violent, worked well, but we had to consult with the local Indigenous community to appropriately modify its delivery to community. This can be done with additional time and investment, but does add to establishment costs.

In some areas, our workers note there are too many siloed programs, with each service provider only funded to offer a single program and they all chase the same families. In reality, funding continues to be measured within short-term funding cycles. Parenting programs, for

example, are not currently funded to work flexibly, but are gentler and more durable approaches with the potential to support resilience, capacity and wellbeing for the whole community.

Further, the old-fashioned 'office-centred' nature of current mainstream service delivery where we bring disadvantaged clients to our location and provide services to them at that location is often inappropriate for a range of marginalised groups, including Indigenous families. For example, our workers are often seeing clients who are young parents (as young as 12 years). These young people have no role models for parenting. Counsellors can expose them to positive role models by both the male and female counsellor visiting them in community, rather than trying to get them to come into an office to attend a parenting group program. On community, the workers can work with the elders and the young people in their own country and culture.

### The RASA experience

Relationships Australia South Australia reports that their service emphasis for Aboriginal and Torres Strait Islander families tends to be in the interactions that those families have with child protection courts, magistrates' courts, and Children's Contact Services. Relationships Australia South Australia notes that these services are often tailored to 'wrap around' an entire family or community, rather than the members of what might be considered to be a nuclear family. Beneficial service offerings tend to focus on dispute resolution and use a restorative practice lens that focuses on children's wellbeing.

To improve the quality and accessibility of family services for Aboriginal and Torres Strait Islander people, we offer the following suggestions:

- increase the length of funding agreements where improved access for Indigenous clients is desired
- increase the flexibility of funding agreements to allow for community development and relationship building work, and improve reporting frameworks to accommodate the recording of this effort
- increase consultation, and apply co-design principles, with workers, clients and community leaders in the local community before an evidence-based program is implemented
- in funding agreements - allow for adaptation of evidence-based programs
- review the recommendations of previous government reports on best practice service provision for Aboriginal and Torres Strait Island people, and
- legislate that, where proceedings involve an Aboriginal or Torres Strait Islander child, a cultural report should be prepared, including a cultural plan that sets out how the child's ongoing connection with kinship networks and country may be maintained.<sup>181</sup>

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<sup>181</sup> ALRC DP86, proposal 10-14. Relationships Australia notes precedents in other jurisdictions and that this would implement recommendations made by the Family Law Council in 2016, as well as recommendations of the House of Representatives Social Policy and Legal Affairs Committee in its 2017 report on *A Better Family Law System to Support and Protect Those Affected by Family Violence*. We also draw to the Committee's attention the recent ANROWS report, *Understanding the role of Law and Culture in Aboriginal and Torres Strait Islander communities in responding to and preventing family violence*, June 2020.

## B Culturally and linguistically diverse women

Relationships Australia notes the work done in the pilot of legally assisted and culturally appropriate FDR (LACA FDR) for families who had experienced domestic violence. This pilot focused on serving Aboriginal and Torres Strait Islander families, and families with a culturally and linguistically diverse background.

In our experience, LACA FDR demonstrated the value – for all families affected by family and domestic violence - of having a dedicated domestic/family violence specialist support worker to focus on case work and preparation. This has been noted in our contribution to the evaluators, our activity work plan reports, and our post-LACA engagement with stakeholders.

### LACA FDR in Queensland – a snap shot

As part of our LACAFDR service model, Relationships Australia Queensland employed a Domestic Violence Support Worker (DVSW) based within the Family Relationships Centre. This specialist worker carried out rapid response risk screening, support, safety planning and referrals for participants presenting with high risk indicators. We reported the following data for 2018-19 (2019-20 data are still being collated):

- 100% participants presented as having experienced current and/or historic DFV
- 45% had a current DVO
- 55% had an expired DVO or DFV identified by referrers and/or at intake

We followed up a sample of clients who agreed to be contacted, and heard that:

- 70% reported improvements in safety and wellbeing
- 75% reported improvement in child wellbeing only
- 16% of clients reported low level DFV instances, and no significant DFV instances, post-exit.

The DVSW remained engaged with clients post-service through active safety planning, referrals and follow up. Where cases were not appropriate to proceed, the DVSW supported clients to transition safely to appropriate DFV services and legal services.

In its 2017 report on reforms to the family law system, this Committee recommended that, subject to a positive evaluation, the Government should

...seek[s] ways to encourage more legally assisted family dispute resolution, which may include extending the pilot program. (Recommendation 4)

The Government agreed in principle with this recommendation, noting that the evaluation would 'inform government decisions about future funding.'<sup>182</sup>

This pilot has ended, and COVID-19 has, we understand, delayed the delivery to Government of the evaluation report. Relationships Australia sees clear benefits in having CALD-specific

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<sup>182</sup> See

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/House/Social\\_Policy\\_and\\_Legal\\_Affairs/FVlawreform/Government\\_Response](https://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/FVlawreform/Government_Response), p 7.

services that are rolled out on an ongoing basis. However, even if the evaluation were to support ongoing provision of LACA FDR, and even if Government were to agree, the expiration of funding is likely to mean (as noted in section E of our response to Term of Reference (a)) that specialist staff may have been re-deployed or even have left services, creating inefficiencies in ramping it back up again.

Sometimes, inadvertent barriers are placed in the way of CALD users accessing services. For example, family violence services may require that family violence be explicitly named and acknowledged; some of our female clients who are family violence survivors strongly resist, for cultural reasons, naming perpetrator behaviour as family violence. This inhibits access by the family to services that might be of real value. Accordingly, Relationships Australia suggests that all services, but *particularly* services targeted for CALD users, be carefully designed to inadvertently deter help-seeking.<sup>183</sup>

We respectfully draw to the Committee's attention the research report recently published by ANROWS, *Multicultural and Settlement Services – Supporting women experiencing violence: The MuSeS project*.<sup>184</sup> We would also ask the Committee to consider the particular vulnerabilities of women and children who are refugees; in this regard, we draw to the Committee's attention the AIFS report, *Intimate partner violence in Australian refugee communities*.<sup>185</sup>

Finally, Relationships Australia notes Recommendation 25 of the Committee's 2017 report into reforms of the family law system. The substance of this recommendation was that the Government implement, as a matter of urgency, recommendations made in reports by the Family Law Council in 2012 and 2016 to improve the family law system for clients from culturally and linguistically diverse backgrounds. The barriers faced by women from culturally and linguistically diverse backgrounds that prevent them from availing themselves of the family law system are not new and not obscured from the gaze of government. Likewise, potential solutions have been offered to government across the past decade. Against this background, it is disheartening that a service designed for CALD families affected by family violence has been allowed simply to expire from effluxion of time.

## C Women with disability

We commend to the Committee's attention in this regard the 2017 ANROWS Horizons Report, *'Whatever it takes': Access for women with disabilities to domestic and family violence services*.<sup>186</sup> That report makes four recommendations, in relation to:

- promoting access and accessibility
- building cross-sector collaboration
- involving women with disabilities, and
- high quality data collection.

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<sup>183</sup> For more information on CALD-sensitive practice in South Australia, please see the separate submission to the ALRC inquiry from Relationships Australia South Australia.

<sup>184</sup> Published May 2020.

<sup>185</sup> CFCA Paper 50, 2018.

<sup>186</sup> [https://d2rn9gno7zhxqg.cloudfront.net/wp-content/uploads/2019/02/19024645/Disability\\_Horizons\\_FINAL-1.pdf](https://d2rn9gno7zhxqg.cloudfront.net/wp-content/uploads/2019/02/19024645/Disability_Horizons_FINAL-1.pdf)

## C.1 Inclusive and accessible services

Relationships Australia is committed to inclusive services predicated on the autonomy and dignity of all individuals, and which are strength, not deficit, based. This commitment should inform the development of all systems and services. In the context of serving people with disabilities who have experienced violence, abuse, neglect and exploitation, Relationships Australia has worked with Maven to offer more than 300 of our staff disability awareness training.<sup>187</sup> We have found Maven's peer-led training to be especially valuable in upskilling our staff to provide high quality services to people with disability and urge that peer co-design be an integral part of implementing the recommendations made in the 2017 ANROWS report.

## C.2 Case guardians and litigation representatives

In the context of affording access to justice to people with disability in the family law courts, we recommend that Commonwealth family law legislation should provide for the appointment of a litigation representative where a person with disability, who is involved in family law proceedings, is unable to be supported to make their own decisions. The Act should set out the circumstances for a person to have a litigation representative and the functions of the litigation representative. These provisions should be in a form consistent with recommendations 7-3 to 7-4 of the ALRC Report 124, *Equality, Capacity and Disability in Commonwealth Laws*. Relationships Australia concurs with the Commission's suggestion that the role and duties of litigation representatives be re-conceptualised,<sup>188</sup> and the legislative arrangements to implement this include the elements described at paragraph 9.59 of ALRC DP86.

There is deep concern about the difficulties being encountered in arranging, in a timely manner, the appointment of suitable litigation guardians.<sup>189</sup> We are aware of cases being delayed for considerable periods of time, to the detriment of parties, because willing guardians cannot be found. This is a grave denial of access to justice. Relationships Australia understands that the Attorney-General's Department is aware of these difficulties, and has – over some years now – been seeking to address them, but with little success. A reformed system should ensure that persons with disability have access to the advocacy and, where warranted, decision-making supports, to facilitate their fullest engagement with family services, including legal and decision-making services and frameworks. As a corollary, steps should be taken to remove barriers deterring people from acting as case guardians.

Family courts should develop practice notes explaining the duties that litigation representatives have to the person they represent and to the court. Alternatively, the proposed Family Commission could develop guidance in collaboration with the courts. The Australian Government should work with state and territory governments to facilitate the appointment of statutory authorities as litigation representatives in family law proceedings.<sup>190</sup>

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<sup>187</sup> For an account of this training, see <https://www.abc.net.au/news/2020-07-02/disability-royal-commission-counselling-support-on-offer/12406410>.

<sup>188</sup> ALRC DP 86 paragraph 9.50.

<sup>189</sup> For example, Caxton Legal Centre, submission 51 to the ALRC inquiry, paragraphs 15-19; Law Council of Australia, submission 43 to the ALRC inquiry, paragraph 80.

<sup>190</sup> See ALRC DP86, Proposals 9-3 to 9-5.



Relationships Australia would urge the Commonwealth to make funding available to state and territory public guardians to undertake this work. We welcome Parliament's support for limitations on the courts' powers to order costs against a litigation guardian, as this may remove some of the deterrents to potential guardians accepting an appointment. Relationships Australia welcomed the amendment to prohibit the court from making an order under ss117(2) of the current Act, unless the court is satisfied that the guardian's conduct has been unreasonable or has unreasonably delayed the proceedings.<sup>191</sup>

### C.3 Family separation services and the NDIS

The Australian Government should work with the National Disability Insurance Agency to consider how referrals can be made to the NDIA by professionals outside the disability services sector, and how the National Disability Insurance Scheme could be used to fund appropriate supports for eligible people with disability to:

- build parenting abilities
- access early intervention parenting supports
- carry out their parenting responsibilities
- access family support services and alternative dispute resolution processes, and
- navigate the family law system.

The Australian Government should ensure that the family law system has specialist professionals and services to support people with disability to engage with the family law system.<sup>192</sup>

Commonwealth legislation should provide that, where concerns are raised about the parenting ability of a person with disability in proceedings for parenting orders, a report writer with requisite skills should:

- prepare a report for the court about the person's parenting ability, including what supports could be provided to improve their parenting; and
- make recommendations to the court.<sup>193</sup>

Relationships Australia agrees with the observations made by the Australian Psychological Society that

Separation and divorce are emotionally challenging for most families, and people coming into contact with the family court and related services may well present as more distressed and confused than they would under normal circumstances. Many parents and families may also be subject to or recovering from family violence and abuse. They may be very anxious, unhappy, irritable or disorganised. This does not mean the parents are mentally unstable, and it does not mean that they are not a caring and effective parent.<sup>194</sup>

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<sup>191</sup> See *Civil Law and Justice Legislation Amendment Act 2018*.

<sup>192</sup> ALRC Report 135, proposals 9-6 and 9-7.

<sup>193</sup> ALRC Report 135, proposal 10-13.

<sup>194</sup> Submission 55 to the ALRC inquiry, p 17.

Our practice experience bears out concerns expressed by submitters about the limited availability of supports currently available to parents with disability.

### **Case study**

Parents (Mr and Mrs H) of two young children engaged in FDR to resolve their financial and property matters. Mrs H had sustained a brain injury, had physical limitations and limited capacity to always accurately recall information and make rational decisions. FDR provided scope for the parents to both be part of the discussion, with Mrs H's attorney present through the discussions to support her participation and contribution towards the decision making process.

A challenge in FDR where another person is present in a 'support person role' is the support person's conscious or unconscious alignment to the party whom they represent/support. In this case, Mr B (the holder of the power of attorney) is also the father of Mrs H. There was potential for the session to be emotive, with Mr and Mrs H staying entrenched in the conflict and continuing the pattern of behaviours around decision-making. The FDRP sought agreement from Mr H and Mrs H to include Mr B as a client rather than a support person. This meant Mr B was in a position to contribute to the discussions, hear Mr H's worries and concerns for Mrs H, and actively participate in the exploration of options and reality testing of ideas.

The FDRP conducted the session using a trauma-informed practice approach. The parties spent some of the sessions together. At other times, each client had separate sessions with the FDRP to assist in managing the impact the injury had on each of their lives, dreams, hopes, aspirations and the financial hardship and uncertainty they have experienced.

Each party felt heard, respected and found common ground. The FDRP's approach removed a sense of burden placed on Mr B to make the best decision possible for Mrs H's financial future. For Mr H, his sense of being dismissed and overshadowed by Mr B was removed. Mrs H felt valued.

Agreements reached were based on a shared understanding of the current situation and future needs of both parents and their children.

In their recent study of the needs of children and young people in the family law system, Carson et al drew attention to the need for structures to be in place to support children with disability to participate in the process.<sup>195</sup>

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<sup>195</sup> Carson et al, 2018, 81, Case Study 2: Hamish and Colleen.

## **D Women living in rural, regional and remote areas**

Relationships Australia supports the FLC's recommendations in its 2016 report.

Relationships Australia notes with particular concern that many rural, regional and remote communities are severely impoverished; drought conditions, the bushfire crisis and the COVID-19 pandemic are further exacerbating existing hardship across the country. Their effects – physical, psychological, economic and social – will be long lasting. In the Northern Territory, for example, there are families living in over-crowded, inadequate housing and struggling to provide basic food and shelter. In areas of the New South Wales South Coast, bushfire recovery and remediation has been delayed by exigencies of the COVID-19 restrictions, putting families under further strain. There is no additional money to access family law services. In addition, remoteness, lack of transport or technology, and access to services and neutral interpreters means that issues in remote communities can go unaddressed.

Assumptions that technology can fully fill gaps in service delivery do not accommodate issues of literacy, lack of internet services and safe and appropriate spaces and technology. These remain despite some exponential leaps forward in online service provision, accelerated by the pandemic. In dealing with issues as inherently personal as family conflict and separation, many people of all backgrounds may need to engage face to face to tell their stories, to be heard, and to be supported in navigating a strange and formidable network of institutions and services. Group mediation has proved extremely challenging in an online environment.

A further, and not insignificant, barrier to reliance on technology is constituted by rates of functional illiteracy in Australia. According to the most recent ABS and OECD data, lack of functional literacy is a not uncommon barrier to economic and social participation, including engagement with online media.<sup>196</sup> These barriers are particularly high for Indigenous and CALD populations, but are by no means confined to these cohorts.

## **E Women within the LGBTIQ+ communities**

We share the concern, noted at paragraph 93 of ALRC Issues Paper 48, that there are deficiencies in the data about the access to and use of family law services by members of LGBTIQ+ communities, and any specific needs with which they may present. Relationships Australia encourages the capture of such data, to inform relevant and inclusive policy and programmes. Relationships Australia endorses the findings of the Victorian Royal Commission, highlighting the significant and pressing need for policy and programmes to address the risks of family violence which arise particularly as a result of sexuality or gender identity. Further, governments and services need to be aware of using inclusive language.

We draw to the Committee's attention the recent report of a study conducted by Relationships Australia New South Wales and ACON, and published by ANROWS, *Developing LGBTQ*

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<sup>196</sup> See, the ABS fact sheet on the *Programme for the International Assessment of Adult Competencies*, Australia, 2011-2012, at <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4228.0Main+Features202011-12>. A 2016 study by the Australian Industry Group indicated that 90% of employers were concerned by low rates of literacy and numeracy among their employees.

programs for perpetrators and victims/survivors of domestic and family violence.<sup>197</sup> Its recommendations focus on:

- introducing mandatory inclusivity training for all staff in the domestic and family violence/intimate partner violence sector, as well as in clinical organisations, the police and legal professionals
- developing referral pathways to LGBTQ-friendly services for key professionals
- increasing representation of LGBTQ people in promotional material about domestic and family violence/intimate partner violence
- using social media platforms to increase awareness in LGBTQ communities and using these channels to engage clients for future programs
- providing ongoing funding to develop, trial and implement tailored programs,<sup>198</sup> and
- ensuring programs respond to diverse needs within mixed LGBTQ groups and manage transphobia and biphobia.

These recommendations emerge from a pilot, conducted by Relationships Australia New South Wales and ACON, of the LGBTIQ+ Behaviour Change Program and Partner Support group. The term ‘family and domestic violence’ has a high recognition value within the lay community, as being traditionally associated as victimisation of women by men in heterosexual relationships. A tension exists, however; programs trading off the broad understanding of ‘family and domestic violence’ may inadvertently limit their client pools as LGBTIQ+ people struggle to find room for themselves within the common (binary-gendered) understanding of the story.

The development of a viable conceptual framework for LGBTIQ+ intimate partner violence is vital. Such frameworks may challenge existing feminist models for family violence but, if done well, will enrich explanations of intimate partner violence, *including* intimate partner violence experienced by cisgender and heterosexual people. Aside from the (non-trivial) desirability of an intellectually coherent explanation for intimate partner violence that is capable of including LGBTIQ+ people and relationships, a number of scholars have proposed that the *lack* of such a framework is a considerable barrier to the recognition of intimate partner violence by people experiencing it, to the recognition of that intimate partner violence by service providers and informal support networks, to help-seeking by victims and perpetrators, and to the provision of relevant programs and resources.

Programs seeking to intervene in intimate partner violence dynamics within LGBTIQ+ relationships and for LGBTIQ+ individuals must go beyond ‘tolerance’ for or ‘inclusion’ of LGBTIQ+ people in existing programs and resources. Although there is some overlap, the LGBTIQ+ community and/or people facing violence within queer relationships may have experiences not covered in programs designed for cisgender, heterosexual clients. ‘Minority stress’<sup>199</sup> as well as homophobic and transphobic abuse should be taken seriously as service

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<sup>197</sup> <https://www.anrows.org.au/project/developing-lgbtq-programs-for-perpetrators-and-victims-survivors-of-domestic-and-family-violence/>

<sup>198</sup> The report notes that short funding cycles do not provide adequate time to populate groups within an underdeveloped community area: at pp 13-14.

<sup>199</sup> “ ‘Minority stress’ refers to the experience of heightened, ongoing psychological distress and social pressure experienced by members of stigmatised, minority populations. Such groups face additional life stressors compared to the general population, related to experiences of prejudice, discrimination and harassment, including

needs and built into the programs. Services should also consider adding questions about these specific forms of violence into their domestic and family violence/intimate partner violence screening and assessment tools. Staff and organisations should undergo audits and sensitivity training to ensure that relevant programs are offered in respectful, culturally appropriate ways.

## **F Women on temporary visas**

In 2013, the Settlement Council of Australia identified the following factors as the most significant in the context of family violence in migrant and refugee communities:

- cultural and religious factors around disclosure
- barriers to accessing information
- institutional and structural barriers in service awareness and access, and
- lack of knowledge about the legal system.<sup>200</sup>

We would respectfully commend to the Committee's attention the 2018 AIFS report *Intimate Partner Violence in Australian Refugee Communities*.<sup>201</sup>

We support a fast track for urgent interim spousal maintenance applications, which would assist women on temporary protection visas.<sup>202</sup> In section A of our response to paragraph (a) of the Terms of Reference, we also advocate for merger of spousal maintenance provisions.

### **F.1 Relocation cases**

Relationships Australia also wishes to draw attention to the difficulties faced by families involved in re-location disputes. These can cost around \$30,000-40,000 to litigate. The outcomes, too, can carry significant ongoing costs – for example, airfares, which can be particularly expensive where members of separated families live in regional or remote areas and where children are too young to fly unaccompanied.

Relationships Australia proposes subsidised legally-assisted dispute resolution (LADR) services to provide to families two LADR sessions of two hours each for re-location matters. Services should also be funded to offer child-inclusive practice. The presence of lawyers is essential in these matters, because of the complexity of the legal issues, and also because they can provide parties with a 'reality check'. There are also differences in how the primacy of the children's best interests operates with the consideration of parental wellbeing, if the desired re-location is not approved, being taken into account by the court. Issues such as parents' employment

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violence and abuse. LGBTQ communities experience minority stress which can lead to internalised homophobia and fear of being outed, and cause a range of negative mental health outcomes (Meyer, 2003), cited in the ANROWS publication, 'Developing LGBTQ programs for perpetrators and victims/survivors of domestic and family violence: Key findings and future directions,' *Research to Policy & Practice* series, Issue 10, May 2020, at p 8.

<sup>200</sup> See Settlement Council of Australia, *Policy Brief on Domestic Violence*, 2013, at <http://scoa.org.au/sectorupdates/sector-publications/family-and-social-support/scoa-policy-brief-domestic-violence-2013/>

<sup>201</sup> See <https://aifs.gov.au/cfca/publications/cfca-paper/intimate-partner-violence-australian-refugee-communities/introduction>

<sup>202</sup> See also ALRC 135, recommendation 18; see also section C of our response to paragraph (a) of the Terms of Reference.



opportunities and social networks are, in our experience, considered in these matters, because of the bi-directional nature of parental and child wellbeing and adjustment. LADR in re-location cases should be explicitly child inclusive in its approach, to ease some of the pressure that can be placed on children to articulate to each parent a view as to the proposed re-location (and the older the child, the more likely the child is to be asked for their views).

It is the expectation of Relationships Australia that re-location disputes between Aboriginal people are likely to come to the attention of family courts more often in the future. Issues can involve, for example, whether a child is to be brought up in town or on country and whether, when a child is old enough for secondary school, he or she should be sent to boarding school. Communities to which parents belong can be situated thousands of kilometres apart, with road travel the only option. This can be complicated if road travel is unexpectedly impossible, such as when roads are closed for community business or because of weather considerations.

**Term of Reference (i) The impact of natural disasters and other significant events such as COVID-19, including health requirements such as staying at home, on the prevalence of domestic violence and provision of support services**

The impact of significant events on those affected by family violence has been amplified by having to rely on systems that have been desperately under-funded, and recognised as such, for decades. Further, evidence has already accumulated that indicates that the impact of disasters can be gendered. In Australia, COVID-19 has led to women bearing the greater load of additional caring responsibilities (including caring for children while working from home), as well as continuing to do the 'lion's share' of housework.<sup>203</sup> COVID-19, and the restrictions that have accompanied it, have exacerbated existing inequities, stressors and vulnerabilities. We note the observation by Women's Safety NSW that

Since the beginning of the COVID-19 pandemic, frontline workers have been warning there will be an increase in domestic and family violence. Based on multiple reports from various Indigenous workers representing a wide range of organisations, it is clear that this fear has now been realised.<sup>204</sup>

In relation to data about the prevalence of family and domestic violence among women during the pandemic, we respectfully draw to the Committee's attention a Statistical Bulletin issued this month (ie July 2020) by the Australian Institute of Criminology (No. 28), which concluded that, in the initial stages of the pandemic,

One in 20 women (4.6%) experienced physical or sexual violence over the last three months, 5.8% experienced coercive control, and one in 10 (11.6%) experienced at least one form of emotionally abusive, harassing or controlling behaviour perpetrated by a current or former cohabiting partner.

Critically, the COVID-19 pandemic appears to have coincided with the onset of physical or sexual violence or coercive control for many women. For other women, it coincided with an increase in the frequency or severity of ongoing violence or abuse. Two-thirds of women who had experienced physical or sexual violence by a current or former cohabiting partner since the start of the COVID-19 pandemic said the violence had started or escalated in the three months prior to the survey. Similarly, more than half the women who had experienced coercive control reported the onset or escalation of emotionally abusive, harassing or controlling behaviours during the COVID-19 pandemic....many were unable to [seek outside help] because of safety concerns.....It also helps to explain why the number of domestic violence incidents reported to police has not increased (Freeman 2020b)....it appears likely that the conditions and

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<sup>203</sup> See, for example, AIFS report on the *Families in Australia survey - Life During Covid-19, Report no. 1: Early findings*, July 2020.

<sup>204</sup> Women's Safety NSW, *Experiences of Indigenous women impacted by violence during COVID-19*, at 1. See also the comments by the Age Discrimination Commissioner, the Hon Dr Kay Patterson AO to ABC Radio National on 22 July 2020, noting evidence of an increase in abuse of older people.

consequences associated with the COVID-19 pandemic contributed to an increase in domestic violence.<sup>205</sup>

It is a matter of general agreement in the community, as well as among users and service providers, that all components of the system need adequate and ongoing resourcing. Lack of adequate funding has been a chronic issue which has exacerbated other issues people encounter when enmeshed in the family law, family violence and child protection systems. Concerns about underfunding the family courts, for example, are by no means new. As noted previously in this submission, Brennan J (as he then was), sitting in the High Court, remarked that

It seems the pressures on the Family Court are such that there is no time to pay more than lip service to the lofty rhetoric of s. 43 of the Act....It is a matter of public notoriety that the Family Court has frequently been embarrassed by a failure of government to provide the resources needed to perform the vast functions expected of the Court under the Act.<sup>206</sup>

The Government has the following options:

- **continue with the *status quo*.** This is indefensible when so many are dying by family violence or by their own hand because of stresses associated with family separation, while others are driven into poverty and chronic welfare dependency in the aftermath of separation. Family separation embeds poverty, most particularly with the primary caregiver of any child/ren. Poverty, in turn, is associated with poor outcomes for children<sup>207</sup>
- continue to resort to **serial short-term** announceables, reviews and pilots to get past short-term political or media issues and avoid long-term commitment to a system which profoundly affects millions of Australians
- **spend significant amounts of money**, as suggested in 2014 by the Productivity Commission, to **fix the current arrangements**. This would provide temporary relief, but

<sup>205</sup> H Boxall, A Morgan and R Brown, 'The prevalence of domestic violence among women during the COVID-19 pandemic', July 2020, p 16.

<sup>206</sup> *Harris v Caladine* (1991) 172 CLR 84, 112.

<sup>207</sup> Cf Joan B Kelly, 'Children's Adjustment in Conflicted Marriage and Divorce: A Decade Review of Research', 39 *J. A. M. ACAD.CHILD & ADOLESCENT PSYCHIATRY* 963 (2000). Relationships Australia notes that 84% of Australian single parent families are single mother families. In 50% of single parent families with dependants, the age of the youngest child is between 0-9 years of age: Australian Bureau of Statistics (2012), Labour Force, Australia: Labour Force Status and Other Characteristics of Families, Cat. No. 6224.0.55.001. There is a strong negative association between poverty and children's developmental outcomes. The negative effects associated with low income and poverty carry a significant cost for individuals and families, as well as the broader community. There are also clear costs associated with children's development and wellbeing - the impacts of which are likely to be amplified later in life for the children who experienced poverty and also the wider society. See Warren, D, *Low Income and Poverty Dynamics - Implications for Child Outcomes*. Social Policy Research Paper Number 47 (2017). Available at <https://www.dss.gov.au/publications-articles/research-publications/social-policy-research-paper-series/social-policy-research-paper-number-47-low-income-and-poverty-dynamics-implications-for-child-outcomes>; Stock, Corlyon et al, *Personal Relationships and Poverty: An Evidence and Policy Review*, a report prepared for the Joseph Rowntree Foundation by the Tavistock Institute of Human Relations, 2014.

require taxpayers to invest heavily in a system that enmeshes binary win/loss outcomes and is inherently unfit to do what taxpayers now expect of it, particularly in respect of users with complex needs, or

- spend **significant amounts of money and exercise policy leadership by transforming** a court-centric and highly siloed edifice to a wraparound family-focused service that could make proper inquiry into children's development needs and offer ongoing multi-disciplinary support to children and their families to build capacity, and address the social and relational needs at the heart of family separation.

Relationships Australia is aware of arguments that better and less expensive outcomes could be gained simply by giving those structures more funding. We note the implications, for Australia's economy, of the COVID-19 pandemic. These are profound and enduring. But conversely, they create an opportunity to re-consider the previous 'business as usual' approach to investing in services that enhance the capacity of families to contribute safe and meaningfully to all facets of our society, including through education and workforce participation. This is perhaps a unique opportunity to consider the unconscionability of continuing to sporadically dripfeed relatively small amounts of short term money to prop up a system that is not fit for purpose and which, by its inherently combative nature, can never be 'tweaked' into being fit for purpose.

**Term of reference (j) The views and experiences of frontline services, advocacy groups and others throughout this unprecedented time****Case study: A report from Relationships Australia New South Wales**

All service models were adapted for online service delivery and telephone, and all staff moved to working from home (WFH) arrangements from Monday, 23 March. There was a swift transition to delivering services over the phone and online. As social distancing rules were implemented, most clients welcomed the availability of phone and online services and were understanding of the need for this change. For FRC's, service was initially by phone, then online FDR was developed using a secure videoconferencing platform. We intend to retain this option going forward, giving clients the choice of receiving their service face to face, by phone or online. We are currently receiving feedback from clients to inform and shape changes in future delivery.

The FRCs experienced an initial disruption to service delivery, while protocols were developed to move the service online. As the Family Advisers conduct all work over the phone in ordinary circumstances, they experienced minimal disruption and were able to continue delivering their service to clients. Protocols were in place that enabled phone FDR to commence from mid-April, with online pre-FDR commencing from early May. Service delivery volume was impacted significantly in late March-early April; however, this has now picked up, with the FRCs now able to work at full capacity.

*Time 2 Talk* launched on 6 April. This offered a free phone service providing support around Covid-19 related challenges for individuals, couples, families, households and teams.

The move to WFH necessitated the rapid implementation of protocols for online service delivery. In some cases, this resulted in a short term reduction in service capacity. However, service levels recovered and we are working in most programs at least at pre-COVID-19 capacity.

This experience required flexible working arrangements for staff, as well as the provision of alternative options for clients to access our services. Subject to ongoing client demand, we intend to retain these options for clients while also resuming face to face services.

As a result of COVID-19, we have had to reduce the amount of joint FDR, in the move to telephone then online service delivery. This has generally resulted in a drop in fee income. We will need to invest significantly in technology hardware and mobile phones to enable us to continue offering online service delivery.

Counsellor feedback has consistently highlighted that monitoring and assessing safety when working with couples has been experienced as more difficult since COVID-19, and the move to working from home and providing counselling either over the phone or online. The decision was made to see/ speak to all clients individually for their first appointment before moving to joint couple counselling when counselling over the phone



or online. This is to provide counsellors with a greater opportunity to assess client safety. Even with this practice change, concerns relating to privacy and safety remain (eg when a partner may be close by and within ear shot of the counselling).

Counsellors report that more serious cases of family violence are harder to manage when a client is in their home. They are aware there is not the support of colleagues and the office context to help support the client/s. Counsellors also report that they feel like there are more cases where they feel less certain that they are getting the whole story around violence and safety when counselling on the phone and online. Some of this may be in response to adjusting to the change in how counselling is delivered, in particular, the change in communication with the loss of many of non-verbal cues available when communicating face-to-face.

More broadly, practitioners have expressed concern about people who need help but are not able to access it because of restrictions. Our practitioners across service offerings are concerned about some families regressing while restrictions are in effect,<sup>208</sup> and given the generally heightened stress levels caused by the pandemic and its sequelae (eg unemployment, under-employment and employment precarity, financial stress, increased substance misuse, housing precarity, exacerbation of existing mental illness).

Our practitioners generally have reported an increase in the complexity of clients' presentation, in terms of:

- the number of co-morbidities with which clients have presented, and
- increased intensity of those co-morbidities (eg increased substance misuse,<sup>209</sup> aggravated mental health issues, escalation of violence, social isolation).<sup>210</sup>

There has been a general observation that people experiencing family violence have, because of restrictions, adopted strategies to attempt to appease a violent partner until they could escape. This has included refraining from reporting violence and not co-operating with police. However, attempts to leave violent relationships may spike whenever restrictions ease, activating a new phase of danger.

Because of school closures, and greater reluctance to attend services such as GPs, there are fewer opportunities for abuse to be detected and support offered (or taken up).

Coercive controlling perpetrators have seized on increased opportunities for surveillance, afforded by pandemic restrictions, as well as opportunities to pressure partners into re-visiting existing agreements about child contact.

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<sup>208</sup> Eg children's contact services, services responding to abuse of older people and specialist family violence services. On the basis of anecdotal evidence, this seems to be common across service providers.

<sup>209</sup> As borne out also across other services, such as publicly-reported emergency department presentations.

<sup>210</sup> This is an experience which appears to be common across services working with women affected by family violence: see, eg, Women's Safety NSW, *Experiences of Indigenous women impacted by violence during COVID-19*, at 2.

Crisis accommodation is very difficult to source.

Some clients have expressed enthusiasm for continuing online services because they:

- can be done at a safe place of the clients' choosing (eg no risk of bumping into a former partner in a lift or the carpark)
- require less time away from work/home
- no need to find or pay for parking
- no need to take public transport
- don't have to worry about forgetting to bring something (eg financial records) to an appointment away from home; it's 'at their fingertips'
- can be more accessible for people living a distance away from service premises, and
- for people living in small communities – can be more private.

However, clients have experienced issues with IT, hardware, internet connections, online security and the cost of data.

Children's Contact Services were disrupted.<sup>211</sup> There were serious concerns about the safety of offering online supervised contact when CCS' were unable to manage children's environments to support their safety; accordingly, Relationships Australia does not use three-way video-conferencing for contact visits. However, once children were able to attend CCS's, two way online contact could be supported with the child attending the centre and contact being made with the other parent who was offsite. As restrictions eased, they were able to re-open, with modifications such as:

- reduced numbers of families
- shorter appointments (to allow for cleaning between families)
- asking families to bring their own toys
- providing some art/craft materials such as playdough which families then take home with them
- rigorous cleaning protocols
- taking clients' temperatures
- providing additional hygiene protocol training to staff, and
- sign in records for contact tracing, if required.

Some families safely self-managed contact during disrupted services.

Online group mediation has proved challenging across service offerings, including mediation services for families affected by abuse of older members.

While practitioners adapted well to working from home, some have expressed concerns about their own wellbeing, given the dissipation of physical boundaries between work and home, and inability for face to face de-briefing and peer support. Accordingly, we have some cohorts of workers who were seeking to return to work premises at the earliest possible opportunity. We have sought to accommodate that.

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<sup>211</sup> For example, our CCS in Tasmania was closed for eight weeks.

## A.1 Online decision-making services and supports

Relationships Australia supports the exploration of online decision-making processes (such as the recently-launched Amica) to support, facilitate and complement face to face services. It remains, however, vital to recognise the persistent barriers of the digital divide as well as other barriers, such as inadequate access to fast, reliable and private online services, illiteracy, cultural considerations and poverty.<sup>212</sup> Some of these barriers will diminish over time, but there will – for the foreseeable future - be a cohort of people for whom online services is not a practical way of interacting with service providers. It is vital that the disadvantages suffered by those in that cohort are not compounded by exclusion from services to support resolution of family conflict.

It has been argued that the introduction of interactive, automated, user-pays systems using artificial intelligence would enable and empower users to negotiate separation arrangements (including parenting plans and division of property) in their own time and in a safe space, with transparent and capped costs. It is suggested that, as online dispute resolution (ODR) services mature, increasingly integrated services could be made available, with links to other systems (such as family courts and the Child Support Agency), services and referral pathways. The system could allow users to 'buy in' additional services to assist with resolution. Some systems proposed would include the cost of a lawyer to review the final agreement to ensure that the outcome is fair and equitable, and has not been compromised by a power imbalance. If acceptable, the agreement could then be formalised by final orders by a court.

Relationships Australia understands that similar systems are being used in the United Kingdom, the Netherlands and Canada. The design, flow and content follow the behaviour, needs and emotions of people looking for enduring outcomes.

While the further development of ODR would be a welcome complement to face to face services, there are additional factors which require consideration, beyond the barriers to online participation noted above. There can be great therapeutic benefit in face to face contact with clients, especially when dealing with high emotions – connection with a person can be one way of getting through a difficult situation and moving away from the loneliness or isolation that can be experienced, while also creating a safeguard against trauma.

In addition, the confidentiality, reliability of technology and thorough training for those involved in providing this service would need to be considered, as would capital investment. In this respect, exploration will need to be made of emerging technological capabilities.

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<sup>212</sup> Relationships Australia cautions against conflating telephony and internet based services, and also notes that privacy issues are likely to arise from the use of Cloud technology: see our comments on the KPMG final report, p 10, Appendix E. Relationships Australia Queensland offers technology-enabled services including the FRAL and the Telephone Dispute Resolution Service. The Family Safety Navigation Model used by Relationships Australia Victoria makes heavy use of telephone-based consultations.

Relationships Australia is also aware that, for many Australians, the digital divide remains a reality. The Australian Digital Inclusion Index 2019 reported that

Across the nation the so-called 'digital divide' follows some clear economic, social and geographic contours and broadly Australians with low levels of income, education, employment or in some regional areas are significantly less digitally included.

This report – the fourth Australian Digital Inclusion Index – brings a sharp focus to digital inclusion in Australia and while it is encouraging to see improvement year-on-year, and particularly in regional Australia, it is clear there is still a lot to be done.<sup>213</sup>

The digital divide is not always a function of technological skill or willingness to learn on the part of the user; many Australians simply do not yet have access to fast, reliable, safe and private internet access (and not only because they live in regional, rural or remote areas). Accordingly, service providers and governments must continue to offer information and services across a range of platforms.

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<sup>213</sup> [https://digitalinclusionindex.org.au/wp-content/uploads/2019/10/TLS\\_ADII\\_Report-2019\\_Final\\_web\\_.pdf](https://digitalinclusionindex.org.au/wp-content/uploads/2019/10/TLS_ADII_Report-2019_Final_web_.pdf). In submission 63 to the ALRC inquiry, the Family Violence Prevention and Legal Services Forum cautioned against treating technology as a complete solution: see p 16. See also submission 45 to the ALRC inquiry from Women's Legal Services Australia, 14.

## **Term of Reference (k) An audit of previous parliamentary reviews focussed on domestic and family violence**

Parliamentary reviews include:

- Family law in Australia, Report of the Joint Select Committee on the Family Law Act (1980)
- The Family Law Act 1975: Aspects of its operation and interpretation, Report of the Joint Select Committee on Certain Aspects of the Operation of the Family Law Act (1992)
- *Every picture tells a story: Report on the inquiry into child custody arrangements in the event of family separation*, House of Representatives Standing Committee on Family and Community Affairs (2003)
- Senate Standing Committee on Finance and Public Administration *Inquiry into Domestic Violence and Gender Inequality* (2016), and
- this Committee's 2017 report on its inquiry into a better family law system to support and protect those affected by family violence.

Other significant reviews include:

- Domestic Violence (ALRC 30), (1986)
- Recognition of Aboriginal Customary Laws (ALRC 31), (1986)
- Matrimonial Property (ALRC 39), (1987)
- Multiculturalism and the Law (ALRC 57), (1992)
- Equality before the Law: Justice for Women (ALRC 67, 69), (1994)
- For the Sake of the Kids: Complex Contact Cases and the Family Court (ALRC 73), (1995)
- Seen and heard: priority for children in the legal process (ALRC 84) (1997)
- the Family Law Council report, Litigants in person (2000)
- the Family Law Council report, Family Law and Child Protection – Final Report (2002)
- the Family Law Council Report, Improving Post-Parenting Order Processes (2007)
- the Family Law Council report, Family Violence (2009)
- Family Violence – A National Legal Response (ALRC 114), (2010)



- Family Violence and Commonwealth Laws – Improving Legal Frameworks (ALRC 117), (2012)
- the Family Law Council report, Indigenous and culturally and linguistically diverse clients in the family law system (2012)
- the Family Law Council report, Parentage and the Family Law Act 1975 (2013)
- the evaluation of family law services by Allens Consulting Group (2013)
- Access to Justice Arrangements, Productivity Commission (2014)
- the evaluation by AIFS of the role and effectiveness of Independent Children’s Lawyers (2014)
- • the AIFS evaluation of the 2012 family violence amendments (2015)
- the KPMG review of the future nature, location and funding models for family law services (2015)
- the findings of the Victorian Coroner’s Court – Inquest into the Death of Luke Geoffrey Batty (2015)
- Not Now Not Ever, report of the Queensland Special Taskforce on family violence (2015)
- the Royal Commission into the Child Protection Systems in South Australia (2016)
- Report of the Victorian Royal Commission into Family Violence (2016)
- AIFS’ study of the experiences of children and young people of family law services (which built on the work undertaken by the National Children’s Commissioner in 2014-15)
- Final report of the COAG advisory panel on reducing violence against women and their children (2016)
- the report of the Australian Human Rights Commission, A National System for Domestic and Family Violence Death Review (2017)
- Elder Abuse – A National Legal Response (ARLC 131), (2017)
- Victorian Auditor-General’s report on *Managing Support and Safety Hubs* (the ‘Orange Doors’ established by Family Safety Victoria) (2020)
- the ongoing Royal Commission into Aged Care Quality and Safety, and
- the ongoing Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

## Term of Reference (I) Any other related matters

### A Children and the family law system

... um, I was a bit scared of like - because I didn't want to say anything ... I didn't want to hurt my parents' feelings ... And I didn't really - it didn't really - I wasn't really listened to - I needed to learn - it was kind of just like, well this is just the children, they don't really have a say in - we understood that it was ... no one really listened to you, you're 12 years old ... I didn't want to say anything that would - that would hurt another, another person there ... Because, as a person, I love to keep everyone else that I love ... I love, I love everyone to be happy ... And I just - it's, it's, it's hard when you just - you don't want to say anything that will hurt anyone - anyone's other feelings ... And then you, and then you, if you don't say then they won't get - it won't get through to them. (Ellie, 10-11 years)<sup>214</sup>

The 2012 AIFS survey of recently separated parents found that only 44% of parents agreed that the family law system meets the needs of children and just under half of all parents agreed that the system protects the safety of children. Just over two-fifths of all parents agreed the system effectively helps parents find the best outcome for their children. In its 2018 report on children's involvement with the family law system, one young person observed that the 'winner/loser' approach used in the courts 'should be ditched'.<sup>215</sup> Further, an audit of data collected by Relationships Australia South Australia found that clients reported concerns about mental health, violence and harm to children. The audit analysed over 3,200 files from 2013-2018; its findings are summarised in the table set out in our response to paragraph (a) of the Terms of Reference. That table emphasises that family violence is rarely present in isolation from other issues such as substance abuse, mental health problems or personality disorders.<sup>216</sup> Further, family court judges rarely have the luxury of being asked to decide between one option that is safe for the child and one that is not safe. Too often, judges must identify a parenting arrangement that is merely *relatively* safer than other alternatives.<sup>217</sup>

#### A.1 Children and family violence

In 2018, AIFS reported that 50% of parents interviewed expressed safety concerns for themselves and/or children as a result of ongoing contact with the other parent. Children and young people also reported instances where they felt unsafe with a parent with whom they were required to spend time.<sup>218</sup> Daniel said

I didn't really get a say [in living arrangements] .....I think the family court's corrupt...'cause we went to court and the judge said I had to go back with Dad that night.

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<sup>214</sup> Carson et al, 2018.

<sup>215</sup> From ALRC DP 86, paragraph 1.43, citing South Australia Commissioner for Children and Young People, *What Children and Young People Think Should Happen When Families Separate* (Office of the Commissioner for Children and Young People, 2018) 15.

<sup>216</sup> See, for example, the submission of Relationships Australia South Australia in response to ALRC IP48 (submission 62), 4.

<sup>217</sup> See also Bretherton et al, 2011, 541.

<sup>218</sup> Carson et al, 2018, 33, 40.

Soon after the court event,

I said to my mum that he didn't pick me up. And my dad got really angry, he, um, and because of that he - that night he choked me for a solid minute...<sup>219</sup>

Unsurprisingly, researchers have observed that

The struggle that children have in a climate of domestic violence in just feeling safe is immense. There is physical safety... then there is psychological safety....The emotional climate and the child feeling fundamentally cared about and protected from uncertainty needs to be on a par with physical safety. There are very good data on that. *This is not something that is waiting to be demonstrated. It is very clear that this kind of conflict between parents affects children in a bad way.*<sup>220</sup> [emphasis added]

The Australian Psychological Society notes that

...the factors predicting child wellbeing are the same for children in separated families and those in stable families. The *presence of inter-parent conflict and family violence reduces child wellbeing*, while responsive, warm, consistent and authoritative parenting is associated with improved outcomes for children (Sanson & McIntosh, 2018). Additionally, where there is high conflict and family violence, the capacity of parents to enact shared time increases the risk of exacerbating conflict and provides opportunities for those who use violence to continue to intimidate and cause fear to the other parent (Cashmore et al, 2010).<sup>221</sup> [emphasis added]

Carson et al related the concerns of one interviewee who contrasted the court processes used to assess the best interests of his sister, with the resolution of his own parenting arrangements outside of the court process (to which he attributed arrangements that enabled him to safely maintain a relationship with both parents):

You need to let children speak up. And be in the, with, have a bit more of a random conversation, rather than planned. Because in my sister's - my sister's case, she was doing a talk with a counsellor, but her dad was there and he's pretty scary. He, um, when my mum were together, he was hitting her. And so my sister's scared of her, him. And at the time, she thought that if she had said that she doesn't want to stay there, he could have hurt her. But, so it's better if it, when she was there, if someone came over randomly and just talked to SISTER. When she hadn't been prepared ... they (father and his family) were also bribing SISTER a bit. They were saying, 'If you come live with us, we'll give you a dog and a big house and a big room,' and all sorts ... And it wasn't fair, because SISTER was young. It's been two or three years and she didn't understand. And now it's crazy because SISTER wants to come home now and she doesn't want to go there and she's not getting another chance ... I don't think my sister's safe at all ... Because I think he's crazy and I don't know what he's capable of, because he's said

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<sup>219</sup> Carson et al, 2018, 34.

<sup>220</sup> Zeanah, in Lieberman et al, *Attachment Perspectives on Domestic Violence and Family Law*, 2011, 530-531.

<sup>221</sup> Submission 55, 23.

some really bad things to my mum ... And he has physically assaulted her and I don't think it's safe for my sister to be around him. (Andrew, 12-14 years)<sup>222</sup>

These interviews took place against a background of numerous inquiries in Australia about child protection and family violence, and against a background of a Royal Commission that heard extensive and heartbreaking evidence of children who, when they reported harm and threats to their safety, were disbelieved, dismissed, even punished for speaking; their suffering minimised and camouflaged by sustained institutional denial. The adults those children became bear forever the wounds not only of their abuse, but those wounds inflicted by the shameful inaction of those charged to protect them.

Silencing children, by act or omission, does not protect them.

## A.2 The role of child-focused and child-inclusive practice

*Child-focussed practice* is used where the child is too young to meet with the child consultant (generally this applies to children under 6 years of age). The child consultant meets with the parents to obtain information about the child and provides the parents with information about the likely developmental needs of the child.

*Child-inclusive practice* (CIP) is where a child who is deemed to be developmentally able (generally, over six years of age) meets with a child consultant. The consultant explores what the family situation looks like through the child's eyes, their experiences of the separation, and how this affects the child. Children are not asked any questions about things that parents need to decide. CIP is currently not separately funded in most FRCs.

In both processes, the child consultant attends the joint FDR session to support the parents to understand and respond to their child's needs and experiences.<sup>223</sup>

A well-resourced multi-disciplinary team, accessible as early as possible<sup>224</sup> should form the central plank of child-oriented services, making use of tools along the lines of the Scottish F9 form as means to elicit and report on children's views, from an early point in any decision-making process. Perhaps a pilot could be run from one registry, linked to an appropriate research capacity. Relationships Australia Tasmania has suggested that Hobart, with its diverse yet relatively small population, could be an appropriate pilot site.

Relationships Australia is committed to child inclusive practice as offering the best possibilities for outcomes that are in children's best interests.<sup>225</sup> Relationships Australia Canberra and

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<sup>222</sup> Carson et al, 2018, 51, 81-82.

<sup>223</sup> See Carson et al, 2018, 56. Relationships Australia agrees with Birnbaum (2017) that reports from family consultants/single experts are not a substitute for child-inclusive and child-focused practice.

<sup>224</sup> The CAFCASS facility in the United Kingdom is only accessible to families who have entered the court system. For a more detailed discussion of potential for a CAFCASS-like service in Australia, see section C.5 of our response to paragraph (a) of the Terms of Reference.

<sup>225</sup> For more information on how child inclusive practice is undertaken in South Australia, please see the separate submission from Relationships Australia South Australia to the 2017-2019 ALRC inquiry. Relationships Australia

Region (Riverina) currently uses the 'Meeting with Children' model of child informed practice, which offers a structured framework for meeting with children and a structure for giving feedback to the parents. One example of how it can be undertaken is that a child consultant, independent of the mediator, meets with the child to talk to them about their experience of the separation. The child consultant then attends the joint session to talk with parents and caregivers about the child's experience, providing information on the child's perspectives of the separation. Through this process, parents are assisted in focussing on the needs of the child and are encouraged to work towards the best possible parenting arrangements for their children.<sup>226</sup>

It is acknowledged that supporting children's participation can be resource intensive and, at present, providers bear the cost of this. During intake and in subsequent sessions, FDRPs use child-focused materials in preparing adult participants to undertake FDR and, in discussion with the adult participants, reinforce the need to be child-focused throughout the process. Some Relationships Australia organisations use models in which a case manager ensures that all practitioners engaging with the family know what is happening, and that all components of the process remain consistently focused on the child.

### **Case study – engaging parents in child inclusive practice**

Mary initially contacted Relationships Australia for mediation with her former partner regarding the children. The couple had previously been together for 24 years and had been separated for 8 months when the mediation process was initiated. Nigel, aged 11, was living with Doug, and Kaitlyn, aged 8, had week about with both parents. Kaitlyn has accessed the school counsellor for psychological support. Mary and Doug each had an intake and second session appointment prior to starting mediation sessions. During this time, the practitioner discussed the child inclusive practitioner and the role that they could play in mediation. Both parents agreed for the children to be part of the mediation process. Before the child inclusive practice sessions with the children, the parents attended two mediation sessions, to be clear on what they each wanted; this included the establishment of a parenting plan. The child inclusive practice sessions demonstrated to both parents how much the conflict between them had affected the children. Based on this, the parents reached consensus to change the way they communicated with each other and the children. Both parents were also referred to the counselling after separation program for additional individual support and skill development. For this family, the process has been significant, with sessions beginning with the initial intake and the final mediation session

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New South Wales is moving toward an 'opt out' system of child-inclusive practice, away from the current 'opt in' approach. This is intended to normalise the participation of children in FDR.

<sup>226</sup> For further information, see Mieke Brandon and Linda Fisher, *Mediating with Families*, third edition, 96-7, 539-42; J E McIntosh and CM Long, *Children Beyond Dispute - A Prospective Study of Outcomes from Child focused and Child Inclusive Post-Separation Family Dispute Resolution*, Final Report, Attorney-General's Department, 2006. Note that training is available to become a qualified child consultant; eg through Family Transitions. Relationships Australian Northern Territory, for example, requires its child consultants to undertake this training as a prerequisite to practising as a child consultant.



occurring just over 12 months apart. The child inclusive practice process does extend the timeline but has proven to have worthwhile outcomes for children.

The literature consistently reports that children are more resilient to the trauma of their parent's separation when given an opportunity to participate and there is considerable evidence that children want to be included.<sup>227</sup>

Discussions about including children in FDR often conflate Child Inclusive Practice with the provision of therapeutic services to children and the case for both is arguably weakened by this. While Child Inclusive Practice is argued to be a positive experience for children,<sup>228</sup> and is often described by Child Consultants as 'incidentally therapeutic', therapy is not the aim. Therapeutic services for children that are provided by Relationships Australia New South Wales, for example, include groups for children and family therapy. Both are offered as referrals where appropriate. Groups for children have been offered through the FRCs; however, their place as part of the funded service of the FRCs is not clear.

Child Consultants should be involved in more cases as a standard part of FDR. The percentage increase in cases is dependent on factors such as availability of appropriately skilled staff as well as decisions about funding Child Inclusive Practice.

### **Case study – the 'Kids in Focus' Seminar, Relationships Australia New South Wales**

**The Kids in Focus (KIF) Seminar** was created to be presented in Family Relationship Centres. It has proven to be a very important part of the FRC process and is reported by clients as often being a turning point. The aims of the Seminar are:

- To give each participant the opportunity to gain an understanding and awareness of their own behaviour, and to provide a space to think about what they can do differently.
- Participants are encouraged to realise that they are the main role models for their children. Children are watching and absorbing every day from their parents. During separation, children are trying to make sense of their continuing importance to their parents. Conflict takes away much needed attention from the children.

A parenting alliance is a soothing space for children to meet their developmental needs, such as to feel loved and to learn more about resilient relationships. Children need to see that their parents are able to work together.

Research has shown that high ongoing conflict between parents that is not resolved can have the most damaging impact on children's mental health and well-being. This is the core message of the Kids in Focus Seminar. Parents are encouraged to reduce their conflict, so they can focus on their children's needs.

The value of the Kids in Focus Seminar is that it provides a supportive environment for separated parents to reflect, whilst also explaining and acknowledging the grief and pain

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<sup>227</sup> Smith, Taylor, Tapp. 2003; Carson *et al*, 2018.

<sup>228</sup> McIntosh 2006; McIntosh 2007; Smith, Taylor and Tapp 2003; Petridis and Hannan 2011.

that separation brings not only to parents but to children as well. It is also an opportunity for parents to hear the stories of other parents going through a similar situation and realise they are not alone in this.

Different versions of KIF could be developed to tailor to the different experiences of the following groups:

- Grandparents
- Estranged parents who have no contact with their children
- Parents who have come out of a violent relationship, and are now withholding their children from the other parent due to safety concerns
- Returning clients – need special extra material particularly where the Conflict is still high, and
- Aboriginal clients.

Research overwhelmingly supports the view that ‘cooperative parenting’, or at a minimum ‘parallel parenting’ with low conflict creates a better environment for children. An improved environment is predictive of a good outcome for children. The Kids in Focus seminar offered as a routine part of the FRC process draws on the work of Dr Jenn McIntosh (Kids in Focus manual 2009) and many others (Amato 2000 and 2014, Emery 1999, Kelly 2000) in its educational content on models of post separation parenting.

Relationships Australia joins with the Australian Psychological Society in recommending that longitudinal research be funded to better discern how shared parenting arrangements support children’s attachment, developmental and other needs.<sup>229</sup>

### A.3 Children talking to judges

We have previously advocated that Australian judges should be trained and encouraged to talk to children; other jurisdictions have demonstrated that this can be a safe and successful way to implement the CRC and lessen children’s marginalisation. This is common practice in other family law jurisdictions. For example, in the German family law system, judges are obliged to hear personally from the child if the feelings, ties or will of the child are thought to be significant to the decision. These child hearings take different formats, depending on the age and development of the particular child. Evaluation of this approach demonstrated that it achieves very positive results for all participants, including the children.<sup>230</sup> The central question for the most recent evaluation concerned the effect on children, and their family relationships, of being interviewed by a judge in child custody and access matters. The evaluation found that

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<sup>229</sup> See submission 55 to the ALRC inquiry, p 22, noting also Sanson & McIntosh, 2018, and Smyth, McIntosh, Emery and Howarth 2016.

<sup>230</sup> See Michael Karle and Sandra Gathmann, ‘Hearing the Voice of the Child – The State of the Art of Child Hearings in Germany. Results of a Nationwide Representative Study in German Courts,’ (2016) 54(2) *Family Court Review* 167-185. This article also refers to earlier evaluation of the German approach to hearing from children: see p 180.

‘Altogether the observable signs of stress in children accompanying the judicial interviews can be seen as very moderate’.<sup>231</sup> Karle and Gathmann conclude that

Neither in the current study nor in the previous study by Lempp et al (1987) was there any sign of major or lasting stress for the children. The multiple measurement times were able to show that before the hearing, reactions to tension at various levels can be measured and subscribed to the concept of examination anxiety. Immediately before the interview, the tension increases in intensity, but directly after the hearing and four weeks later, tension falls to below the initial level measured.<sup>232</sup>

Parents, unanimously, supported the judicial child interviews, and the involvement of child advocates.<sup>233</sup>

Judges themselves noted advantages such as probing how the child is coping, getting to know the child, enhancing evaluation of ‘best interests’, and enhancing the prospect of parents reaching agreement. Judges experienced in interacting with children were less likely to refrain from engaging with children on the basis of children’s ages or concerns about exposing children to stress; Karle and Gathmann concluded that

...there should be no reason to refuse the obligation for hearing all children as far as their interests are concerned, as declared in Article 12 of UNCROC unless specific circumstances in a given case warrant otherwise. This applies particularly to the two arguments most frequently brought up by judges: 1. “Children are too young to be heard”.... 2. “Children are placed under too much stress in child hearings”.....<sup>234</sup>

Australian family law judges would need significant support, training and resources to shift practice in this way. In the most recent German evaluation, judges nominated useful professional development courses in the following areas:

- questioning techniques
- communication psychology (including questioning and interviewing techniques for various age groups, registration of non-verbal signals)
- signs of child stress
- developmental psychology, including steps in motor, cognitive, psychological, language competency and social development
- role play, and
- psychological and pedagogical insight into effects of separation.

Relationships Australia acknowledges the barriers to requiring Chapter III judges to undertake training. In view of this, it would be helpful if family courts adopted processes in which parenting matters could only be listed before judges with appropriate training in child inclusive practice, and the other domains relevant to engaging with children and hearing their voices.

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<sup>231</sup> Karle and Gathmann, p 179.

<sup>232</sup> Karle and Gathmann, at p 181.

<sup>233</sup> Karle and Gathmann, at p 182.

<sup>234</sup> Karle and Gathmann, at p 182. At 183-184, Karle and Gathmann do recommend further evaluation which includes the measurement of neurophysiological stress markers.

## B Overarching obligations for all system professionals

Relationships Australia supported Proposal 10-1 in ALRC Discussion Paper 86, to develop a workforce capability plan for the Family Law System. We consider that this is apposite to the current inquiry, as part of work to reduce fragmentation between jurisdictions, legislative schemes, and professional disciplines.

We recommend that state and territory governments be involved in development of the proposed plan, given the many and close connections between Commonwealth, state and territory functions in this area. We consider the following to be core competencies of all professionals in systems that serve those affected by family violence, including judicial officers:

- family violence
- understanding of a broad range of risks, including suicide risk
- trauma-informed practice<sup>235</sup>
- understanding of the impact on children of conflict and family violence
- vicarious trauma
- an understanding of child abuse, including child sexual abuse and neglect
- cultural competence in relation to Aboriginal and Torres Strait Islander people, LGBTIQ+ families, and culturally and linguistically diverse communities
- disability awareness
- intersectional disadvantage and discrimination
- elder abuse and intergenerational conflict
- lateral violence
- substance abuse and mental health issues (including as these affect children and young people, and how they affect older people)
- problem gambling
- child-inclusive and child-focused practice, and
- child development<sup>236</sup> and parent-child attachment,<sup>237</sup> and how attachment needs evolve<sup>238</sup> as children develop.

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<sup>235</sup> See Fallot and Harris, 2006, for the five principles of trauma-informed practice: safety, transparency and trustworthiness, choice, collaboration and mutuality, and empowerment.

<sup>236</sup> In Lieberman et al, 2011, Zeanah notes (at 535): 'It is peculiar, the lack of developmental thinking in the legal system, and it is a huge problem for children. The fact that it's completely, by its nature, un-developmental. So we see the same arrangements ordered for 15-year-olds and 15-month olds. And that is just on its base crazy.'

<sup>237</sup> In Bretherton et al, 2011, Crowell observes that 'Attachment speaks to the logistics of development, not emotional touchy-feely matters. I think that is where people get mixed up in attachment, and the law does too. Attachment theory if anything encourages us to think on a more practical and organizational level.' (at 546)

<sup>238</sup> Noting the observation by Seligman that 'As clinicians, we have to actively move family law professionals away from thinking of attachment as if it were acquired at a certain time, or as if one parent-child relationship ticks the box and the other does not. Patterns of early contact are important, but there is a *wide variation between being a parent who is not the primary attachment figure in the beginning, and being someone who is marginalised.*' (See Bretherton et al, 2011, 543-544, emphasis added). Relationships Australia notes that various submitters responding to ALRC IP48 drew attention to what they regarded as misapplication of attachment theory, to the detriment of children; see, for example, Family and Relationship Services Australia, submission 53 in response to ALRC IP48, p 21.

## CONCLUSION

We thank the Committee for the opportunity to contribute to its work on this inquiry, and would be happy to discuss further the contents of this submission if this would be of assistance. I can be contacted directly on (02) 6162 9301 or by email: [ntebbey@relationships.org.au](mailto:ntebbey@relationships.org.au). Alternatively, you can contact Dr Susan Cochrane, National Policy Manager, Relationships Australia National, on (02) 6162 9309 or by email: [scochrane@relationships.org.au](mailto:scochrane@relationships.org.au).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Nick Tebbey', with a stylized flourish at the end.

Nick Tebbey  
National Executive Officer



## APPENDIX A

### KEY THEMES/RECOMMENDATIONS FROM RELATIONSHIPS AUSTRALIA'S SUBMISSIONS TO THE AUSTRALIAN LAW REFORM COMMISSION AND THE JOINT SELECT COMMITTEE INTO AUSTRALIA'S FAMILY LAW SYSTEM

1. Replace the Commonwealth 'family law system' with a family wellbeing system, as described in section A of this submission's response to paragraph (e) of the Committee's Terms of Reference, and establish:
  - Family Wellbeing Hubs
  - a **specialist tribunal** to investigate and direct arrangements to further children's best interests
  - **post-order/post agreement services** (including by adopting a Parenting Coordination model for high conflict families who need additional support to implement orders and agreements), and
  - a **Family Wellbeing and Family Law Commission** to safeguard the integrity of the System through robust accountability, oversight of professionals in the system, and undertaking inquiries into systemic problems.
2. Transform dispute resolution mechanisms to focus on family wellbeing and child development focus by:
  - abandoning processes built around lengthy, expensive and combative litigation, which force parents into binary win/loss outcomes in relation to their children
  - making smarter and more integrated use of services that meet families' social, emotional, health and financial needs and that divert more families from litigation, at earlier points of time, and
  - introducing mandatory pre-filing Family Dispute Resolution for property matters.
3. Improve focus on children's safe and healthy development, including during and after separation, through:
  - hearing their voices and keeping them informed of matters that affect them
  - enhancing CCSs through more realistic and enduring funding, and expanding their role, and
  - accrediting CCSs and family report writers.
4. Support these shifts with:
  - a new Act focusing on family wellbeing and child development in separating families, and
  - a stable, ongoing funding base that properly recognises that preventing family violence, and nurturing family wellbeing and healthy child development are vital to a vibrant, prosperous and resilient Australia, and that existing funding approaches pose an urgent existential threat to Australia's social and economic wellbeing.