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Committee Secretary
House of Representatives Standing Committee on Social Policy and Legal Affairs

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Inquiry into Family Violence Orders

Relationships Australia welcomes the opportunity to make a submission to this Inquiry. Our submission will address the Terms of Reference through the lenses of forms of domestic and family violence (DFV) including intimate partner violence (IPV), abuse and neglect of older people (ANOP), and child maltreatment.

Recommendations

Recommendations made under the Framing Principles

Recommendation 1 That cultural safety training and trauma informed practice should be mandatory across services working with First Nations people in family law and family relationship services, and services which encounter DFV, ANOP and child maltreatment.

Recommendations made under Term of Reference 1

Recommendation 2 Making an FVO should be a catalyst for providing direct support to a partner using violence, with courts providing information to that partner about interventions, and making warm referrals to services (including Men's Behaviour Change Services, housing services, services for harmful use of alcohol, other drugs and harmful gambling, as well as mental health supports).

Recommendation 3 That safety reforms in family law and family violence be accompanied by an adequately-resourced, coordinated, nationally consistent and ongoing public education and awareness campaign.

Recommendation 4 That Australian Governments ensure that relevant professional groups across the family law, family relationships, domestic, family and sexual violence, and child protection systems, receive appropriate initial and ongoing professional development, to ensure that policies and service responses are supported by the best available contemporary evidence.

Recommendation 5 That:

- the Government should involve professionals and judicial officers in co-designing a training package for court staff, including judicial officers, registry staff, and court-employed professionals such as Court Child Experts in the Federal Circuit and Family Court

- programs to raise awareness of the National Strategic Framework for Information Sharing between the Family Law and Family Violence and Child Protection Systems (the Information Sharing Framework) extend to Family Dispute Resolution Practitioners and other professionals who work in Family Relationship Centres and Children's Contact Services, as well as to members of Family Law Pathways Networks
- training and awareness programs should deal explicitly with the relationship between the Information Sharing Framework and applicable Commonwealth, State and Territory privacy legislation, and
- resourcing should be made available on a recurrent basis to support initial and ongoing refresher training, to enable professionals to keep up to date as the Information Sharing Framework and associated arrangements evolve.

Recommendation 6 That the Commonwealth Government commission a study on the impact of the repeal of the statutory presumption of shared parental responsibility.

Recommendation 7 That training materials and the Information Sharing Protocol must build on the safeguards in the Act and the Regulations by paying specific attention to police perpetrators and police officers who engage in conduct that risks the safety of victim survivors of domestic and family violence and child maltreatment and/or the safety of notifiers.

Recommendation 8 That services such as Children's Contact Services, Family Dispute Resolution services, and post-separation parenting programme providers be included as AISEs [Authorised Information Sharing Entities] under the Information Sharing Framework in the future.

Recommendation 9 That post-order and post-agreement services, outside the often-distressing court setting, should be available in accordance with principles of geographic equity and universal access.

Recommendations made under Term of Reference 2

Recommendation 10 That, to reduce the burdens of fragmentation on victim survivors, the Commonwealth Government amend the Family Law Act to empower and resource the Federal Circuit and Family Law Court to make FVOs.

Recommendation 11 That Australian Governments work together to resource training for judicial officers across all State and Territory jurisdictions to empower them to:

- understand and implement trauma-informed and DFV-informed practices,
- make FVOs under the Family Law Act, and

- confidently make and vary orders under Part VII of the Family Law Act.
- Recommendation 12** That Australian Governments extend the National Domestic Violence Order Scheme, as contemplated in the 2015 Interim Report of the Family Law Council, to include orders from all family law courts, State and Territory children’s courts, and State and Territory mental health tribunals.
- Recommendation 13** That, to further reduce the safety risks arising from fragmentation:
- consistent with our recommendations about amending the *Family Law Regulations 1984* (Cth) (see regulation 12CBA) to expand the range of Authorised Information Sharing Entities - the National Domestic Violence Order Scheme be extended, with appropriate safeguards, to allow service providers to access orders that are in place
 - the federal family law courts give service providers 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, and
 - state and territory authorities work with the federal family law courts to allow federal judges access to information about state/territory services accessed by families.
- Recommendation 14** That Australian Governments resource independent interpreter services with appropriate training in intimate partner violence, abuse and neglect of older people, child maltreatment, family law, and trauma.
- Recommendation 15** That the Committee engage with service providers with expertise in identifying and addressing multi-factorial circumstances and in working with diverse client bases, including those experiencing compound circumstances of marginalisation and disadvantage.
- Recommendation 16** That the FASS be extended to be available at all family law and DFV courts (and potentially children’s courts), on all hearing days.
- Recommendation 17** That:
- all prosecution offices and courts be child safe organisations
 - governments fund case management and navigation support for people using the family law, DFV and child protection systems
 - police, prosecutors and court staff be equipped and empowered to provide victim survivors with warm referrals to case management and psychosocial supports
 - providers of psychosocial support services, with expertise in working with victim survivors of sexual violence, be embedded

at all courts hearing sexual violence matters; those providers should also be resourced, and have the capability, to 'warm refer' victim survivors to other support services, if needed.

Recommendation 18 That the Commonwealth Government implement Proposals 4-1 to 4-4 made by the Australian Law Reform Commission in Discussion Paper 86.

Recommendations made under Term of Reference 3

Recommendation 19 That the Commonwealth Government extend the Co-location Program (currently funded only until 30 June 2025) as an ongoing element of the federal family law system.

Recommendation 20 That Australian Governments implement systematic, universal screening of victim survivors, *and* persons using (or at risk of using) DFV, at the earliest possible engagement.

Recommendations made under Term of Reference 4

Recommendation 21 That Australian Governments identify and invest in perpetrator programmes for people, other than men, who use violence in relationships.

Recommendation 22 That Australian Governments urgently increase funding to perpetrator interventions across the country and invest in consistent, secure and adequate resourcing nationally, to enable early identification of people at risk of using violence as well as to change attitudes and behaviours that encourage, normalise, reward or excuse using violence in relationships.

Recommendation 23 That Australian Governments initiate a research program as a matter of urgency, to ensure that legislation targeting the use of coercive control succeeds in its safety objectives and does not inadvertently harm victim survivors or entrench marginalisation and exclusion.

Recommendation 24 That Australian Governments integrate legislation, policy and service delivery in family law, DFV, child protection, and abuse and neglect of older people, to:

- enable appropriate safety planning
- facilitate access by older people to mainstream services, including recreational, educational and health services, and
- reduce the risks to safety arising from administrative, funding, or vocational fragmentation.

Recommendation 25 That funding arrangements take into account the costs of providing outreach services.

The work of Relationships Australia

Relationships Australia is an Australian 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, cultural background, lifestyle choices, or economic circumstances. Relationships Australia provides services for victims and perpetrators of domestic, family, sexual and other interpersonal violence, including abuse and neglect of older people. 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. 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 within their families and communities with dignity and safety, and to enjoy healthy relationships.

In 2022-2023, Relationships Australia member organisations:

- served more than 140,000 clients across more than 100 locations and 97 outreach locations
- employed 2,340 staff to offer more than 320 separate services/programs
- launched more than 25 new programs
- participated in over 29 research projects, and
- offered more than 27 articles, submissions and papers to support legislative and policy development, and continuous improvement and innovation in service delivery, and which reflected and amplified what we learn from our clients and through our research projects.

Our services include:

- individual, couples, and family counselling
- family law counselling, mediation and dispute resolution, and post-separation services for parents and children
- Children's Contact Services (services which provide supervised contact and changeovers for high risk families)
- Specialised Family Violence Services
- services designed for men, including programs to support parenting capacities and resources,¹ Men's Behaviour Change Programs, and tailored programs such as the Respectful Relationships Program for Indigenous clients²
- a range of tailored services for older Australians, including senior relationship services, elder mediation, elder abuse case management and mediation, social

¹ See, eg, Alford, 2023.

² This program, delivered by Relationships Australia Northern Territory in partnership with Darwin Indigenous Men's Service, helps Indigenous men to undertake an exploration of the meaning of respect.

- connection services and mental health services in residential aged care on behalf of Primary Health Networks in South Australia
- therapeutic and case management services to applicants for Redress Support Services, Forgotten Australians, Forced Adoption Support Services, Intercountry Adoptee Family Support Service, and Post Adoption Support Services
 - services designed for men, including programs to support parenting capacities and resources, Men's Behaviour Change Programs, and tailored programs such as the Respectful Relationships Program for Indigenous clients
 - gambling help services
 - alcohol and other drugs services
 - employee assistance programs
 - Headspace (youth mental health) services
 - mental health (including suicide prevention) services and programs, and
 - Family Mental Health Support Services.

To better understand the Australian relational landscape, we relaunched our *Relationship Indicators* research during the 2022-2023 financial year (Fisher et al, 2022). Relationship Indicators is the only nationally representative survey that explores the state of relationships in Australia.³ Relationships Australia is continuing to analyse this data and release special reports on discrete topics. Key findings relevant to this Inquiry include that:

- 1.7 million members of our community (or 8.8%) feel unsafe disagreeing with their most important person, and
- 59% of people who felt unsafe disagreeing with their important person were aged 55 years or more.

Domestic and family violence (DFV) remains a serious and highly prevalent problem among Relationships Australia clients. DFV is endemic to families who seek professional assistance when they are separating or separated (Kaspiew et al, 2015); this means not only that DFV is core business for Relationships Australia, but that it is an ethical imperative to identify and respond to DFV, supporting victim survivors and perpetrators.

DFV is not a discrete phenomenon, but is generally accompanied by a constellation of interacting co-morbidities including substance abuse, mental health problems and personality disorders.⁴ A recent national study of family dispute resolution⁵ ('FDR outcomes') conducted by Relationships Australia involved approximately 1700 participants, of whom:

- nearly a quarter (23%) presented with high levels of psychological distress, and

³ The findings from this report have been quoted in Australia's first Wellbeing Framework.

⁴ See Family Law Council, 2015, 2016.

⁵ See Part II, Division 3 of the *Family Law Act 1975* (Cth).

- 68% reported experiencing at least one form of abuse, with verbal abuse being the most common (64%).⁶

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. The Family Law Act recognises that such exposure is a form of family violence in its own right, of which children are direct victims (subsections 4AB(3) and 4AB(4)).

Drawing on this practice expertise, Relationships Australia National Office has made substantive contributions to recent inquiries focusing on domestic and family violence (including abuse and neglect of older people by family members), which can be found at <https://relationships.org.au/research/#advocacy>. These include our submissions commenting on:

- the Australian Law Reform Commission Issues Paper 48 and Discussion Paper 85
- the 2020 inquiry by the House of Representatives Standing Committee on Social Policy and Legal Affairs into family, domestic and sexual violence
- the inquiry by the Joint Select Committee into Australia's Family Law System
- drafts of the 2022-2032 National Plan to End Violence Against Women and Children
- the inquiry by the Senate Standing Committee on Legal and Constitutional Affairs Committee into the Family Law Amendment Bill (No. 1) 2023
- the Government's exposure draft of the Family Law Amendment Bill (No. 2) 2023, which includes reforms to clarify how DFV should be addressed in financial and property matters before the family law courts, and
- the current Inquiry into financial abuse by the Parliamentary Joint Committee on Corporations and Financial Services.

Framing Principles for this submission

Principle 1 - Commitment to human rights

Relationships Australia contextualises its services, research and advocacy within imperatives to strengthen connections between people, scaffolded by a robust commitment to human rights. Relationships Australia recognises the indivisibility and universality of human rights and the inherent and equal freedom and dignity of all. In our 2023 submission to the inquiry by the Parliamentary Joint Committee on Human Rights into Australia's human rights framework, we recommended that Government should introduce a Human Rights Act that provides a positive framework for recognition of human rights in Australia (Recommendation 2 of that submission).⁷

⁶ See Heard & Bickerdike, 2021a; Heard & Bickerdike, 2021b; Heard, Bickerdike & Lee, 2021.

⁷ Available at https://www.relationships.org.au/wp-content/uploads/PJCHRhumanrightsframework.FINAL_.pdf

Principle 2 – Accessible and inclusive public institutions, regulation and service delivery

Inclusive and universally accessible public institutions, regulation and services are an imperative of human rights. This is because circumstances that operate to exclude, marginalise or discriminate against individuals become barriers to full participation in economic, cultural, political, and social life through the operation of systemic and structural factors including:

- legal, political and bureaucratic frameworks
- beliefs and expectations that are reflected in decision-making structures (such as legislatures, courts and tribunals, and regulators)
- policy settings that inform programme administration, and
- biases or prejudices that persist across society and that are reflected in arts, culture, media and entertainment.

Relationships Australia is committed to ensuring that financial circumstances are not a barrier for people seeking our help. We have always been conscious of the adverse effect that financial stresses can have on family relationships, including as a precipitating factor and a co-occurring factor with DFV (including abuse and neglect of older people and intimate partner violence).⁸ Our practitioners are reporting increases in client households where couples are living ‘separated but together’, because of inability to find or afford separate households. This is leading to increased parental conflict, increased DFV, increased abuse and neglect of older adults, and affects parental capacity as well as parent and child mental health and wellbeing.⁹

Principle 3 - cultural safety and responsiveness

Our commitment to upholding human rights necessarily includes a commitment to respecting epistemologies beyond conventional Western ways of being, thinking and doing. Of acute importance is a commitment to respecting epistemologies and experiences of Aboriginal and Torres Strait Islander people as foundational to policy and programme development, as well as service delivery. Connection to Country, and context-specific experiences of kinship, for example, do not countenance the hyper-individualism that pervades Western assumptions about distribution of resources and obligations between the Western nation-state and individual taxpayers and among individual taxpayers. Centring the epistemologies and experiences of Aboriginal and Torres Strait Islander people is a necessary (although not sufficient) step in achieving the targets in the National Agreement on Closing the Gap.

Current DFV and broader family relationship services are premised on the concept of a Western nuclear family, and do not accommodate the diversity of family formation and composition that now characterises families in Australia. This includes intergenerational households, whether

⁸ See also Morgan & Boxall, 2020; Boxall & Morgan, 2021; Morgan & Boxall, 2022.

⁹ See Kaspiew et al, 2017, for discussion of the impact of DFV on parental capacity and support needs.

emerging from cultural mores or driven by housing and other cost of living pressures), as well as kinship systems. First Nations conceptualisations of drivers of intimate partner violence can differ from those emerging from white feminism (Hunter, 2006).

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 legal advice and assistance, as well as other services that work with people affected by family law proceedings, DFV, child maltreatment, and ANOP. Systems, processes and practices developed in the context of urbanised clients often do not translate well to the situation of First Nations people living in remote areas. Additionally, many of our clients suffer from intergenerational and complex trauma. In some communities, violence has been normalised and cultural practices can obscure financial and economic abuse, such as through 'humberging'.¹⁰ Relationships Australia **recommends** that cultural safety training and trauma informed practice be mandatory across services working with First Nations people in family law and family relationship services, and services which encounter DFV, ANOP and child maltreatment (Recommendation 1).¹¹

Principle 4 - the agency, rights and safety of children

Consistent with Principle 1 (commitment to human rights), and with the policy intent underpinning family law and DFV legislation, Relationships Australia is committed to ensuring that the paramountcy of children's best interests, in all domains, is honoured and upheld. This includes, but is not limited to, ensuring that children's voices and children's safety and developmental needs are centred in all systems and processes with which they engage.

The existing family law system derives from how common law civil disputes have traditionally been resolved, and has been consistently and unequivocally shown to harm children.¹² That harm is intrinsic to the nature of the system, which assigns innately combative roles to parents. Nearly half a century of 'retrofitting' the Family Law Act and supporting processes to centre children, and to soften the edges of win/loss litigation dynamics, has failed to mitigate this harm. Children and young people have been harmed and suffered from entanglement in this system, and later continue to suffer in their adult lives and relationships.

Australian domestic and family violence systems, in their origins, paid more attention to children (Hunter, 2006). However, as they evolved, children's rights and agencies were obscured, and they came to be seen, at the most, as witnesses or secondary victims of DFV.

¹⁰ See Kimberley Birds, 2020.

¹¹ See SNAICC, 2010; see also observations and recommendations in Family Law Council, 2012a and 2012b.

¹² Recognised by the first Chief Justice of the then Family Court of Australia: see Evatt, 1979; see also Crockenberg & Langrock, 2001; Elrod, 2001; Fogarty, 2001. See also the Foreword by then Chief Justice Diana Bryant AO to the Less Adversarial Trial Handbook (2009); FLC, 2016; FCFCOA Fact Sheet, nd; AHRC, 2015-2018; Carson et al, 2018.

This is slowly changing.¹³ A key, and deeply concerning, aspect of the 2018 AIFS report on children and young people in separated families¹⁴ was the accounts given by children and young people who did not feel that they were listened to, or their views in any way acted on, when they raised safety concerns for themselves, or others, such as parents and other children. The lack of visibility children have in relation to family court proceedings concerning them compounds their trauma and feelings of being unsafe and unprotected from family violence. Children and young people reported to AIFS instances where they felt unsafe with a parent with whom they were required to spend time.¹⁵ 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.

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 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)¹⁶

¹³ We acknowledge, in particular, recent research focusing on children and young people in the DFV context, including Carson et al, 2018 (children and young people's experience of the family law system), Mathews et al, 2023 (child maltreatment); ADFV Death Review Network & ANROWS, 2024 (filicides in the context of DFV); Gomersall et al, 2024 (children bereaved by DFV homicide).

¹⁴ Carson et al, 2018.

¹⁵ Carson et al, 2018, 33, 40.

¹⁶ Carson et al, 2018, 51, 81-82.

Carson et al (2018) observed that children in high-risk circumstances had a particular need and wish ‘to be heard and taken seriously.’¹⁷ Some participants felt that they had not been taken seriously when they expressed fears for their safety, or the safety of their siblings. Isabelle reported that

Mmm, they [police] didn’t protect SISTER. They thought it was okay to leave her in his custody when they know that stuff was happening in his house, alone...Mum, like, reported everything, but all of them got turned down. [Interviewer: And this was to police or child protection?] Everything. [Isabelle, 12-14 years]

Recent years have seen mounting research and commentary favouring the participation of children and young people, and noting the increasingly-articulated desire of children and young people to be included in decision-making that affects them. The ALRC commented that

This tension between protection and participation is sometimes framed as a contest between competing principles or rights.....The Committee on the Rights of the Child has suggested that there is no tension between children’s welfare or best interests (art 3) and their right to participation (Article 12). Instead, they are complementary...[at paragraph 7.18]¹⁸

Relationships Australia has been heartened by recent progress towards elevating the rights and agency of children and young people, and amplifying their voices at systemic levels and in legal processes concerning them as individuals. We welcomed the ALRC’s recommendation for a children and young people’s advisory group for the family law system,¹⁹ the 2023 reforms to strengthen the role of Independent Children’s Lawyers and their direct engagement with children,²⁰ and the expectation, set out in the National Principles to Address Coercive Control in Family and Domestic Violence, that the perspectives of children and young people be sought in implementation of the Principles. We look forward to the upcoming report by the Family Law Council on support for children and young people and how to strengthen their voices.²¹

Principle 5 – accessible legal and regulatory frameworks

Legal and regulatory frameworks should be clear, intelligible, accessible and inclusive. Accordingly, Relationships Australia is committed to advocating for:

- reducing complexity of the law and its supporting systems and processes

¹⁷ Carson et al, 2018, 42.

¹⁸ See also AHRC, 2015-18.

¹⁹ ALRC Report 135, Recommendation 50.

²⁰ See new subsections 68LA(5A), (5AA), (5B), (5C) and (5E).

²¹ The Council is due to deliver a report on its current Terms of Reference to the Attorney-General on or before 2 December 2024; its release will be a matter for Government. The Terms of Reference are accessible at <https://www.ag.gov.au/sites/default/files/2022-09/family-law-council-terms-of-reference.pdf>

- reducing fragmentation, and
- high quality and evidence-based regulation, accompanied by robust and timely accountability mechanisms.

Principle 6 – geographic equity

Relationships Australia advocates for geographic equity in the availability of services for people affected by abuse and neglect of older people and intimate partner violence.

Principle 7 – fragmentation and siloing

Our commitment to accessibility also underpins our advocacy for systems and processes that lift from the shoulders of those least equipped to bear them the burdens of fragmented, siloed, complex and duplicative or inconsistent laws, policies, programmes, and administering entities. The complex co-morbidities and intersectionalities experienced by many victim survivors²² can limit their cognitive and emotional capacity to navigate the multiple services and agencies with which they must engage to obtain FVOs.²³ In the context of women experiencing or escaping ‘domestic financial abuse’ in the United States of America, Canada and the United Kingdom, for example, Glenn (2019) cautioned that policy makers, service providers and financial institutions need to have an ‘[u]nderstanding that system complexity and lack of cognitive bandwidth means many survivors can’t or don’t access the limited support available’ and should be ‘working to simplify systems and processes and improve access to resources.’²⁴

Relationships Australia is committed to promoting accessibility of its services, and advocating for accessibility, including by:

- reducing fragmentation
- reducing complexity of the law and its supporting processes, to benefit not only those families who require a judicial disposition of their matters, but also families who will ‘bargain in the shadow of the law’,²⁵ and
- reducing barriers to access arising from financial or economic disadvantage, as well as other positionalities and circumstances that create barriers to accessing services (including by promoting geographic equity).

²² See, eg, ALRC, 2018, Discussion Paper 86 (esp Chapters 1 and 4); Family Law Council reports, 2015 and 2016.

²³ The National Principles to Address Coercive Control in Family and Domestic Violence, 2023, note that ‘A victim-survivor can also be affected by memory loss; blocking off memories of abuse as a psychologically protective measure’ (p 14). Recent research has concluded that ‘as CTE is typically associated with cognitive and behavioral symptoms, future IPV interventions need to recognize the possibility of these deficits affecting individuals with longstanding RHI exposure, with intensive and specialized support for those at risk’ (Tiemensma et al, 2024).

²⁴ Glenn, 2019, p 53.

²⁵ A term originating in Mnookin & Kornhauser, 1979, and used extensively in Australian family law literature; see, eg, Crowe et al, 2018.

In the context of this Committee's Terms of Reference, fragmentation and siloing of systems, services and professional disciplines is well-documented. The influential ALRC/NSWLRC report into a national legal response to family violence observed that

A key element of the challenge of this Inquiry is that, in the area of family law, neither the Commonwealth nor the states and territories have exclusive legislative competence. The result is an especially fragmented system with respect to children. Moreover the boundaries between the various parts of the system are not always clear and jurisdictional intersections and overlaps are 'an inevitable, but unintended, consequence'. (citing the Family Law Council, 2000)

For example, family violence involving children may arise as a dispute between parents and the state in a children's court—where care and protection proceedings are initiated with respect to a child or children—or as a dispute between parents in a court with jurisdiction under the Family Law Act. There is also a danger that issues concerning violence may fall into the cracks between the systems. The consequence of the division of powers means that:

neither the Commonwealth nor the States' jurisdiction provides a family unit with the complete suite of judicial solutions to address all of the legal issues that may impact on a family in respect of their children.²⁶

The fragmentation of the system has also led to a fragmentation of practice. A number of stakeholders in this Inquiry commented that the different parts of the legal framework dealing with issues of family violence operated in 'silos' and that this was *the key problem* in the system. Although the laws utilised within each 'silo' might be perceived to operate effectively, or to require minor refinement and change, the problems faced by victims of violence required engagement with several different parts of the system. Consequently, as discussed particularly in Chapter 2 and Part E, these people could be referred from court to court, and agency to agency, with the risk that they may fall into the gaps in the system and not obtain the legal solutions—and the protection—that they require. [references omitted]

Although the laws utilised within each 'silo' might be perceived to operate effectively, or to require minor refinement and change, the problems faced by victims of violence required engagement with several different parts of the system. Consequently these people could be referred from court to court, agency to agency, with the risk that they

²⁶ Citing Moloney et al, 2007, [paragraph 7.3.2].

may fall between the gaps in the system and not obtain the legal solutions—and the protection—that they require.²⁷ (at Volume 1, p 52) [emphasis added]

These observations – and the many others on the same issue in that and subsequent reports - hold 14 years later, despite enormous effort and energy being expended to improve matters. In its 2019 report on Australia’s family law system, the ALRC again identified issues arising from fragmentation of protective orders made in the context of family violence.²⁸

In 2022, and in the context of the ACT’s DFV system, Easteal et al wrote that

the complexities and inadequacies of the dynamic between the ACT’s FV legislation and the federal family law system emerged in our research as a key issue that affected safety for victim/survivors and their children. (p 24)

Chronically under-funded service providers of diverse disciplines have worked hard to develop networks and collaborations to ameliorate the impact of silos on our clients, despite apparently intractable administrative siloing. The situation is analogous to that described by Dr Warren Mundy in his recent review of the National Legal Partnership:

Service providers show a strong capacity and willingness to collaborate with each other; the challenges in collaboration seem largely limited to some central agencies. However, the level of competitive tendering has taken us to a place where, by design, we put organisations that are collaborative by nature in competition with each other. In some cases, that competition can have existential outcomes. (p iv)

Victim survivors of DFV remain endangered by silos in family law, DFV, ANOP and child maltreatment services. Only governments can solve these issues because, at the most fundamental level, they are innate artefacts of our federated system.

²⁷ See also ALRC Report No. 114/NSWLRC Report No. 128 at p 138: ‘Although the laws utilised within each ‘silo’ might be perceived to operate effectively, or to require minor refinement and change, the problems faced by victims of violence required engagement with several different parts of the system. Consequently these people could be referred from court to court, agency to agency, with the risk that they may fall between the gaps in the system and not obtain the legal solutions—and the protection—that they require.’

²⁸ See ALRC Report 135, paragraphs 4.30, 4.38, Appendix G; see also Hester, 2011; Taylor, et al, 2015.

Comments responding to the Terms of Reference

1. The risk of an escalation in the aggressive and violent behaviour of the perpetrator and heightened risk to the partner and children during family court proceedings.

The following comments are caveated with reference to the discussion by Boxall and Lawler (2021) on the ambiguities of defining and measuring escalation. The authors also note that escalation is not inevitable, underlining the importance of early identification of both people at risk of using violence and people already using violence, and of service responses that disrupt potential escalation.

Victim survivors of DFV express to us fears of applying for an FVO, because of perceived risks that the perpetrator will retaliate and escalate, or that they will make counter-accusations, leading to the victim survivor being misidentified as the aggressor.²⁹ Another deterrent to applying for an FVO is fear that the perpetrator will lose their job, which may compromise the perpetrator's ability to pay child support and thus have significant adverse impacts on the whole family. We also have clients whose violent partners or ex-partners are police officers; this is a circumstance that heightens fears, both of job loss and also of retaliatory violence and other forms of abuse, such as surveillance and technology-facilitated abuse.

The making of an FVO should be seen as an opportunity for making interventions and supports available to perpetrators. Relationships Australia **recommends** that making an FVO should be catalyst for providing direct support to a partner using violence, with courts providing information to that partner about interventions, and making warm referrals to services (including Men's Behaviour Change Services, housing services, services for harmful use of alcohol, other drugs and harmful gambling, as well as mental health supports) (Recommendation 2). Of course, this will be effective only if services are resourced to follow up promptly with the partner using violence.

Extensive research literature demonstrates that the use of domestic and family violence can escalate around life transitions, as perpetrators seek to maintain control and dominance. These transitions include:

- pregnancy
- childbirth
- attempts to separate
- separation, and

²⁹ Misidentification of the victim survivor as the perpetrator is well-documented. There is a heightened risk of misidentification among members of communities that experience disproportionate incarceration. See, eg, Nancarrow et al, 2020; Reeves, 2020.

- the institution, progress and finalisation of legal proceedings.³⁰

The experience of Relationships Australia clients is consistent with this research. Family court proceedings (whether concerning arrangements for children, or division of property) can present particular dangers for victim survivors. These dangers include aggressive and violent behaviour, as well as exploitation of opportunities presented by legal proceedings to maintain contact and control to perpetuate abuse.

Relationships Australia has welcomed recent reforms to reduce these opportunities, including by limiting the use of subpoenae in favour of court-led information gathering.³¹ The power, conferred by section 102QAC of the Family Law Act, to make harmful proceedings orders is also a promising measure. Nevertheless, opportunities to manipulate court processes, and other systems, remain.

Children

Relationships Australia acknowledges significant progress in reforms that recognise children as victim survivors of DFV in their own right and which elevate their safety as a priority. However, we remain concerned that the intersections between the Commonwealth family law system and the State/Territory DFV and child protection systems continue to endanger children; including children who may not be named in an order, but who may reside in households where orders are operationalised.³²

While formal legislative and policy settings may well deliver improvements in safety over time, the legacy in popular thought of equal shared parental responsibility, of notions of ‘unfriendly parents’ (generally mothers), and concerns about parental alienation (generally by mothers), continue to influence the behaviour of some separating parents - and their advisers. For example, parents alleging DFV may still be discouraged from naming children on family violence orders for fear that adverse inferences will be drawn in later proceedings under Part VII of the Family Law Act.³³ This removes opportunities for therapeutic interventions, inhibits the ability of the Family Court to have a clear understanding of risks to children, and can distort negotiations between parents who never approach the Court or withdraw from litigation

³⁰ See, eg, Adhia et al, 2020; Carbone-Lopez et al, 2012; National Principles to Address Coercive Control in Family and Domestic Violence, 2023, 1.

³¹ Through the National Strategic Framework for Information Sharing between the Family Law and Family Violence and Child Protection Systems and supported by 2023 amendments of the *Family Law Act 1975* (Cth) See <https://www.ag.gov.au/families-and-marriage/publications/national-strategic-framework-information-sharing-between-family-law-and-family-violence-and-child-protection-systems>

³² Accordingly, in commenting on the Family Law (Federal Family Violence Orders) Bill 2021, Relationships Australia recommended that the Commonwealth, States and Territories ensure that operationalisation of the Framework takes the broadest possible approach to ensure that safeguards apply to any children who may be affected by an order, whether or not they are named or concerned in proceedings under Part VII of the Act. (Recommendation 2 of our submission to the Senate Legal and Constitutional Affairs Legislation Committee). That Bill lapsed on the dissolution of Parliament in April 2022.

³³ See the National Domestic and Family Violence Bench Book, 2023, paragraph 7.7, for discussion of inferences in these circumstances.

before final orders by a judicial officer following contested hearings, but are instead ‘bargaining in the shadow of the law’.

Consequently, effectiveness of reforms to promote safety from DFV is largely contingent on public awareness that they exist, and understanding of what they mean for victim survivors, perpetrators, their families and communities. This has been recognised by Australian Governments, including in the National Principles to Address Coercive Control in Family and Domestic Violence (the Coercive Control Principles).³⁴

Consistent with previous submissions therefore, we **recommend** that safety reforms in family law and family violence be accompanied by an adequately-resourced, coordinated, nationally consistent and ongoing public education and awareness campaign (Recommendation 3). The Commonwealth, States and Territories should each contribute to this. We further **recommend** that Australian Governments ensure that relevant professional groups across the family law, family relationships, domestic, family and sexual violence, and child protection systems, receive appropriate initial and ongoing professional development, to ensure that policies and service responses are supported by the best available contemporary evidence (Recommendation 4).

We **recommend** that:

- the Government should involve professionals and judicial officers in co-designing a training package for court staff, including judicial officers, registry staff, and court-employed professionals such as Court Child Experts in the Federal Circuit and Family Court
 - programs to raise awareness of the National Strategic Framework for Information Sharing between the Family Law and Family Violence and Child Protection Systems (the Information Sharing Framework) extend to Family Dispute Resolution Practitioners and other professionals who work in Family Relationship Centres and Children’s Contact Services, as well as to members of Family Law Pathways Networks
 - training and awareness programs should deal explicitly with the relationship between the Information Sharing Framework and applicable Commonwealth, State and Territory privacy legislation, and
 - resourcing should be made available on a recurrent basis to support initial and ongoing refresher training, to enable professionals to keep up to date as the Information Sharing Framework and associated arrangements evolve.
- (Collectively, Recommendation 5)

Escalation after proceedings – implementation of court orders

Relationships Australia also wishes to emphasise that DFV can also escalate not only during, but also *after* proceedings; orders can inadvertently create opportunities for that to occur. In other

³⁴ See, eg, p 7.

words, the family law court and any final orders that it might make is not the end point for DFV; rather, it represents a new phase within which DFV may persist and, indeed, intensify so that there is increased risk to victim survivors.

This can occur, first, through the *implementation of court orders*. For example, where an order (including a consent order) is made for a violent parent to spend time with children but does not sufficiently take into account safety considerations,³⁵ the violent parent can exploit that to maintain contact with, and dominance and control over, children and the other parent. Relationships Australia has suggested in previous submissions that circumstances contributing to making unsafe orders include:

- the difficulties encountered by family law courts in gaining access to accurate and up to date safety and risk information (whether because parties to proceedings did not tender appropriate evidence or because other agencies did not or could not provide information),
- the employment of coercive controlling techniques outside the court room (and in separate systems such as the child support system or the migration system) to create a climate of fear that coerces a victim survivor to acquiesce to unsafe orders, without the court necessarily being aware of safety concerns, and
- the influence of the statutory presumption of equal shared parental responsibility and linkage of the concept of parental responsibility with that of time spent.³⁶

We therefore supported the Information Sharing Framework, the Co-Location Program,³⁷ and the associated 2023 amendments of the *Family Law Act 1975 (Cth)*³⁸ to address the first of these circumstances, and the removal of the statutory presumption of equal shared parental responsibility to address the third. We have previously **recommended** to Government that it commission a study on the impact of the repeal of the statutory presumption and take this opportunity to reiterate the value that such a study could have on developing the evidence base about the impact of the repeal on safety risks (Recommendation 6).

In relation to the Commonwealth legislation supporting implementation of the Information Sharing Framework, we draw to your attention our **recommendation** to Government that training materials and the Information Sharing Protocol must build on the safeguards in the Act and the Regulations by paying specific attention to police perpetrators and police officers who engage in conduct that risks the safety of victim survivors of domestic and family violence and child maltreatment and/or the safety of notifiers (Recommendation 7).

The information sharing amendments to the Family Law Act will be subject to statutory review pursuant to section 67ZBL. Clause 4.5 of the Information Sharing Framework indicates that

³⁵ See eg Carson et al, 2022.

³⁶ See also Carson et al, 2022.

³⁷ See artd, 2022, for the final report of its evaluation of the Co-Location Pilot. The program is funded until 30 June 2025.

³⁸ See the *Family Law Amendment (Information Sharing) Act 2023*.

Consideration will be given to including other bodies as AISEs [Authorised Information Sharing Entities] under the Information Sharing Framework in the future. These could include:

- state and territory corrections agencies and facilities
- state and territory youth justice agencies and facilities, and
- non-government organisations, such as specialist family violence services.

Relationships Australia would support these extensions, and further **recommends** that services such as Children’s Contact Services, Family Dispute Resolution services, and post-separation parenting programme providers be included (Recommendation 8). As previously canvassed in this and other submissions, services such as these routinely encounter people who use violence, including people exercising coercive control through systems abuse. Such individuals can see services that are not badged specifically as DFV services as ‘soft targets’ through which to perpetrate abuse. In extending the scope of the Information Sharing Framework, Government would be hardening these services against abuse, and making them safer for victim survivors.

Escalation can also be manifested through *non-compliance with orders* by either or both of a perpetrator and a victim survivor partner. Carson et al (2022) found that ‘...non-compliance arises from a complex interplay of difficult interpersonal dynamics, including family violence, and systemic limitations in the response to them’. A perpetrator who uses coercive control can deliberately or disingenuously not comply with an order. Carson et al (2022) also found that

Family violence and safety concerns are also a key contributor to non-compliance where such concerns were not brought to the court’s attention or were not given due consideration in the development of parenting orders, resulting in inappropriate or unsafe parenting orders or orders not accepted as safe by the contravening party.³⁹

This report into compliance with, and enforcement of, family law parenting orders also remarked that

In the context of the findings demonstrating that fathers are more likely to be instigators of litigation in both primary parenting proceedings and contravention matters, and the concerns expressed by professionals and parents about the misuse of litigation, these patterns support concerns that the contravention regime may be subject to misuse. (Carson et al, 2022, at p 120)

Carson et al, 2022, noted evidence about the experiences of families where an FVO was in place, and who were also affected by non-compliance with family law parenting orders:

³⁹ Carson et al, 2022, at p 15.

More than a quarter of all contravention matters involved current or previous involvement of state child protection agencies (28%) either at the time of the contravention proceedings or during the primary parenting proceedings, although it is noted that this involvement more commonly arose in the context of the primary parenting proceedings (Table A17, Appendix A) Also of note, half of all contravention matters (50%) were identified as having a current or past personal protection order (PPO) on their court file, with more than one quarter of these PPOs (27%) being PPOs in place in the past, 17% being current PPOs and 6 per cent having both past and current PPOs. (Table A18, Appendix A)⁴⁰

Finally, as noted in our submission to the Joint Select Committee inquiry into Australia's Family Law System, stakeholders have for some time insisted on 'the need for improved measures to support highly conflicted parties to implement parenting arrangements and develop positive post-order communication.'⁴¹ In this regard, Relationships Australia National Office and Relationships Australia Western Australia have, for example, briefed the Commonwealth Attorney-General's Department on the use of Parenting Coordination, domestically and overseas, as an innovation that can add to the suite of tools available to services and parents in high conflict families.

Recommendations 38 and 39 of ALRC 135 focused on court-based solutions to issues of implementation. However, high quality post-order support does not require expensive court resources. We **recommend** that post-order and post-agreement services, outside the often-distressing court setting, should be available in accordance with principles of geographic equity and universal access (Recommendation 9).

⁴⁰ Carson et al, 2022, at p 103.

⁴¹ Acknowledged also in ALRC Report 135, paragraph 11.1.

2. The current barriers for litigants in the family law system to obtain and enforce FVOs, including but not limited to:
 - a) the additional difficulty for victims of violence in the family law system to attend multiple courts for their family law order proceedings and an FVO
 - b) the intersection between FVOs and parenting orders, including that a family court parenting order may override an FVO
 - c) the availability of wrap-around support services and security for victims of violence.

Multiple courts (Term of Reference 2 (a))

Fragmentation endangers and harms victim survivors.

We acknowledge recent progress towards making it easier to obtain and enforce FVOs.⁴² In previous submissions (including to this Committee's 2020 inquiry), we have canvassed in detail the origins, nature and impact of fragmentation and silos, and consistently argued that the burdens of navigating multiple courts, government agencies and service providers, and reconciling their disparate functions and requirements, must be lifted off the shoulders of those least equipped to bear them. Many of the 'seams' are an inescapable consequence of our federal system, but they should be invisible to families affected by DFV.

Nevertheless, significant barriers still remain. These include logistical barriers of engaging with multiple courts, and conceptual barriers which derive from the disparate purposes of the family law system compared with the DFV and child protection systems. DFV systems have been developed with the goal of protecting victim survivors through separation from people who use violence. The Australian family law system, particularly following the 2006 amendments, has sought to maintain relationships between parents and children, sometimes regardless of safety considerations.⁴³

Carson et al, 2022, noted that

A recent longitudinal study by Douglas (2021) detailed the experiences of 65 women who used a range of legal processes including personal protection orders and family law jurisdictions. For the purposes of this discussion, there are three particularly pertinent themes in her work: the financial implications of needing to use justice services; limited

⁴² Such as the National Domestic Order Violence Scheme and the information sharing arrangements canvassed in our response to Term of Reference 1.

⁴³ See also, eg, Hester, 2011; Easteal et al, 2022.

understanding of family violence among decisionmakers; and the capacity for legal processes to be used as an extension of the abuse.

In reviewing the *Family Violence Act 2016* (ACT), Easteal et al (2022) noted:

- disharmony and communication between the *Family Violence Act 2016* (ACT) and family law processes and outcomes including FVOs and parenting orders;
- reluctance to include children on FVOs (if family law proceedings were underway or an order in place), and to disclose (the effects of) family violence due to concerns about how this could affect future family law matters (for example, by enabling a perpetrator to question a victim survivor's parenting capacity); and
- that adult victim survivors of DFV may feel pressured into accepting an undertaking for contact/time between perpetrator parents and their children, and how not applying for an FVO, or accepting an undertaking in lieu of an order, may affect the family law courts perception of the seriousness of DFV when it is disclosed. (at p 25)

In recent years, there has been extensive effort invested in promoting information sharing through the Information Sharing Framework and complementary legislative amendments. Nevertheless, significant limitations on information sharing remain, as highlighted in the National Domestic and Family Violence Bench Book.⁴⁴

These limitations pose unacceptable risks to victim survivors. Furthermore, negotiating the gaps and inconsistencies caused by these limitations imposes on our clients untenable practical and logistical burdens while in distress and experiencing ongoing effects of trauma. For over a decade, expert reviews have made recommendations to ameliorate the situation, often anchored in the idea that one court should be able to meet all of the DFV safety needs of those who approach it.⁴⁵

Relationships Australia **recommends** that, to reduce the burdens of fragmentation on victim survivors, the Commonwealth Government amend the Family Law Act to empower and resource the Federal Circuit and Family Law Court to make FVOs (Recommendation 10). This could be done by introducing a Bill similar in intent and effect to the Family Law Amendment (Federal Family Violence Orders) Bill 2021, which lapsed on the dissolution of Parliament in 2022.

Relationships Australia further **recommends** that Australian Governments work together to resource training for judicial officers across all State and Territory jurisdictions to empower them to:

⁴⁴ See, for example, paragraphs 7.3, 7.7.

⁴⁵ See, eg, ALRC Report No. 114/NSWLRC Report No. 128; this Committee's 2017 report on the intersection between the family law system and families affected by family violence where it noted, among other concerns, the gaps in protection arising from reliance upon the injunctive powers in the Family Law Act.

- understand and implement trauma-informed and DFV-informed practices,
- make FVOs under the Family Law Act, and
- confidently make and vary orders under Part VII of the Family Law Act. (Recommendation 11).⁴⁶

We also reiterate our **support**, expressed in our 2020 submission to this Committee's inquiry, to empower, facilitate and appropriately resource State and Territory judges to make orders to help families already before them on other matters (eg child welfare and victims of crime compensation matters).

To ensure that all courts making FVOs can be confident they are making decisions based on the best available evidence, especially as to safety, we also **recommend** that Governments extend the National Domestic Violence Order Scheme as contemplated in the 2015 Interim Report of the Family Law Council to include orders from all family law courts, State and Territory children's courts, and State and Territory mental health tribunals (Recommendation 12).⁴⁷ Consistent with our recommendations to this Committee's 2020 inquiry into family, domestic and sexual violence, we further **recommend** that, to further reduce the safety risks arising from fragmentation:

- consistent with our recommendations about amending the *Family Law Regulations 1984* (Cth) (see regulation 12CBA) to expand the range of Authorised Information Sharing Entities - the National Domestic Violence Order Scheme be extended, with appropriate safeguards,⁴⁸ to allow service providers to access orders that are in place,
- the federal family law courts give service providers 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,⁴⁹ and
- state and territory authorities work with the federal family law courts to allow federal judges access to information about state/territory services accessed by families. (Collectively, Recommendation 13).

⁴⁶ Building on existing guidance in resources such as the National Family and Domestic Violence Bench Book, 2023.

⁴⁷ See especially Recommendation 5. See also Family Law Council, 2016, Chapters 5 and 9; Recommendation 3 of ALRC Report 135.

⁴⁸ Potentially informed by the harm prevention and data minimisation principles underpinning the *Family Law (Information Sharing) Act 2023* and regulations made pursuant to that Act, as well as the information sharing protocols guiding the operationalisation of these reforms.

⁴⁹ ALRC Discussion Paper 86, Proposal 11-6.

Intersection between FVOs and orders under Part VII of the Family Law Act

The intersection between FVOs and Family Law Act orders under Part VII is complex, and this complexity is a source of endangerment. Our clients express confusion and fear about how an FVO (especially if it extends to children) will affect existing parenting arrangements, and about how court-ordered parenting arrangements may affect their ability to obtain and enforce an FVO.

For example, many clients have an FVO in place that prevents contact between parents, or even contact between a parent and children. It is not uncommon that, notwithstanding the FVO, a family law court will order contact or even that the party using violence will become the ‘lives with’ parent.⁵⁰ Such orders tend to be made with the objectives of facilitating a ‘meaningful relationship’ with that parent, and have apparently been made in the belief that this was necessary, pursuant to the recently-repealed statutory presumption of equal shared parental responsibility.⁵¹ Relationships Australia is hopeful that the repeal of that presumption will render less likely the making of unsafe orders. To ensure that policy and legislative reforms in this area is evidence-based, we have previously **recommended** that the Commonwealth Government commission longitudinal research on the effect of the repeal of that presumption.

Sometimes, a family law court orders that parties engage in Family Dispute Resolution (FDR),⁵² notwithstanding an FVO to the contrary. Alternatively, an FVO might be made in terms that create confusion and ambiguity as to whether the order permits or requires that FDR be undertaken (and, if so, under what conditions), or whether Children’s Contact Services may be accessed. Our practitioners in these and other service streams routinely encounter clients who present as being uncertain and confused about the meaning and intended effect of orders that have been made (and even whether any orders have been made by any court). Some clients will be reluctant to allow our practitioners to view orders (which we seek to do so that we can be confident that offering a service does not breach existing orders).⁵³ Both of these circumstances intensify confusion and fear, while also creating opportunities for systems abuse.⁵⁴

Relationships Australia therefore **recommends** that the National Domestic Violence Order Scheme be extended, with appropriate safeguards, to allow service providers to access orders that are in place (see Recommendation 13).

⁵⁰ See Carson et al, 2022: ‘Empirical research prior to this current study [compliance with and enforcement of family law parenting orders] has also indicated deficiencies in the consideration of family violence when making parenting orders.’ (p 27)

⁵¹ See previous sections 61DA and 65DAA of the *Family Law Act 1975* (Cth).

⁵² Defined in Part II, Division 3 of the *Family Law Act 1975* (Cth).

⁵³ Practitioners may decline service even in the absence of an FVO if, in their professional judgement, it would be unsafe to offer service.

⁵⁴ The National Family and Domestic Violence Bench Book, 2023, addresses the potential for inconsistencies at paragraph 7.7; see also Chapter 8 (Perpetrator interventions).

There is concern, too, among our clients and their legal advisors about inferences that family law courts may draw from the existence or terms of an FVO (especially if mutual orders are in place)⁵⁵ or that a magistrate may draw from the existence or terms of an order under Part VII (including a consent order).⁵⁶ Further, as noted in the National Family and Domestic Violence Bench Book (2023),

Judicial officers should be aware when making protection orders naming children as protected people in these circumstances that there may be a considerable delay before parenting matters, including contact, can be dealt with by the Family Court, and that the new status quo established by the protection order may impact on the outcome of any subsequent parenting proceedings. (paragraph 7.7; see also paragraph 7.8)

These concerns are compounded exponentially for many of our clients experiencing cultural or racial marginalisation (CARM). Language-accessible, and culturally appropriate, information and advice about FVOs and family law issues is inconsistent and hard to find. Interpreting services can be financially inaccessible, or otherwise unreliable in providing accurate translation and interpretation. This can arise from their own lack of understanding of family law and family violence systems. Relationships Australia **recommends** that Australian governments resource independent interpreter services with appropriate training in intimate partner violence, abuse and neglect of older people, child maltreatment, family law, and trauma (Recommendation 14).

There is ongoing evidence that judicial officers can be deterred from exercising the full array of powers available to them because of concerns about interactions between FVOs and orders made under the *Family Law Act 1975* (Cth). Relationships Australia acknowledges the work that has been done to address this (such as the Family Violence Bench Book) and, to complement these initiatives, **recommends** that Australian Governments should combine to resource initial and ongoing training, for judicial officers, in relation to:

- DFV-informed practice
- trauma-informed practice,
- the powers available to them in making FVOs and parenting orders.⁵⁷ (see Recommendation 11).

Wraparound support services – Term of Reference 2(c)

The drivers of gender-based violence, intimate partner violence, abuse and neglect of older people, and child maltreatment are each multi-factorial; so too must be the mechanisms by

⁵⁵ See Hunter, 2006, eg p 762. There is a heightened risk of mutual orders where coercive control is present and where perpetrators are able to persuade police officers and courts that they are either the person most in need of protection, or that violence is mutual. Law and justice professionals may confuse self-defence or retaliatory violence with mutual violence: see, eg, National Principles to Address Coercive Control in Family and Domestic Violence, 2023, p 18.

⁵⁶ See the National Domestic and Family Violence Bench Book, 2023, paragraph 7.7, for discussion of inferences in these circumstances.

⁵⁷ While there are limitations on requiring that judicial officers undergo training, training and other resources, tailored to judicial officers, should nevertheless be made available.

which we seek to stop them. For the Committee to most effectively fulfil its Terms of Reference, we **recommend** that it engage with service providers with expertise in identifying and addressing multi-factorial circumstances and in working with diverse client bases, including those experiencing compound circumstances of marginalisation and disadvantage (Recommendation 15).

As noted above, victim survivors are endangered by the ongoing need to navigate fragmented systems and services. For example, our practice experience, confirmed by research, shows that:

- people experiencing physical violence in relationships use at least four wellbeing or family law services before or during separation (Kaspiew et al, 2015)
- people reporting physical harm before or after separation are twice as likely to use a counselling, relationship or dispute resolution service than a domestic violence service, (Kaspiew et al, 2015), and
- parents accessed an average of eight different services when finalising parenting disputes under the Family Law Act. (Carson et al, 2018).

The evidence base consistently demonstrates the necessity, for people experiencing DFV, of being able to access an array of relevant services with as little ‘friction’ as possible.⁵⁸ People experiencing, or at risk of experiencing, abuse, violence and exploitation need a range of service options across diverse practices. Additional services may be needed to address co-morbidities including intergenerational trauma, harmful gambling, harmful use of alcohol and other drugs, and mental ill-health.

There are multiple examples demonstrating the benefits and effectiveness of wraparound services. For example, the recent final report of the review, by Dr Warren Mundy, of the National Legal Assistance Partnership, described how the FVPLS service model delivers wraparound services.⁵⁹

The Family and Advocacy Support Services in the court system have proven invaluable to women and men. Relationships Australia **recommends** the FASS being extended to be available at all family law and DFV courts (and potentially children’s courts), on all hearing days (Recommendation 16).⁶⁰ Relationships Australia practitioners have also **suggested** that FASS be extended to act as a client/court liaison when victim survivors are involved in proceedings before family law and DFV courts. This could also have the benefit of relieving Independent Children’s Lawyers of these roles, often conferred upon them by default, and for which they are not resourced, and would support courts to ensure that orders are the best possible to promote safety.

⁵⁸ See, eg, Hester, 2011.

⁵⁹ Mundy, 2024, p 92, Box 5.2.

⁶⁰ See also ALRC Report 135, Recommendations 57 and 58.

Consistent with our recent submission to the inquiry by the Australian Law Reform Commission into justice responses to sexual violence, Relationships Australia **recommends** that:

- all prosecution offices and courts be child safe organisations
- governments fund case management and navigation support for people using the family law, DFV and child protection systems
- police, prosecutors and court staff be equipped and empowered to provide victim survivors with warm referrals to case management and psychosocial supports
- providers of psychosocial support services, with expertise in working with victim survivors of sexual violence, be embedded at all courts hearing sexual violence matters; those providers should also be resourced, and have the capability, to ‘warm refer’ victim survivors to other support services, if needed.⁶¹

(Collectively, Recommendation 17).

Relationships Australia **recommends** that the Commonwealth Government implement Proposals 4-1 to 4-4 made by the Australian Law Reform Commission in Discussion Paper 86 (see also Proposal 8-2), which offer a comprehensive and well-supported model for wraparound services that would most effectively lift the burdens of fragmentation from the shoulders of victim survivors, those engaged in family law proceedings, and separating/separated parents who ‘bargain in the shadow of the law’ (Recommendation 18).

⁶¹ In designing these services, governments should have regard to the principles set out in Mental Health Australia & National Mental Health Consumer & Carer Forum, 2024, p 8.

3. How FVOs could be more accessible for victims of violence going through the family law system, including but not limited to:
 - a) making it easier to apply for and enforce an FVO
 - b) co-location arrangements that would allow an application or enforcement of an FVO to be heard in the same physical location as the Federal Circuit and Family Court of Australia
 - c) the legal and non-legal support services required to promote early identification of and response to family violence.

Relationships Australia supports initiatives to make it easier to apply for and enforce FVOs, and co-location arrangements of the kind described in paragraph (b) of Term of Reference 3.

We **recommend** that the Commonwealth Government extend the Co-location Program (currently funded only until 30 June 2025) as an ongoing element of the federal family law system (Recommendation 19). The evaluation of the Co-location Pilot found that

The most significant change resulting from co-location reported to date, includes the ease of information sharing (reported by 91% of partnership survey respondents) and better outcomes for children and families (reported by 29% of partnership survey respondents).... Despite the challenges of COVID-19, the co-location model has largely been implemented as intended in 15 registries across the country. All 22 co-located officials were appointed and commenced their roles by June 2020. The co-located officials are a dedicated resource to facilitate information sharing with the family court, ensuring that decision makers have access to available and relevant information to safeguard those at risk of, or experiencing family violence. Stakeholders report that sharing information to identify and manage risks to child or family safety benefits the court, departmental agencies and families and children.⁶²

To accurately identify risks, and to enable implementation of strategies to link services and ameliorate fragmentation, we **recommend** that Australian Governments implement systematic, universal screening of victim survivors, *and* persons using (or at risk of using) DFV, at the earliest possible engagement (Recommendation 20). This would support collaboration and early response. An audit of data collected by Relationships Australia South Australia found that clients reported concerns about mental health, violence and harm to children. Reports included self-reports and disclosures of use of DFV.⁶³ The audit analysed over 3,200 files from 2013-2018.

⁶² artd, 2022, p ii.

⁶³ See McIntosh et al, 2021.

Relationships Australia would be happy to explore with the Committee how use of DOORS⁶⁴ can assist in screening for risk, providing families with wraparound services and support them in their engagement with the family law, DFV, child protection and criminal justice systems.

Legal and non-legal support services required to promote early identification of and response to family violence

It is, perhaps, unhelpful to refer to ‘non-legal support services’, as this obscures and unjustifiably diminishes the necessity for highly skilled and experienced professionals across a range of specialist disciplines to contribute to the aim of ending gender-based violence in a generation. The use of this language arguably also contributes to the difficulty in recruiting, retaining and appropriately remunerating these professionals.

It is also unfortunate that governments have tended to take a narrow view of which services exist at the ‘coalface’ of DFV, generally focusing on police, legal advice and specialist DFV services. Much like general practitioners, service providers like Relationships Australia are often first points of contact by people seeking help when they are worried about, or feel unsafe in, their relationships. DFV may not be the initially presenting issue; clients may instead approach us through our gambling help, alcohol and other drugs and mental health services. However, through use of screening tools such as DOORS,⁶⁵ and as relationships of trust are built, DFV is often disclosed. As noted previously, Relationships Australia member organisations are also funded to provide services where DFV is a principal presenting issue (eg Children’s Contact Services and Parenting Orders Programs).

In addition, while Relationships Australia **supports** advocacy for specialist DFV courts, we would urge that all courts should have an understanding of DFV. Given Australia’s geography and population distribution, it is unlikely that all areas could ever be serviced by specialist courts. It is therefore imperative that all courts be empowered and effective in identifying and addressing DFV.

⁶⁴ McIntosh & Ralfs, 2012; McIntosh, Wells & Lee, 2016; Wells et al, 2018. See also Meyer et al, 2023.

⁶⁵ McIntosh & Ralfs, 2012; McIntosh, Wells & Lee, 2016; Wells et al, 2018.

4. Any other reform that would make it safer and fairer for victims of violence in the family law system who need the protection of FVOs.

Perpetrator interventions

Members of the Relationships Australia Federation provide perpetrator intervention programs (commonly known as Men's Behaviour Change Programs, or MBCP) to men who use, or are at risk of using, violence in their relationships. The shared experience of Federation members provides insight into the need for proper resourcing and government commitment to these critical programs across the country.

As currently understood, 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, CALD/CARM communities, LGBTIQ+ communities, Aboriginal and Torres Strait Islander communities, and responding better to the impact of mental ill-health, as well as drug, alcohol and gambling harms).⁶⁶

Our practitioners identify the following as foundational to effective MBCPs:

- support for partners/victim-survivors
- healthy working relationships between MBCP co-facilitators
- focus on trauma-informed practice
- focus on individual clinical interventions
- availability of tailored programs
- connection between practitioners and participants
- programs working across cultures, and
- positive relationship with magistrates.

Demand

A useful indicator of currently unmet demand can be found in the current client waitlists within the MBCPs offered by Relationships Australia Members. Despite a growing acceptance of the need for early intervention approaches to have an impact on perpetration, there has been no real increase in government funding nationally for a significant period. Indeed, in real terms this funding has gone backwards due to the cumulative effect of chronic underfunding and the indexation freeze of 2014. This lack of adequate resourcing, combined with growing demand, points to an immediate opportunity to expand MBCP programs to meet demand. For example, the following waitlists were recently noted:

- across the programs offered by Relationships Australia in NSW: 245 men,

⁶⁶ For exploration of how the family law system could improve to better serve First Nations and CALM communities, see Family Law Council, 2012a and 2012b. The current Family Law Council is working on a reference that re-visits these concerns, due to report in December 2024.

- in Western Australia: 60 men,
- wait times of up to 17 weeks (compared to an average of 2 weeks) in some locations across Victoria,
- in south-eastern Queensland: approximately 130 men and in Cairns, over 100 men.⁶⁷

In some locations, waitlists are not utilised, largely due to the structure of the programs and their specific intake procedures. However, unmet demand is also a very real challenge in those locations. For example:

- In Northern Queensland, Relationships Australia's MBCP are funded in specific regional locations to take place only once per year, meaning that applications are only opened prior to a scheduled session and then closed as soon as the session is at capacity. The community then must wait another twelve months before the opportunity arises again.
- Across the country, the number of locations where MBCP is delivered has been reducing due to the growing costs associated with delivering them and the lack of ongoing, secure investment by governments.

It is the experience of our Members that even a rapid expansion in the number of available programs across the country would still struggle to keep up with demand. This issue will become particularly acute if reporting increases due to other reforms that support a greater awareness of DFV.

Experience across the Relationships Australia Federation points to a number of opportunities for improving the effectiveness of MBCP across the country, over and above investment in reducing waitlists. These opportunities include:

- creating sufficient funding certainty and security to allow providers to invest in, and retain, team members who are suitably skilled
- allowing for the education, trust building and awareness raising that is required within communities, particularly in regional, rural and remote locations, to increase uptake of these programs
- providing sufficient flexibility within funding models to allow for services to be tailored to the needs of specific populations (including Aboriginal and Torres Strait Islander, LGBTQIA+ and CALD/CARM communities)
- commitment to holistic and universal risk screening
- further investment in online options
- increased funding to expand the nature of the programs, including advocacy and support for current or former partners and children impacted by family violence

⁶⁷ These numbers are subject to daily fluctuations as new referrals are made.

- integrating MBCP programs within holistic services designed to ensure family safety, including ensuring additional wraparound supports and case management for participants and their families
- post program facilitated peer groups to provide maintenance and relapse prevention support, and
- new and additional investment in research and evaluation.

Achieving lasting change across society and eliminating violence against women and children within a generation requires consistent investment in early intervention programs, including education, capacity building and services targeted at resolving the multitude of comorbidities and risk factors that precipitate domestic and family violence across the country.

MBCP evaluation

Determining the extent to which these MBCP are effective requires high-quality evaluations yet, despite MBCPs being in existence for decades, there is a lack of solid evidence on the effectiveness of MBCPs. (O'Connor et al 2020; AIHW, 2021). However, these have generally been lacking due to limited capacity and evaluation expertise among program staff, and limited resourcing for undertaking independent evaluations. (McLaren, Fischer & Zannettino, 2020). National Outcome Standards for Perpetrator Interventions were published by the Australian Government in 2015.

A key requirement for evaluating the effectiveness of MBCPs is to obtain regular feedback from men's former and current partners.⁶⁸ Standards for MBCPs across Australia emphasise the need to focus on women's and children's safety as the primary outcome of programs. However, measuring women's and children's safety has generally not been prioritised in program evaluation. (ANROWS, 2020; National Family and Domestic Violence Bench Book, 2023)

Participation in MBCPs may be court-mandated or voluntary. This is an important distinction that can influence the effectiveness of programmes.⁶⁹ It is important to assess readiness to change; this is of particularly acute importance given the unmet demand described above. There is evidence that traditional MBCPs group work, with a specific individual motivational component added in, shows promise of being more effective.⁷⁰

Relationships Australia welcomes current initiatives to develop a deeper understanding of people who use violence in their relationships, including the Rapid Review, the Innovative

⁶⁸ Noting outcomes of evaluations undertaken by Relationships Australia New South Wales and Relationships Australia Victoria on their MBCPs. The results of these evaluations indicates promising findings, and areas for future focus to enhance their effectiveness. See also Kelly & Westmarland, 2015 (Project Mirabal) for analysis of perpetrator interventions in the United Kingdom.

⁶⁹ See, eg, Gray et al, 2016.

⁷⁰ See Pinto e Silva et al, 2024.

Perpetrator Response programme, and the ANROWS 2023-2027 research programme on people who use domestic, family and sexual violence.⁷¹

We **recommend** that Australian Governments identify and invest in perpetrator programmes for people, other than men, who use violence in relationships (Recommendation 21). While DFV is overwhelmingly perpetrated by men against women, the consequence of this is that, when non-male users of violence are brought before courts in FVO matters, there are very few referral options available. This can exclude users of violence who are not men from reduced sentencing or other remedial options in circumstances where male perpetrators would have access to less restrictive responses. This produces distorted and unfair penal outcomes that further entrench circumstances of marginalisation and vulnerability experienced by women who use violence, who are often victim survivors of DFV themselves.⁷²

Relationships Australia **recommends** that Australian Governments urgently increase funding to perpetrator interventions across the country and invest in consistent, secure and adequate resourcing nationally, to enable early identification of people at risk of using violence as well as to change attitudes and behaviours that encourage, normalise, reward or excuse using violence in relationships (Recommendation 22). This is a prerequisite to ending gender-based violence within a generation.

FVOs and coercive control

Understanding of coercive control, and its role in DFV, is increasing in the general community, among law enforcement and legal professionals, and judicial officers. Extensive work is being done by Australian Governments to support this better understanding which, it is hoped, will lead in time to improved safety outcomes. This work has included legislation targeting the use of coercive control.⁷³ However, it cannot be assumed that this legislation, and complementary measures, will be immediately effective in identifying and stopping coercive control. This is partly because of biases and stereotypes about DFV, and people who seek help to stop DFV, that remain entrenched in our community despite decades of feminist activism and advocacy, and indeed seem to receive fresh energy in the current ‘manosphere’.⁷⁴ Rape myths linger; so, too, do DFV myths. But the operationalisation of coercive control will be complicated by the innate characteristics of such conduct.

⁷¹ <https://www.anrows.org.au/people-who-use-violence-research-program> . See also AIHW, 2021.

⁷² See the National Family and Domestic Violence Bench Book, 2023, Chapter 8.

⁷³ Relationships Australia has, in other submissions, expressed concern that criminalisation of coercive control is premature, for a range of reasons, including risks of misidentification of the person most in need of protection (risks which are exacerbated by under-resourcing in terms of staff numbers and education/training across law enforcement and other justice agencies). We note that the National Principles acknowledge that ‘Poor responses to coercive control are not always driven by the absence of legislative options, but failures or difficulties applying the laws by police and courts.’ (p 28)

⁷⁴ See, eg, the data reported in the Sexual Violence Scale of the National Community Attitudes Survey (Coumarelous et al, 2023). We agree with Hill & Salter (2024) that, while the work to dismantle these attitudes is necessary, it has proven thus far insufficient to prevent sexual violence or even to improve responses to it.

This submission has canvassed complexities in making and implementing FVOs and family law parenting orders. The insidious nature of coercive control, which can take highly individualised forms, will pose challenges in crafting FVOs, in explaining FVOs (particularly, but not only, to people with low literacy, communication impairments or who are members of CALD/CARM communities), and in implementing and enforcing FVOs.⁷⁵ To enable data and insights to be collected and learned from as coercive control becomes criminalised and (we expect) a more frequent feature of family law proceedings, Relationships Australia **recommends** that Australian Governments initiate a research program as a matter of urgency, to ensure that legislation targeting the use of coercive control succeeds in its safety objectives and does not inadvertently harm victim survivors or entrench marginalisation and exclusion (Recommendation 23).

Intersections between family law, DFV and abuse and neglect of older people (ANOP)

FVOs made in relation to intimate partner violence have, in our experience, flow on effects that endanger older people. A person who is removed from their home in accordance with the terms of an FVO may seek shelter with their parents; anecdotally, this occurs with increasing frequency because of lack of housing and accommodation options.⁷⁶ It is not unlikely that a perpetrator has been exposed to DFV as between their parents and caregivers; where this is the case, the danger is that returning to that environment may reinforce their use of violence, inhibit measures to be accountable, and to change their behaviour. Second, it places older people at risk from violence at the hands of the returning adult child.

Housing precarity is, of course, also a serious issue for victim survivors, and our services have observed that safe housing is critical during family court proceedings; this includes physically safe spaces and additional police monitoring and attention.⁷⁷ We are aware of older people whose adult children have been required to leave their marital home (to comply with a family violence order), and moved in with older parents. They then repeat patterns of violence towards their parents. This is particularly likely if they are experiencing issues such as financial stress, mental ill health, substance misuse or harmful gambling.

Relationships Australia notes evidence recently provided during Estimates to the Community Affairs Committee, that while drivers, risk factors and prevalence may differ as between intimate partner violence, child maltreatment and abuse and neglect of older people,

Some of the common themes are around structural inequality and power imbalances... a common thread in the evidence base is that there are certain forms of structural disadvantage and inequality that apply to those groups, and they are one of the key

⁷⁵ Particular care will need to be taken to capture forms of technology-facilitate abuse.

⁷⁶ See, eg, ANROWS, 2019; Breckenridge et al, 2016.

⁷⁷ Relationships Australia South Australia has expressed its support for a model used in New Zealand, in accordance with which a perpetrator is removed from the family home on the making of an order, and safety supports are provided to the family in the home. This enables children to stay in their community, and at their schools.

contexts for the occurrence of family domestic violence and child maltreatment to some extent.⁷⁸

Accordingly, Relationships Australia **recommends** integrating legislation, policy and service delivery in family law, DFV, child protection, and abuse and neglect of older people, to:

- enable appropriate safety planning,
- facilitate access by older people to mainstream services, including recreational, educational and health services, and
- reduce the risks to safety arising from administrative, funding, or vocational fragmentation.⁷⁹

(Collectively, Recommendation 24).

These recommendations are consistent with those made by Relationships Australia to this Committee in its 2020 inquiry into family, domestic and sexual violence.

Resourcing

Agencies and services whose functions include supporting applicants for FVOs must be adequately resourced. We acknowledge the provisions made pursuant to the Federation Funding Agreements 2021-2027 between the Commonwealth and the States and Territories.⁸⁰

Governments must ensure that funding envelopes include money for investment in initial and ongoing training in a range of areas, including IPV, ANOP, child maltreatment, the nature of coercive control (a concept yet to be fully understood by professionals and the general community), as well as the nature and impacts of trauma (including intergenerational trauma). One of our concerns about the criminalisation of coercive control, for example, has been that general duties police are not yet in a position to confidently identify coercive control and the person most in need of protection, or to accurately and consistently interpret and apply orders. Experience to date has demonstrated that law enforcement and criminal justice systems continue to be influenced by stereotypes or myths about domestic, family and sexual violence, its perpetrators and victim survivors, as well as the effects of trauma.

A further example is provided by the chronic lack of resources for appropriately skilled interpreters or translators. Poor and inaccurate interpretation can undermine the efforts of an applicant to seek protection; for example, where an interpreter is unfamiliar with family law or DFV systems, or where an interpreter from the applicant's community seeks to dissuade the applicant from applying for an FVO.

⁷⁸ Evidence from Dr Rae Kaspiew, Australian Institute of Family Studies, 4 June 2024.

⁷⁹ The fragmentation arising from disconnections between different professional and conceptual disciplines is explored in Hester, 2011, applying Bourdieu's concept of habitus.

⁸⁰ Accessible at <https://federalfinancialrelations.gov.au/agreements/family-domestic-and-sexual-violence-responses-2021-27>

Decisions about resourcing must also take into account the challenges in recruiting and retaining over the long term a highly skilled and specialised workforce (including through measures to mitigate vicarious trauma). As was recently discussed at Senate Estimates hearings conducted by the Community Affairs Committee, it takes time to recruit appropriately skilled professionals to work in these sectors.⁸¹

Finally, Relationships Australia also **recommends** that funding arrangements take into account the costs of providing outreach services (Recommendation 25). The extent and speed at which operational costs for such services are rising precludes them being simply absorbed.

Conclusion

We again thank you for the opportunity to engage with 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 9300 or at ntebbey@relationships.org.au. Alternatively, you can contact Dr Susan Cochrane, National Policy Manager, on (02) 6162 9300 or by email: scochrane@relationships.org.au.

Yours sincerely



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⁸¹ See, eg, transcripts of hearings with the Department of Social Services, 4 June 2024; discussions canvassed concerns about the pace at which the DFV workforce can be expanded (eg through the 500 Workers Initiative: https://www.dss.gov.au/women-programs-services/500-workers-initiative_). These concerns apply more broadly to the community services sector, and are exacerbated by the gender equity pay gap.

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