

## A better family law system to support and protect those affected by family violence

### Relationships Australia's response to the Parliamentary Inquiry

#### The work of Relationships Australia

This submission is written on behalf of Relationships Australia's eight member organisations. It complements submissions provided by Relationships Australia State and Territory organisations.

We are a community-based, not-for-profit Australian organisation with no religious affiliations. Our services are for all members of the community, regardless of religious belief, age, gender, sexual orientation, lifestyle choice, cultural background or economic circumstances.

Relationships Australia provides a range of family support services to Australian families, including counselling, dispute resolution, children's services, services for victims and perpetrators of family violence, and relationship and professional education. We aim to support all people in Australia to achieve positive and respectful relationships. We also believe that people have the capacity to change their behaviour and how they relate to others.

Relationships Australia has been a provider of family relationships support services for more than 60 years. Relationships Australia State and Territory organisations, along with our consortium partners, operate around one third of the 65 Family Relationship Centres (FRCs) across the country. In addition, Relationships Australia Queensland operates the Family Relationships Advice Line.

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

Relationships Australia supports integrated cross sector, multi-disciplinary responses to family and domestic violence which focus foremost on the safety of the victim. Violence in the family is a human rights issue and Relationships Australia supports a legal framework to respond to inequality, coercion and control, and the use of violence in families, including amendments to the *Family Law Act 1975* that protect victims of family violence.

Relationships Australia is committed to:

- Transparency with clients. Violence is named for what it is and there are no excuses for it. Our practitioners make reports of concern to child protection agencies. Unless there is a safety concern, clients are informed about what is happening, encouraged to self-report, given explanations and supported through the reporting process.
- Supporting children affected by family and domestic violence, recognising the harm it does to them, regardless of whether they are the direct or indirect victims.
- Working with people who have experienced violence to ensure they are safe, and supporting them to take control of their lives.
- Working with people who have been violent in their family relationships to keep their family members safe and with the belief that they can, and do, change existing patterns of behaviour.
- Respecting cultural differences, but not accepting them as an excuse for family violence.
- Working in rural and remote areas, recognizing that there are fewer resources available to people in these areas, and that they live with pressures, complexities and uncertainties not experienced by those living in cities and regional centres.
- Collaboration. We work collectively with local and peak body organisations to deliver a spectrum of prevention, early intervention and tertiary intervention programs with men, women, young people and children. We recognize that often a complex suite of services (for example, drug and alcohol services, family support programs, mental health services and public housing) is needed by people affected by family violence.
- Enriching family relationships and encouraging good and respectful communication.
- Ensuring that social and financial disadvantage is not a barrier to accessing services.
- Contributing its practice evidence and skills to research projects, to the development of public policy and to the provision of effective programs.

In preparing this response we have drawn upon:

- our direct service delivery experience across urban, regional, rural and remote locations;
- our experience in delivering programs in a range of communities, including culturally and linguistically diverse and Indigenous communities;
- evidence-based programs and research;
- our leadership and policy development experience;
- the voices of our practitioners; and
- the experiences and voices of men, women and children to bring to attention to a range of issues affecting the adequacy of policy and community responses to family violence.

This response represents the context from which we work whereby (in most cases) the male is the perpetrator of violence and the mother and child(ren) are the victims of violence. In some locations we also deliver services to male victims of family violence. For example, Relationships Australia provides case management and representation for male victims in 21 locations across NSW.

We work with women and children affected by family violence through a range of services, including:

- Men's Behaviour Change Programs (MBCP)
- Targeted women's support programs
- Specialist family violence counselling
- Family therapy
- Parenting and child groups
- Women's support and recovery groups
- Children and adolescent groups, including respectful relationship programs in schools
- Relationship education groups
- Family Dispute Resolution (FDR)
- Royal Commission into Institutional Responses to Child Sexual Abuse support service
- We also work closely with local and state crisis services to refer women and children who require emergency accommodation and services
- Family Relationships Advice Line

We work with male perpetrators specifically through our MBCPs. These programs includes a vital 'partner contact' component which enables women to articulate their experiences, recognise family violence in their relationships, develop safety plans for themselves and their children, and become empowered to make their own decisions for their future. Programs also include services for adolescents and children.

## Response to the terms of Inquiry:

### Introduction

Family violence is the most prevalent issue affecting clients attending our services. It is well known in the literature that relationship breakdown is the highest risk time for women and children who are, or have recently been living in violent households. Of the total domestic violence homicides, for example, about 75% of victims were killed as they attempted to leave the relationship or after the relationship had ended. During long waiting periods for legal and non-legal services, the safety of children is also significantly compromised.

A recent stocktake identified that, of the 160,000 clients accessing our services in 2014-15, around 67,000 people were directly and significantly impacted by family violence. This is considered a highly conservative view of the prevalence of family violence in our services, not necessarily capturing the full extent of violence such as emotional abuse and coercive control. Additionally, children in families where violence is present account for another portion of our work, where we provide services directly for their experience of violence in a range of children's support programs (see below for more detail).

The high prevalence of family violence has created increasing demand for services and long waiting lists. For the 2014-15 financial year, for example, we estimated that there were in excess of 1,000 men throughout Australia waiting to attend our men's behaviour change programs. These waiting lists continue to grow with increasing policy discourse around family violence, and recognition of the improved outcomes for men, women and children that can be achieved through these programs.

The administrative demand and costs associated with delivering family law services for people affected by violence are also increasing. For example, family law services are seeing a significant increase in subpoenas and requests for information from the Family Court, and in our experience the State and Territory courts are even more likely to seek this type of information from services. Training, recruitment and support for specialist family violence practitioners also increases the costs of providing these services in comparison with traditional family law and family support services, but also greatly improve outcomes for clients and ensures the safety of practitioners.

1. how the family law system can more quickly and effectively ensure the safety of people who are or may be affected by family violence, including by:
  - a. facilitating the early identification of and response to family violence; and
  - b. considering the legal and non-legal support services required to support the early identification of and response to family violence;

Our current methods for identifying and responding to family violence are based on our long history and experience in delivering family support and law services, including specialised family violence

services. As a professional organisation, Relationships Australia is continually improving and developing our policies and processes to ensure the safety of clients and staff who are affected by family violence.

Our existing services are well placed to identify, respond to, and assess risk. One of these services is the Family Relationship Advice Line (FRAL), an important part of a holistic and integrated family law system. FRAL is currently being reviewed to further improve its efficiency and effectiveness but continues to provide a first point of contact for people across Australia, including those who may not be willing to approach, or are unable to access, a face-to-face service. The FRAL is also constantly improving on its ability to screen, assess and warm refer clients affected by family violence to other support services, including family counselling, mediation, legal and specialist family violence services.

#### *Identification of family violence*

Early identification of family violence at Relationships Australia is facilitated at intake and assessment through a range of mechanisms, including:

- Family violence training for all staff, including administrative staff.
- Screening of clients using evidence based tools such as the Detection of Overall Risk Screen (DOORS) and/or in-house tools developed using the skills and experience of trained practitioners. Evidence based screening tools can be used by appropriately trained, cross disciplinary staff across different service types. Where violence is identified, referrals can be made to specialist staff for risk assessment and response.
- DOORS is an evidence-based risk screen that identifies parenting stress, developmental risks for children, substance misuse, psychological distress, social isolation and family violence. The DOORS uniquely screens for perpetration as well as victimisation making it a universal family violence and wellbeing risk screening process. By focusing on the patterns of risk, and not isolating family violence from its associated and contributing risk factors, it is possible to come alongside perpetrators as well as victims, with realistic and relevant de-escalation strategies including safety planning.
- Universal screening processes and tools used by services supporting individuals and families, such as DOORS, are of considerable value in effectively identifying family violence and of greatest benefit when used in conjunction with whole of system responses. On their own and without opportunities for legal and non-legal services to collaborate on strategies to manage identified risks of harm they are not sufficient to identify all cases of domestic violence or be accurate enough to predict the reoccurrence or severity of violence. Benchmarks for quality practice should be used to inform a national approach.

We note that the ability to identify and respond to family violence varies across the family law system, and legal and non-legal services and consistent training and processes are needed. We would like to suggest that common training for legal professionals includes awareness of the entire family law system, including alternative dispute resolution services, counselling and targeted family supports such as specialised family violence services ( for example, men's behavioural change programs and victim and perpetrator support) and parenting programs. This would further assist in

integrating the legal and community sectors and increase access to support services for men, women and children.

Training for judicial officers might usefully include screening, risk assessment and response to increase the overall ability of courts to identify and respond to family violence. Training should cover common tools and understandings across the legal and non-legal parts of the family law system. It should also aim to increase awareness of the needs of particular vulnerable groups, including people from culturally and linguistically diverse and Indigenous backgrounds.

### *Response to family violence*

The increasingly complex needs of clients and/or need to support clients for extended periods of time have placed a significant burden on family law services and impacted on our ability to respond to demand. The high prevalence of clients with family violence issues increases the time needed to respond, and in turn reduce the number of clients a practitioner can support. Along with the impact of family violence on waiting lists, and the increasing need for trained specialists to respond to complex and ongoing needs, there is an additional burden on services to increase the supervision requirements for practitioners who are at risk of vicarious trauma due to the high percentage of their clients with family violence issues.

Relationships Australia believes that isolating family violence from the matrix of behaviours and stressors that contribute to, and result from, family violence significantly limits the effectiveness of prevention strategies. Family violence prevention and service responses are often limited by: the failure to identify the patterns of risk that co-exist with and often amplify family violence; a reluctance to engage with perpetrators of violence because offering support for change is often seen as collusion rather than an opportunity to enable de-escalation of violence; and the tendency to overlook the developmental harm to children resulting from parenting that is compromised by relationship conflict, including violence and other stressors.

In our experience, many perpetrators of violence have experienced historical incidences of violence themselves and relationships difficulties are a context of loss that can trigger historical shame and trauma. This does not justify or excuse violent behaviour but nonetheless these experiences require acknowledgement if behaviour change is to occur and be maintained. De-escalating stress and offering support can be a crucial step in preventing future harm and research suggests that timely interventions can create opportunities for behaviour change. This includes fathers' desires to maintain and improve relationships with their children which can be a significant leverage point through which the impact of their violent behaviour can be realised and confronted. Our current footprint of family law services are well-placed to support these families.

We consider that responses to family violence could be improved by embedding a family safety specialist in family dispute resolution (FDR) and FRC services. One such model is discussed below:

### *The Family Safety Model*

A high proportion of clients who enter the family law system have experienced family violence in the past and/or are experiencing family violence at the time they engage with the system. Research conducted by the Australian Institute of Family Studies (AIFS) found that 60% of separated parents

report a history emotional and/or physical abuse before or during separation (Kaspiew et al, 2015a). The same research found that over 70% of clients attending family dispute resolution (FDR) services reported experiencing emotional abuse and around 30% reported physical abuse. The FDR sample also disclosed multiple other concurrent issues, including mental health issues (46%), alcohol and drug use (27%) and gambling (9%), with 20% of these FDR clients reporting four or more issues. In sum, those who are separating have high levels of family violence, while those attending FDR services have an even higher concentration of family violence, often coinciding with multiple additional issues.

As would be expected, the prevalence of emotional and physical abuse in those attending the family court to resolve their separation disputes are even higher at 85% and 54% respectively. This would suggest that the structural and legislative mechanisms for funnelling such cases directly into the court are effective, even though the ongoing support needs of these clients are not necessarily being met by the courts.

Traditionally family dispute resolution practitioners (FDRP's) are tasked with assessing the presence of family violence to ascertain safety and capacity to participate in FDR and to refer those cases judged to be unsafe or unable to effectively participate due to family violence to alternate processes (eg to the Court). As part of that assessment, FDRP's would normally ascertain if there had been any child abuse and assess the current safety of adults and children. If concerns and risks arose the FDRP would then normally refer the clients to appropriate support services and/or in the case of child abuse notify the appropriate authorities. However, the main task of the FDRP remains to assess whether FDR is appropriate and if necessary issue a non-appropriate certificate so the clients can take their issues to court. FDRP's are trained to carry out the difficult and challenging task of mediation. Assessment of family violence is a core component of this work but it is not their main skill set.

Recent AIFS research has found that an unacceptable number of family law clients who have experienced family violence are not being assessed as family violence affected (Kaspiew et al., 2015a). Some are not being asked while others are choosing not to disclose when asked. For example, of those who had experienced emotional abuse, 53% were not asked about emotional abuse by their lawyers or the court, whereas 31% and 23% were not asked by FDR and FRC services respectively. A further 38% of clients who reported that they had experienced family violence revealed in the research that they had chosen not to disclose their family violence. Both these reasons for failure to assess for family violence point to inadequate assessment processes across the family law system. Clearly all practitioners must assess for family violence as a routine standard component of practice. The evidence is clear that, in the separating population most people have experienced family violence. Therefore, practitioners must assume it is present until they have evidence it is not.

Eliciting full and accurate disclosure of family violence requires careful and skilled interventions from an experienced and knowledgeable specialist. Research and practice evidence confirms that a client's willingness to disclose is impacted by feelings of trauma, fear, shame and self-doubt. Family



violence specialists have the skills to select and use the most appropriate assessment tools, simultaneously using their professional skills to respond appropriately to the presenting client.

In the United Kingdom, a model has been designed whereby anyone seeking a parenting order is immediately required to be assessed by a central agency called Cafcass (Children and Family Court Advisory and Support Service). This agency undertakes a comprehensive risk assessment and safety check. The safety checks are statutorily supported and do not require the parent's consent. Cafcass also has statutory authority to carry out any other checks it considers necessary based on the information provided by the parties and has wide powers to prescribe, monitor and report on remedial actions.

This model is apparently working effectively within the UK system. However, the UK family law system does not have a well-developed mediation framework diverting disputes away from the litigation pathway. In Australia, most separating parents are required to attend FRC's or FDR services in the first instance. This presents an early opportunity to detect and provide an appropriate response to family violence affected clients.

What is needed is a family focussed whole of family response by a practitioner whose focus is not on assessment for FDR at all, but rather is able to effectively assess and respond to the presenting family violence issues. One option is to scaffold around the existing FDR and FRC services a specialist family violence assessment and response that complements the existing FDR service. One proposed model is a Family Safety Model. This model has been designed to support Men's Behaviour Change Programs, but is also being trialled in FDR services. Essentially the model requires all clients assessed as family violence-affected to be referred to a specialist family violence case coordinator (family safety practitioner) who proactively prioritises the safety of partners/children/former partners/family members of clients presenting to FRC's and FDR services who have experienced family violence.

Clearly the AIFS research indicates that FDRPs (and other family law practitioners) are not currently effectively assessing for family violence. Training is needed to ensure that FDRPs ask all FDR clients about family violence and that they do so in a way that is likely to elicit disclosure. There is research that can be used to improve FDRP assessment practices (Bingham et al, 2014; Bailey and Bickerdike, 2005; McIntosh and Ralfs, 2012; Pokman et al, 2014; Cleak et al, 2016; Cleak and Bickerdike, 2016). FDRPs will not have the full repertoire of skills and knowledge to deal appropriately with family violence presentations, but they must at a minimum be able to effectively assess for, and make decisions about, consequent capacity and safety to participate in FDR.

#### *The role of the Family Safety Practitioner*

Once a case is assessed as family violence-affected and an assessment of FDR appropriateness is completed, the client (or clients) are transferred to a Family Safety Practitioner (FSP). With a strong emphasis on assertive engagement, the FSP ensures that a comprehensive service entry is undertaken that targets needs and includes a thorough safety, risk and psycho-social assessment for all family members. This assessment is holistic and incorporates a range of psychological, relational and structural domains that inform a collaborative case plan. Some clients will be identified as not



needing further assistance; others will require some level of support to ensure they access the appropriate services. Some will require a comprehensive and ongoing support. The knowledge obtained from this assessment is revised and shaped throughout the period of support, in collaboration with family members, including former partners.

The FSP co-ordinates services by providing key elements such as risk and needs assessment, joint planning of interventions, and facilitation of service delivery by a range of agencies or practitioners. The case plan is developed in consultation with clients and service and support options decided upon. These elements are provided as part of an overall plan, and case tracking and formal case closure processes. The FSP facilitates a warm referral to suitable internal or external services, and proactively supports transitions between services as this is often where people 'fall through the gaps'.

The assessment process also explicitly documents the family's history of legal interventions and breaches. The FSP has the knowledge and skills to assess and coordinate the various legal and protective services (child protection, police, family law, magistrate courts etc). The FSP also coordinates and tracks the different components of the therapeutic work within a service, and the work with external agencies and legal systems. If embedded in each FRC, the FSPs could provide a first point of contact network across Australia and would be a readily identifiable resource that the courts, community sector and the Family Relationships Advice Line could refer.

In sum, the FSP is able to fully attend to the safety and treatment of family violence affected families and to offer services that track the history of family violence, assess current risks, provide coordinated responses and monitor ongoing needs.

## 2. the making of consent orders where there are allegations or findings of family violence, having regard to the legislative and regulatory frameworks, and whether these frameworks can be improved to better support the safety of family members, as well as other arrangements which may be put in place as alternative or complementary measures

We note the significant gains that have been made in policy and processes in the family law system, including the courts in identifying and responding to family violence. The following discussion provides some examples where victims of family violence have not been well supported by the current family law system and where further improvements can be made (see also the opinion piece at Attachment B). Many of the issues identified below could be addressed by improved training, processes and standards for identifying and responding to family violence, and have a national footprint of family violence specialists located in existing services across Australia.

Contemporary definitions and the language around family violence and how this relates to legal, policy and service delivery frameworks often does not adequately capture the effects of violence on children. It is common to reference children as "witnesses" of and as being "exposed to" violence

and abuse. These terms inadequately describe the child's personal experience of family violence as we consider that if a child has seen or heard any form of abuse, then they have directly experienced that abuse.

This language has the effect of minimising the child's experience and furthermore plays into what we often hear as perpetrator's justification and rationalisation of abuse. For example, "the (child) was in the other room so didn't hear it" and "I would never hurt my kids" (but is violent to their mother). Minimisation of violence through language positions the child separately from abuse being perpetrated within the family, and often results in the child not being considered as impacted by the abuse of their mother. This contrasts with contemporary research evidence confirming that to abuse a child's mother is to abuse the child<sup>i</sup> and consent orders should reflect this.

Measure to protect children should also capture the risk of emotional manipulation of children by perpetrators of family violence, including that the violence can be perpetrated after separation covertly through contact with children. This includes a child's experience of continued violence—emotional abuse and control—by being intentionally isolated from other family members and friends (eg mother's family and friends) or not being able to socialise with their school friends because of the perpetrator's controlling behaviour.

Children attending our services report they feel embroiled in family conflict, unsafe in expressing their own feelings, and feel a sense of responsibility for managing the influence of their father's behaviour on the wider family unit<sup>ii</sup>. Whilst we acknowledge that resources are stretched, we need greater responses to children by the Family Court to protect children who are being emotionally abused, but are deemed by services (including Child Protection) as not at risk of harm.

There is a comprehensive list of professionals who could, at differing points in time, be engaged with the child and mother including but not restricted to child protection services, police, domestic violence advocates, legal services, family court consultants, independent children's lawyers, hospital and medical staff, child health services, counsellors, school teachers, day care staff, school and private psychologists, chaplains, child contact services, financial services such as Centrelink. Under the current fragmented system, this extensive list of potential contacts represents an exhaustive list of assessments and correspondingly represents an exhaustive amount of time that a mother and/or her child have to tell and re-tell their history and experience of violence and abuse. All the skills and resources of these professionals could be better utilised to reduce the impact of family violence on women and children if there were shared best practice models and case management such as described in the Family Safety model. FRCs could assist in improving outcomes for adult and child victims therapeutically and have a key role in assessing and monitoring risk during court processes, especially where there are long waiting lists for the court services.

Outcomes for children and their mothers are poor if their lived experience of abuse and violence is minimised, not believed, ignored or not responded to in a timely and consistent manner in court processes and orders, and most importantly if the perpetrator of abuse is not held to account legally for their violence towards the family. As such, we would like to advocate for the improved transparency of family violence in court processes. Family court consultants, independent children's

lawyers and single expert witnesses are responsible for taking the history of domestic violence into account when they deliberate over custody decisions and arrangements, and a history of family violence should have greater weight when determining unsupervised access with the perpetrator.

The Family Court may order children to attend unsupervised visits with the father, when there is family violence identified. This also interferes with the mother-child relationship whereby the child has trusted the mother by telling her that they feel unsafe with their father and/or that their father has hurt them emotionally or physically. Too often we find that decisions made in the Family Court that allow unsupervised visits and handovers of children are a court mandated gateway for ongoing abuse of children and mothers.

The courts could be better informed through training in relation to research that documents the negative impacts on children who have witnessed family violence spending time with the perpetrator. Perpetrator assessment should always include the risks to the child of access at the time of access being granted, and it should not automatically be granted when a family violence order expires; the expiry of an order does not mean the behaviour of the perpetrator has changed.

Family violence court processes could be more child-focussed. For example, children may be not be included in Violence Restraining Orders (VRO), as if they didn't experience or were not impacted by the violence as per the discussion above. If a mother has taken out a VRO she is often deemed as "protective" so no further action by way of support is taken by child protection services. We understand this to be a resource issue, but it also reflects flawed ideology in which family violence is only taken seriously if it results in physical abuse.

Men's intentional failure to present at court also needs to be recognised as an ongoing form of abuse and subsequent risk to the safety of children. While often necessary, there is a need for increased understanding that court adjournments lengthen the period that the child is at risk of harm. The allowance of sustained and lengthy periods by men engaging child protection services, legal and Family Court systems needs to be recognised as ongoing abuse in the form of harassment, emotional abuse, control and the financial disadvantage of women and children (due to the legal costs for women to engage lawyers resulting in less money to provide for children and often leading to poverty). Further, men who use violence towards mothers and children often fail to attend court ordered counselling/men's behavioural change groups, urinalysis and/or parenting groups and are not legally held to account for their non-attendance. Despite non-attendance and non-compliance with court orders they may be granted custody and/or unsupervised visitation with their children. In effect these orders privilege the rights of the father over the safety of the child from emotional and physical abuse.

Mandated program attendance and program outcomes can also be disconnected. For example, while the courts, government and legal practitioners frequently request attendance and participation reports for men who attend MBCPs, this information is often an inadequate indication of whether the perpetrator has made significant changes in both his attitude and behaviour toward his partner and children. However, by attending the services he can be deemed as having fulfilled his court ordered service. Clearer guidelines and systems must be established to demonstrate what

constitutes adequate change by the perpetrator, and who is responsible for assessing this change, to adequately ensure the safety of the victims. Family violence specialists located in the non-government sector could assist the court by undertaking this assessment.

We have often noted substantial discrepancy between our own risk assessments of women, whom we would collaboratively assess as high risk, and the legal response to VRO applications and breaches of VRO's, where VRO applications are denied and breaches of the VRO are at times not taken seriously. This results in unresolved and often heightened and serious risk concerns based on a protracted and severe history of domestic violence though we note the recent proposed amendments are a positive step forward in making perpetrators more accountable.

Similarly, our programs have noted a significant increase in Family Court referrals. In some cases women are reporting negative, inappropriate and blaming responses from magistrates in the criminal and family law systems. Examples include women report being required to attend programs that are not relevant to their needs and render them feeling blamed for their own victimisation, for instance parenting programs, thus implying "because we have experienced family violence we are not good enough mothers." Other examples include family violence victims being required to attend "psychiatric/psychological evaluations". This places increased and unnecessary burden on the already over-burdened services sector and does not improve outcomes for families affected by violence.

The family violence sector may give mothers and children, and men who use violence mixed messages and responses. On one hand as a sector it has insisted that women leave the relationship with her partner because of the abuse (even if it is not yet safe to do so), children are encouraged to report abuse to police (and then they are later court ordered by the Family Court to have unsupervised visits with the father who was violent to them), women/mothers are encouraged and expected to take out a Violence Restraining Order, (despite them having knowledge that if they do so it will put them at more risk). Women are sent to parenting programs by child protection services for no other reason other than that they have experienced family violence - hence the mother gets a message that she is to blame for the violence that was perpetrated against her, the same message she may have received from the perpetrator.

Programs, orders and interventions need to be culturally appropriate and responsive. Culturally specific services and education campaigns, including involving local Aboriginal communities in the design of supports for families will be required if we are to successfully address family violence in Aboriginal communities. This has been recognised in several Family Law Council reports that have found Aboriginal and Torres Strait Islanders under-utilise the family law system because of a lack of understanding about the system and a resistance to engagement with, and even fear of, family law system services.

3. the effectiveness of arrangements which are in place in the family courts, and the family law system more broadly, to support families before the courts where one or more party is self-represented, and where there are allegations or findings of family violence

There are currently no arrangements that enable family law services to support families before the courts as their interaction with the family often ceases once a section 60 (i) certificate is issued. The service may continue to support the family through referral to family support or targeted programs but there is no clear mandate or guidelines. Some people will come back through the family law services if they are accessing Children's Contact Centres, Men's Behavioural Change, Supporting Children and Parents Post Separation, and Parenting Orders Programs.

There are opportunities to provide ongoing support and risk assessment through family law services with a holistic case management model as discussed above. Under the Family Safety Model all cases that go to the Family Court that are judged by the court, lawyers or clients as family violence affected could be assessed by a FRC prior to the court appearance and a report made to the court.

4. how the family law system can better support people who have been subjected to family violence recover financially, including the extent to which family violence should be taken into account in the making of property division orders

In our experience, financial stress and control are significant issues for victims of family violence. More often than not, the victims of family violence suffer greater financial disadvantage than perpetrators, through and after court processes, with victims commonly losing access to the family home and joint resources, especially while court processes evolve. Victims may also continue to suffer financial disadvantage after separation due to the perpetrator continuing to financially abuse victims by hiding income, failing to provide adequate child support and retaining the family home.

However, in acknowledging this very real situation, we are adverse to creating policy silos for people in different situations and would prefer the system to holistically support families to recover from separation and violence, whatever their financial situation.

For example, families who have experienced the drug addiction or gambling of their partner but no other co-morbidity may also be financially disadvantaged but may not benefit from provisions that only apply to families affected by violence. There are also many examples in the child support system where payers hide income and assets from payees which negatively impacts on the payee's ability to recover financially from the separation. Many of these systems fail to identify this as continued financial abuse of victims due to the family violence system's current orientation towards responding (mainly) to physical violence.

Despite this, we have long been concerned that victims of family violence are more likely to make financial concessions when leaving an abusive relationship and may have had their capacity to earn an income post separation significantly compromised by the controlling nature of the relationship pre-separation.

While we recognise that it is extremely difficult to quantify how these circumstances should influence the property settlements, one option could be to allow a review of property division agreements if a party can substantiate that a settlement was unfair due to psychological trauma at the time of settlement. This trauma could extend beyond family violence related trauma—e.g. to severe depression—where the victim could show that their consent did not meet the standards required by law due to family violence or another factor that impacted on their mental wellbeing and objective decision-making. While this solution may open up a Pandora's box of potential reviews, we support policies that will address the injustice of victims of family violence trading immediate safety for future financial security.

## 5. how the capacity of all family law professionals—including judges, lawyers, registrars, family dispute resolution practitioners and family report writers—can be strengthened in relation to matters concerning family violence

We have discussed above the need for training, collaboration, and common policies and procedures across the sector. However, we note that the success of any reform is dependent on whether there are sufficient resources to adequately train judicial officers and build the capacity of family law professionals.

With respect to training, our current training policies at Relationships Australia may provide some insight into what might be needed. Relationships Australia staff, regardless of their role, are offered at least introductory training in family violence. To attend to the complexity and intensity of family violence, we recognise practitioners require deeper levels of understanding and skill, and as a result this work is allocated to highly trained and experienced practitioners. Staff working in client services receive specialist clinical support and supervision and have ready access to supervisors and managers in critical situations or following serious incidents. Practitioners require a wide range of personal qualities and skills: counselling and group leadership skills; knowledge across a broad range of subject areas; breadth of outlook; an understanding of gender; and the capacity to see the potential for change and good in the people they work with. Experienced practitioners identify that the work can throw up personal challenges about how they think, and how they view their own relationships. Staff often have to respond to distressing stories and there is some risk of vicarious trauma, unless they are well supported and supervised.

Under the more holistic model of support proposed above under the Family Safety Model, family law professionals could also benefit from skills transfer, learning and evidence based reports emanating from family violence professionals working in FRCs.

6. the potential for a national approach for the administration and enforcement of intervention orders for personal protection, however described.

Relationships Australia supports a national approach.

## Final observations

Rigorous evaluation and research is required to assess the outcomes of current and/or proposed policy and program changes. While evidence and practice confirm that funding is well-spent in delivering improved outcomes for people impacted by family violence, we urge the Government to continue to focus on a co-ordinated, national policy approach together with the provision of adequate direct funding for programs which provide holistic services to perpetrators and victims of family violence, their children, families and communities.

Thank you for the opportunity to provide a response to the Inquiry: *A better family law system to support and protect those affected by family violence*. Should you require any further clarification of any aspect of this submission or need information about the services Relationships Australia provides, please contact myself or Paula Mance, National Policy Manager, Relationships Australia.

Yours sincerely,

Alison Brook  
National Executive Officer

4 May 2017



## Appendix A – A selection of reports, evaluations and descriptions of family violence support services

### Success Works (2009) Review of the Integrated Response to Family Violence: Final Report, Department of Justice, Tasmania

In this report, a review of the literature identified the following key principles of best practice in family violence policy frameworks:

- Agencies (including police, courts, services for victims, health services etc.) should collaborate to ensure an integrated response to family violence
- The system should acknowledge and treat family violence as a criminal act
- The safety of victims and children must be the primary consideration of everyone concerned
- Service should seek to empower the victim
- Services should be responsive to the experiences and needs of children
- Services should demonstrate cultural competence when dealing with individuals from Indigenous and culturally and linguistically diverse backgrounds
- Offenders should be held responsible for their violence
- Prevention and early intervention strategies should be part of the response
- Service providers should be committed to ongoing family violence training and education of their staff.

### Pursuit of Respectful Relationships (IPRR)

IPRR is a 12 week group program for men conducted by Relationships Australia in the Northern Territory. The group emphasises a careful examination of the thoughts and beliefs that underlie behaviour which may be real or perceived by partners and children as violent or abusive. This involves detailed exploration of the concept of ‘dangerous ideas’ and the link between these dangerous ideas and some of the cultural understandings about being a man. Men in the group are encouraged to move towards respectful ways of thinking and behaving.

Programs targeting men’s violence vary in their context and their form. This program works from an assumption that participants joining the program are seeking loving and respectful relationships but are constrained by some of their beliefs and actions. Participation in the program is voluntary. The model of program heightens the importance of screening. It is important that only men who are genuinely concerned about their actions and wishing to work on changing some of their behaviours are nominated for the program. It is also important that the program is not used as “a soft option” by men who would otherwise be mandated to attend a stopping violence program.

A program evaluation was conducted in 2012<sup>iii</sup> and included the following findings:

- Female partners reported:

- The most common abusive behaviours they experienced in their relationship were primarily psychological or emotional.
- An overall decrease in the frequency of abusive behaviours immediately following the IPRR course. The greatest reduction was in relation to psychological / emotional abuse.
- Reductions in the frequency of: physical violence against property (for example, damaging household items, damaging or destroying possessions, or throwing, smashing, hitting or kicking an object); psychological / emotional abuse; threats of violence; the exposure of children to abusive behaviours (for example, through witnessing of abuse, or being used as 'pawns' in disputes); and their partners becoming abusive after using drugs or alcohol.
- In the three-month follow-up interviews, female partners reported:
  - reduced levels of abuse in their relationship;
  - a greater feeling of safety, both for themselves for their children; and
  - that their relationships had become more respectful.
- In the three-month follow-up interviews, some female partners qualified their positive views of the course by:
  - noting that other factors (counselling, the desire of the men to change) were also significant in leading to positive changes in their relationship; and
  - expressing concerns about the durability of the changes.
- The majority of women interviewed thought that improved communication within their relationship was the most beneficial outcome of the IPRR course.
- While agreeing that the IPRR course was positive overall, a minority of women also identified some negative outcomes, including detrimental effects on their partner's feeling of self-worth, and paradoxically, with their increased feeling of safety, an increased tendency to express their own anger.
- Male IPRR course participants rated the IPRR course highly in terms of its perceived effect on their knowledge, attitudes and behaviours in relation to abusive behaviour.
- Participants identified the most useful aspects of the IPRR course as:
  - the concept of 'dangerous ideas';
  - a greater understanding of abuse and its effect on others;
  - the sharing of experiences as a group of men; and
  - the learning of strategies to deal with their own negative emotions.
- Course facilitators felt that the readiness of the participants for change and their attendance at individual counselling sessions outside the IPRR course are significant factors in course effectiveness.
- Additional IPRR course facilitators were trained during the evaluation period. However, course sustainability continues to be challenged by the shortage of appropriately qualified facilitators (particularly men).
- IPRR facilitators identified two key aspects of course content and process which supported engagement of participants:
  - course flexibility and the innovation this enabled; and
  - the male / female facilitation team and the relationship modelling they provide.

- Female partners offered some suggestions for some improvement in the IPRR course including:
  - companion courses for female partners;
  - IPRR courses specifically for young men; follow-on or refresher courses to assist men with continuing reflection and behaviour change; and
  - more counselling after the course.

### Taking Responsibility

Recent evaluation of the Taking Responsibility<sup>iv</sup> program in NSW made the following recommendations:

- Focus on attitudes to gender in the men's group
- Conduct more research on the therapeutic alliances developed in the group
- Continue to provide psycho-education and cognitive-behavioural material
- The process (discussion) section of the group was also valued by male respondents
- Monitor men's accounts of a lack of empathy or contempt for their partners, it suggests a lack of change
- Time and cost continue to be significant barriers for male clients
- The other clients helped men overcome their fear at the start of the program
- The individual counselling sessions complemented the group work
- The women still describe a sense that their and their children's needs are not being adequately addressed
- It is recommended that phone contact with the partners and former partners continues to be prioritised
- There needs to be a review of how and when we offer support for these women
- Counselling and groups for women were described as beneficial by respondents
- Undertaking domestic violence groups meant these women were less tolerant of abuse in their relationships
- The increased knowledge had repercussions in their relationship, which needs to be managed
- Retain a focus on those affected by violence and abuse
- Phone contact is vital for verifying the male clients' accounts of change
- Monitor couples who are referred by child protection services
- Client engagement does not indicate client change
- Practitioners are advised to monitor the effect of mental health issues
- Seek contact from the new partner, especially when there is no contact between the male client and his former partner.

The Monash Longitudinal Study on the Impact of Men's Behaviour Change Programs (MBCP) on Men and Partners: Selected Findings

Relationships Australia NSW also participated in the broader Monash Longitudinal Study on the Impact of Men's Behaviour Change Programs on Men and Partners<sup>v</sup>.

Selected findings included:

- Program provider staff see program difficulties of: providing MBCPs on current funding, lengthy waiting times, areas not covered with MBCPs, using so many PT staff, problems of rewarding staff, supporting staff, obtaining and maintaining staff, determining and negotiating best training levels for staff, linking with training organisations, developing and documenting innovations, finding a forum inside and outside the agency for discussion of common issues and development needs, linking with local network, especially courts (Children's Courts, Magistrate Courts, Family Law Courts)
- Courts report similar linkage difficulties
- All men believe their violence has reduced (65% considerably, 23% moderately)
- Some 22% report cessation of all violence in the broadest sense; all the rest reductions in frequency and modes
- Areas of greatest improvement reported were : physical violence with injury, making partner afraid, controlling money, criticising sexual behaviours, breaking furniture, stopping partner seeing friends and family
- Physical violence with injury and making partner afraid showed change with greatest statistical reliability
- Little differences in changes in violent behaviour between court ordered men and non-court ordered men except initially more court ordered men reported making their partner afraid for their children and more reported improvement in this area
- One additional problem was reported as improved: substance abuse
- No- court ordered men report greater improvements in additional problems
- Some additional problems were reported as worse: physical health, mental health, finance, employment, housing and gambling
- Some additional problems worsened more for court ordered men: mental health, employment, physical health
- Men in 2009 study showed little understanding of the impact their violence had on their own or their partner's parenting
- In this study 36% of men reported severity of impact of their behaviour on their children as not serious; court ordered men a little less (7%) likely to report any serious impact
- This finding contrasts with reporting impact on partners as fewer men (15%) reported impact as not serious; again court ordered men a little less (7%) likely to report any serious impact
- While men reported improvements in impact some men wrote in that they did not understand impact at the beginning and now did, thus raising questions over attempting to measure this factor

- Partners are considered a motivating factor for change

Overview of Longitudinal Research Study into the Outcomes of Men's Behaviour Change Programs.

Full report available at <https://violencefreefamilies.org.au/overview-longitudinal-research-study-outcomes-mens-behaviour-change-programs/>

### 1. Headlines

The programs work, they work well and they work in the long term.

They show a sharp reduction in the nature and severity of violence over the duration of the programs and that this reduction is maintained and improved upon in subsequent months and years. Most of the men become violence free or almost violence free two years after their program.

This continued reduction in violence is not without effort. Men fear relapsing and often seek further help. This does not negate the value of the programs, which set them on this path.

There is no evidence that one type of violence is transferred to another, eg, physical to psychological. All types reduce together.

Mandated men have significantly better results than non-mandated men. This may be due to motivation and the role of Corrections in managing the men and possibly also to the lower incidence of mental health problems among mandated men.

A critical factor in the quality of programs, as viewed by the men, is the quality of the facilitators. The group dynamics are frequently cited as another vital factor. Program design did not seem to play a great part.

### 2. Reliability

The questionnaire responses showed a lower reduction in the men's perceptions of the seriousness of their behaviour than did the more objective response to numbers and types of incidents. This probably reflects the improved perception of the consequences of their behaviour and this view was supported by phone interview responses, which reinforced and expanded on the questionnaire information overall.

### 3. Partner Views

Partners who were in a current relationship with the man, original or new, were positive. Partners who had separated felt it had not protected them or had come too late.

#### 4. Other Factors

##### *Substance abuse*

Approx 27% reported problems with alcohol. This had improved to about 14% in later surveys.

##### *Mental illness*

Approx 34% reported mental illness and it might be speculated that this is an underestimate. The most frequent problem reported was depression. This rate did not change.

##### *Parenting*

A high percentage of men (nearly 80%) were in contact with children, including about 7% who were sole parents. The programs do not deal with parenting issues in an adequate way and this is a need that should be addressed more fully.

#### Women

For a woman who has experienced abusive behaviours from a man we initially meet one to one.

She may then attend our 'Honouring Wisdom' group programme where the aim is to confirm the wisdom that she may have come to doubt. This will be done by:

- Having her experience validated in a safe inclusive environment
- Exposing the beliefs that underpin a man's abusive actions
- Naming these actions by a man as a deliberate choice
- Confirming that she is not responsible for his abuse
- Acknowledging the impacts of a man's abuse on herself and children
- Exposing abuse as more than physical - sexual, financial, verbal and social isolation
- Acknowledging how she has stood up for herself in resisting abuse and her efforts to keep herself and her children safe
- Unearthing the ways she has held onto hope for a better life
- Confirming that she has always known how she wants to be treated by a man.

#### Men

For a man who has been hurtful and intimidating towards his partner and/or children we initially meet one to one.

If motivated to change a man may then join our 24 week 'Preferred Ways' group programme. In a group with other men who prefer not to be abusive he will be invited to:

- Name his good intentions for relationship with a woman and children
- Recognise the gap between his good intentions and his actions
- Come 'face to face' with the impact of hurtful and intimidating actions
- Expose and resist the attitudes that encourage him to hurt and intimidate
- Accept responsibility for all his actions and all his words - no more excuses
- Consider an intimate relationship as the place to demonstrate equality and partnership
- Reflect on the importance of safety and respect as the foundation of an enduring relationship.

#### Children and Teenagers

For children and teenagers who have experienced abuse from their father/man.

Initially we meet one to one. Then in the school holidays we offer a day long programme. This provides the children with the opportunity to:

- Express their hurts, worries and fears
- Acknowledge their skills, interests and hopes
- Understand they are not to blame for how Dad has treated them or Mum
- Identify steps they have taken to keep themselves and others safe
- Join other children in naming what is acceptable and not acceptable from a Dad
- Enjoy the company of other children.

# FAIR

## Family Abuse Integrated Response

### What is FAIR?

We help men, women, young people and children where there has been abuse in their families or relationships.

### Who are we?

FAIR is staffed by experienced counsellors with qualifications in psychology, social work and/or counselling.

### Do you have to pay?

No. These Relationships Australia (WA) services are free of charge.

### Where are we?

We run these programs in four locations:

If you would like to  
know more, please

contact us on  
6164 0270

**FREMANTLE**  
1 Ord Street

**GOSNELLS**  
Lotteries House  
2232C Albany Highway

**MIDLAND**  
27 The Crescent

**WEST LEEDERVILLE**  
22 Southport Street

*Relationships Australia.*



## **Appendix B** – Opinion piece published in the West Australian Newspaper, April 10, 2017

Available at <https://thewest.com.au/news/wa/victims-of-domestic-violence-deserve-better-ng-b88440369z>

### **Victims of domestic violence deserve better**

Right now in WA there is a window of opportunity for a new approach to family and domestic violence.

A change of government and the announcement of a new minister with responsibility for family and domestic violence means a co-ordinated and integrated response across government agencies and community organisations is possible.

Until now the response from various government departments and services has been fragmented and has resulted, too often, in doing more harm than good.

The police, the courts, corrective services, child protection, health and mental health and a host of community based organisations each play important parts. However, for victims this has meant having to navigate their way around a fragmented service and justice system and having to retell their story to each service provider whose responses have often been inconsistent and even contradictory.

The result has been that the safety of women and children has been put at risk and the men who have perpetrated violence against them have often not been held accountable. Take Mary (not her real name), for example, one of those “one in four Australian women” who has experienced physical or sexual violence by a partner and who knows all too well a fragmented domestic violence system that has re-victimised her and her children.

Police are called to an incident at Mary’s house. Mary has been beaten by her partner again after a long history of abuse and this time he’s charged. The magistrate puts him on a community-based order. One of the conditions is that he attends a men’s domestic violence group. Mary takes out a violence restraining order. He breaches it several times but the police don’t charge him as there’s “not enough evidence”.

Child protection workers are supporting Mary as her kids have experienced the violence too. The housing provider evicts her because of three strikes of disturbing the peace (neighbours). Mary and her kids are now homeless and her kids are taken into care. The child protection worker tells Mary she needs to find accommodation so she can get her kids back. Mary also must do parenting courses.

The perpetrator goes to court seeking custody of the kids and he is living with his parents. Mary goes to the court seeking a no-contact order as she is concerned for her kids’ welfare. Mary must prove she is not alienating the children from their father and at the same time answer questions about why she was not a more protective mother.

Mary’s story is not unusual. Though it is a compilation of several cases, it is an accurate portrayal of the many ways victims of domestic violence currently experience the system set

up to help them. The example illustrates the need for effective case management and communication of essential information across the domestic violence system.

So what would an integrated system look like? The new minister's role would provide leadership, oversight and accountability as well as ensuring the implementation of best practice across the family violence system that is sustainable in the long term and immune to changing political agendas. However no one minister can do it alone. There needs to be a multi-agency integrated approach with community-based services responding to victims and perpetrators.

There is strong support for an integrated approach to domestic violence. Positive steps are already under way. Currently there are national outcome standards for perpetrator interventions being developed for how governments and community organisations respond to male perpetrators. A new peak body that consists of representatives from Men's Behaviour Change Program providers has been established. There are other projects happening in other parts of the system.

The community services sector looks forward to engaging with the new minister in this important opportunity to oversee the development of a truly integrated and consistent domestic violence service system, to monitor and evaluate its operation and effectiveness, and to advise government and other stakeholders.

This would be a seamless system that Mary needed but didn't experience. It would also mean hope for numerous other women and children — that their safety will not be jeopardised and their abusers will be held to account.

**Terri Reilly is chief executive of Relationships Australia WA**

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