



Submission to the Joint Select Committee on Australia's Family Law System

January 2020

Authorised by:

Jacqui Watt, Chief Executive Officer

Prepared by:

Ingrid Kirchner, Policy Officer

Simone Tassone, Policy and Research Manager

Contents

About No to Violence.....	3
No to Violence's work in the area of family law	4
Executive Summary.....	5
Improving safety	5
Contributing to family violence perpetrator accountability.....	5
Building on the evidence.....	6
About this submission.....	7
Response to the Terms of Reference.....	8
Sharing information between systems and jurisdictions	8
Family court powers, compliance and enforcement	13
Reforms required beyond merging the courts	15
The financial costs to families	16
Delivering family law support services	17
Keeping families and children safe	21
Extended family carers.....	22
Performance and monitoring of professionals	23
Family law and child support	25
Pre-nuptial agreements	25
Other	25
References	26

About No to Violence

No to Violence (NTV) is the largest peak body in Australia representing organisations and individuals working with men to end family violence. We are guided by the values of accountability, gender equity, leadership, change, and respect. Meaning, we must account for our work by being rigorous and evidence-informed, that all of our work is supportive of gender equity, that we continue to use our platform to lead a national conversation on the need to address men's use of violence and abuse, that we hold hope that change is possible, and that we engage our clients and stakeholders in a manner that respects their dignity and human rights.

NTV provides support and advocacy for the work of specialist men's family violence interventions carried out by organisations and individuals. NTV play a central role in the development of evidence to support the work of specialist men's family violence work as well as providing guidance for practice and policy development in Victoria, Tasmania and New South Wales.

The work undertaken by specialist men's family violence services is diverse and includes but is not limited to; Men's Behaviour Change Programs (MBCP); case management, individual counselling, policy development and advocacy, research and evaluation, and workforce development and capability building. NTV also provides a range of training for the specialist men's family violence workforce including a graduate certificate in partnership with Swinburne University, as well as professional development for all workforces who come into contact, directly and indirectly, with men using family violence.

NTV represents 165 members Australia-wide. Our members include individuals and organisations ranging from specialist family violence services, to individuals and groups who have an interest in preventing and responding to men's family violence. NTV's specialist members are those who provide specialised men's family violence services, including Men's Behaviour Change Programs (MBCP), case management, and individual counselling. All specialist member services that work directly with men who have used family violence include family contact work, which consists of counselling and ongoing risk assessment and risk management directly with victim survivors of family violence.

In Victoria, specialist services are funded to provide approximately 4000 places in Men's Behaviour Change Programs and offer support to 1300 men through case management.

Men's Behaviour Change Programs (MBCPs)

The Men's Behaviour Change Program (MBCP) is a structured group program that focuses on behavioural change through addressing the drivers of perpetrators' use of family violence and abuse. The minimum length of programs varies in each Australian state and territory, based on set minimum standards for practice. For example, in Victoria, group programs run for at least twenty weekly sessions.

The safety and wellbeing of those directly impacted by a perpetrator's use of family violence is at the centre of MBCP design and delivery. It is a requirement of all programs to provide support, risk assessment, safety planning and referrals for the perpetrator's ex/partner and family members, including children.

NTV's other members are diverse. They work across a broad cross section of community, health, legal and corporate services, often coming into contact with men who have used family violence. Many associate members have developed policies and practices to prevent and respond to staff or clients identified as using family violence. Associate members also advocate in their communities and

workplaces against men's use of family violence. All NTV members are committed to changing the social structures that underpin men's use of family violence against women and children.

No to Violence's work in the area of family law

No to Violence's work with families where family violence is identified has increased significantly in the past decade. In NTV's service delivery capacity, we provide a specialist men's family violence response within the Family Advocacy and Support Service (FASS) located in the Melbourne and Dandenong family courts in Victoria.

Family Advocacy and Support Service (FASS)

Funded through Attorney General's office, the FASS provides a proactive response to engaging with families involved in family law proceedings who are affected by family violence.

The service aims to increase the focus on risk assessment and safety planning for all family members to ensure safe, responsive and appropriate outcomes. In the period of July 2019 to December 2019, NTV's FASS staff provided services to 215 clients who were alleged to have used family violence, including counselling, safety planning, referrals, risk assessment and advocacy.

NTV is highly supportive of this program and expanding the areas and jurisdictions that it works.

Through our work as a peak body, NTV work closely with the specialist men's family violence service system – our members. This system includes intake and referral services, MBCPs, individual-based perpetrator interventions including case management, specialist fathering programs and court-based supports. Increasingly, the specialist men's family violence service system is in contact and engaging with men who are about to enter, or are already involved in, family law proceedings.

Working at the intersection of family violence and family law, the men's family violence service system provides:

- Comprehensive family violence risk and holistic needs assessments;
- Specialist support and intervention to address the use of family violence;
- Referrals to legal services for information, advice and representation;
- Referrals to family, drug and alcohol, mental health and other health and social services for additional support and assistance; and
- Family violence advice and education in the community.

Executive Summary

No to Violence welcomes the opportunity to provide this written submission to the Joint Select Committee on Australia's Family Law System.

NTV and its members within the family violence services sector engage with men everyday. We feel we could offer further understanding to the committee through in-person submissions and would be grateful for the appropriate opportunities to demonstrate the insights gained in our work engaging men who use family violence and that of our members.

NTV recognises matters in the family law system are often complicated by complex needs and the prevalence of family violence and sees opportunities to enhance its current operation to improve outcomes.

Our organisation envisions a family law system that more equitable, economical and efficient and that serves the families who enter it. We contend that it should hold a safety lens at its core, contribute to the broader policy agenda of family violence perpetrator accountability, and make well-informed decisions on the best interests of children.

NTV recognises this enquiry is placed in the wider endeavour to prioritise and protect the safety and best interests of children, as well as seeking to increase access to justice, make simpler and streamline processes, addressing the high rates of family violence, making the system easier and less costly to navigate, and adopting a client-centred approach. NTV believes these are commendable goals that are huge in scope and will be resource intensive. If implemented as envisioned, we see them as positive developments in the family law system.

Improving safety

In both our and our members' experiences of providing support to families involved in family law proceedings, we see how the system can, at times, provide inadequate responses to the needs of all parties, especially children, and can escalate risk associated with family violence. The impact of family violence on victim/survivors has long-term and deleterious effects. Even after a victim/survivor is no longer in physical proximity to an abuser, a pattern of coercive control and incidents of violence may continue.

A safe, risk-responsive, and less adversarial approach to family law matters is essential in supporting victim/survivors in family court processes and improving outcomes for children. We support Victorian Legal Aid's recommendation to establish processes for early determinations of family violence, which, together with the introduction of a streamlined court intake, triage, risk assessment and referral process, would set up the court to address safety at the outset and improve efficiency in procedures.

Contributing to family violence perpetrator accountability

The family law system has a responsibility to contribute to the broader family violence policy agenda, working towards the goal that 'perpetrators stop their violence and are held to account' (Commonwealth of Australia 2019a). While we are highly supportive of aspects of the current system that are family violence-informed, including FASS and Legally Assisted Family Dispute Resolution (FDR), a comprehensive understanding of the dynamics and impacts of family violence is inconsistent across both the system and the professionals working within it.

All points of the legal and service systems need to take responsibility for the ways in which they interact with family violence perpetrators and provide opportunities for change. This includes an

understanding of the ways in which interactions with, and decisions about, the perpetrator can potentially make families safer or at increased risk, and that at its core, systems need to be accountable to victim/survivors, including children. NTV recommends reforms to the family law system that increase safety and contribute to the long-term wellbeing of families experiencing family violence, including through the introduction of a statutory referral and services model to better integrate knowledge of and respond to perpetrators' use of family violence.

Building on the evidence

This submission builds on our previous submissions to the Australian Family Law Reform Commission, which released its findings in March 2019.

NTV believes that the Australian Law Reform Commission's Final Report on the Family Law System provides significant insight into the changes that need to be made in reforming the current Family Law System. NTV strongly encourages the Joint Select Committee on Australia's Family law System to review and take into consideration the exploration of issues, analysis, and recommendations made in this detailed report.

In providing this submission, NTV also draws the Joint Select Committee's attention to the expertise of the many legal and support services whose work with families has placed them in close contact with the family law system. Given their experience provides a deep understanding of the issues, NTV presents this submission with an endorsement of the submission made by Victorian Legal Aid.

About this submission

No to Violence's submission attempts to provide guidance to several of the Terms of Reference provided. The submission does not attempt to respond to all Terms of Reference but instead focusses on the areas in which NTV hold expertise and can offer a unique contribution.

In working towards a family law system that is safe and inclusive and where decision making is centred on the best interests of children, we make the following recommendations, which are discussed further in the body of this submission.

We also take an inclusive definition of family. We hold that in the broadest sense of the word, a family is a group of people who have intimate social relationships and have a history and a long-term commitment to each other. Further, a family caregiving unit might consist of a couple; a mother, father and children; a single parent and child; grandparent and grandchildren; a sibling group; or a group that share strong emotional bonds, whether or not they share biology.

NOTE: The case studies used within this submission are real clients. The information has been de-identified and details changes to protect privacy and confidentiality.

Response to the Terms of Reference

Sharing information between systems and jurisdictions

A. Ongoing issues and further improvements relating to the interaction and information sharing between the family law system and state and territory child protection systems, and family and domestic violence jurisdictions

Information Sharing

NTV supports the introduction of improved information sharing practices between the family law system and state and territory child protection systems, and family and domestic violence jurisdictions. Improved collaboration and information sharing presents an opportunity to bridge gaps increase risk assessment, and simplify and join multiple matters.

Police and family violence organisations hold important risk-relevant information about the families with whom they come into contact. There is, however, little information shared between these organisations and the courts. Kelly and Fehlberg (2002) found – in a Victorian study analysing communication between child protection and the family law system – that communication between the two bodies was absent (Kelly and Fehlberg, 2002). The Australian Law Reform Commission (ALRC) has supported these findings from their consultations with both judicial and non-judicial services; suggesting the theme of better information procedures is common across organisations (ALRC, 2019).

Adding to the complexity of these situations is the fact that many families are involved in proceedings in multiple jurisdictions, which increases the risk of inconsistent orders being made. This is exacerbated by inadequate communication between courts, family violence organisations, family services, and other statutory bodies. As has been comprehensively explored in Victoria's Royal Commission into Family Violence, lack of information-sharing can lead to the continuation of violence and in some tragic cases, fatalities (Royal Commission into Family Violence, 2016).

Information sharing frameworks and protocols, however, must be implemented thoughtfully. Several learnings have emerged as a result of the implementation of Victoria's Family Violence Information Sharing Scheme (FVISS) and Child Information Sharing Scheme (CISS), which are imperative to reform design within the family law system setting. These include:

- Clear and consistent definitions and guidance on determining relevancy of risk, safety and wellbeing information
- Clear consent rules underpinned by both a strong safety and empowerment framework and an understanding of family violence
- Inclusion of safeguards against inappropriate or unsafe sharing of information
- Training, communication and a change management strategy is essential to ensure safety in information sharing practices. Training must include:
 - seeking informed consent and promoting agency, including balancing risk and safety around consent-seeking
 - communicating appropriately with children and their protective parents/carers about information sharing obligations

NTV endorses the recommendation made by the Australian Law Reform Commission (2019) in considering ways to improve collaboration, coordination and information sharing within the family law system:

ALRC (2019) Recommendation 2: The Australian Government should work with state and territory governments to develop and implement a national information sharing framework to guide the sharing of information about the safety, welfare, and wellbeing of families and children between the family law, family violence, and child protection systems. The framework should include:

- the legal framework for sharing information;
- relevant federal, state, and territory court documents;
- child protection records;
- police records;
- experts' reports; and
- other relevant information

Recommendation 1:

Develop a national information sharing framework that is underpinned by the principles of safety and empowerment, an understanding of family violence, and in line with the parameters established through the Australian Law Reform Committee's review and final report in 2019.

The visibility of family violence in Family Court matters

Improving the visibility of and response to family violence in the family law system is critical and long overdue. The ALRC's Final Report (2019) highlights the prevalence of family violence in family law proceedings, with approximately 60% of separated parents reporting physical hurt and emotional abuse and up to 70% of parents reporting children's exposure to family violence (ALRC, 2019: 103-104). In addition, approximately 85% of parents using courts to resolve parenting issues reported a history of emotional abuse, and more than half physical hurt from the former partner.

At present the family law system does not have systematic processes to identify and respond to family violence. NTV has observed insufficient knowledge and understanding of safe practice in working with family violence dynamics; a lack of appropriate family violence screening, identification, and risk assessment processes, tools and resources; and insufficient monitoring or quality assurance of practice with regard to family violence. Responses are highly dependent on the pathways and professionals that families encounter during their experience through the system, often contributing to adverse outcomes. This is an insufficient response to address both the volume of families affected by family violence who use the family law system and the complex needs with which they present (ALRC, 2019).

While NTV acknowledges that there is an impetus already placed on courts to take prompt action in relation to allegations of family violence or child abuse, this is not translating in the reality of families' interactions with the family law system. This is often due to late, if any, determinations made about family violence. Slow processes and delayed access to courts and services have resulted in unnecessary escalations in disputes and increased risk for victim/survivors and their children.

NTV supports Victorian Legal Aid's recommendation to introduce a model for early determinations about family violence. We believe that earlier determinations will allow for better management of safety and contribute to more efficient resolutions of family law matters.

Recommendation 2:

Introduce a model (supported by specialist professionals) for early determinations of family violence in family law proceedings.

Embedding men's family violence interventions in determining orders and outcomes

Men's Behaviour Change Programs (MBCPs) currently receive only a small number of referrals through the family law system. While a significant number of MBCP participants have current family law proceedings or parenting orders, they are rarely referred into the program by the family law system, and there is virtually no information shared between the MBCP and the family law system. Many NTV members have reported this is a major 'missing link' in the family law system's response to domestic and family violence.

The assessment of men's safe parenting capacity in the context of a history of family and domestic violence perpetration is complex. There is no single assessment tool or template that can be used by non-family violence specialists to determine whether a father is making progress in addressing and reducing his use of family and domestic violence; and whether he is engaging in reparative, restorative and responsible parenting mindful of the effects that his violence has had and is having on his partner, his children and the mother-child bond. Many family and domestic violence perpetrators engage in a range of behaviours and tactics to undermine their partner's or former partner's confidence and ability to parent, and the relationship she has with her children. MBCPs, working with men over a period of time and collaborating with child protection authorities and family services providers, are in the best position to provide accurate and informed advice in family court situations about the risk that family and domestic violence perpetrators pose to their children, and whether he is making the changes required to provide safe, reparative and restorative parenting. This is in recognition that men's perpetration of family and domestic violence, even when targeted mostly towards the mother, is a child protection issue given the major impacts on children's safety, stability and development.

Alternative models

In the United Kingdom the family law system is the second largest referrer of participants into community-based domestic violence perpetrator programs (DVPPs) – second only to child protection services (UK Government, 2017). DVPPs operate similarly to Men's Behaviour Change Programs in Australia. This is due to the significant proportion of family law matters involving a father who is perpetrating family and domestic violence, and the potential for this violence to significantly compromise children's safety, development, and wellbeing.

These referrals are facilitated through the Children and Family Court Advisory and Support Service (CAFCASS). CAFCASS is a program providing early identification and response to family violence, independent and evidence-based assessment information to the court, and ensures more consistent, safe and quality outcomes (UK Government, 2017). CAFCASS makes the referral direct to the DVPP, and during the man's participation and at its conclusion, the DVPP reports back to CAFCASS concerning the updated/current risk that the father poses to his children, and assessments of his capacity to be a safe parent (UK Government, 2017).

CAFCASS is independent of the courts, social services, health agencies and other similar authorities. CAFCASS uses the assessment by the DVPP together with any other relevant information to then make recommendations to the Family Court around consent order and parenting arrangements based on representing the best interests of the child. DVPPs in the UK therefore perform an important role in assisting CAFCASS to make assessments of the pattern and profile of the man's safe parenting capacity, and whether he is making the changes required to become a safer parent through taking responsibility for his use of family and domestic violence, and putting in the work required to change his attitudes and behaviour. Importantly, DVPPs in the UK, to varying extents, work closely with child protection authorities, when these authorities are involved, to provide joint assessments on the man's safe parenting capacity, and his progress towards becoming a safer parent.

The family law system would benefit from a more comprehensive service model, similar to CAFCASS, where support services receive statutory referrals, work across all cases and prioritise based on risk, and provide assessment reports to the court based on assessing safety and wellbeing of children, and family violence risk to adults.

The Family Law Council, in their 2016 report titled *Families with complex needs and the intersection of the family law and child protection systems*, discussed an independent family safety service within the non-government sector (Family Law Council, 2016). The Council noted that:

Such an agency could be tasked with providing a range of services for client families and family law system professionals, including the courts. Council envisages this including the conduct of risk assessments for clients who are referred to the service by lawyers when risk factors have been identified (discussed below), as well as parties who are referred by the courts following identification of risk factors in the Notice of Risk. A dedicated family safety service could also effect referrals to and liaison with relevant services, such as parenting courses and men's behaviour change programs, where the court orders a person's participation in these programs. Like CAFCASS in the United Kingdom, a family safety service could also be used to monitor a client's engagement with such services and provide assessment reports to the court. – Family Law Council final report, pp. 120-121

Embedding and strengthening links between family law courts and family violence assessment and response services can contribute to the model for early determinations of family violence and support

ongoing safety throughout the family law process by providing case management, parenting and family violence interventions.

Recommendation 3:

Establish a statutory referral and service model to assess risk, manage safety and provide accredited parenting and intervention programs for perpetrators of family violence, with the capacity and mandate to inform the court regarding men's risk and capacity to parent safely.

Family court powers, compliance and enforcement

B. The appropriateness of family court powers to ensure parties in family law proceedings provide truthful and complete evidence, and the ability of the court to make orders for non-compliance and the efficacy of the enforcement of such orders

There is an often-broadcast belief that mothers in the family law court fabricate allegations of family violence to help their family law cases. However, the evidence shows that this is not the case and that women are disinclined to raise family violence allegations due to a fear of not being believed (Laing, 2010). The research shows that false allegations are much rarer than the issue of victim survivors not reporting abuse and the minimisation and denial of abuse by men who use violence (Jaffe, 2008). A evaluation of the 2012 Family Violence Amendments to the Family Law Act 1975 (Cth) also found that family law court proceeding are often used by perpetrators as a way of continuing to harass a victim of family violence (Kaspiew, Carson, Dunstan, Qu, Horsfall, De Maio, Moore, Moloney, Coulson & Tayton, 2015). Perpetrators may justify their actions by saying 'they just to see their children' while using this as a tactic of abuse (Laing, 2010).

It is the experience of NTV and its members that the current design of the family law system affords men who use family and domestic violence opportunities to inflict further distress on victim/survivors. As the *Small Claims, Large Battles* report elucidates, negotiations and legal proceedings may be drawn out intentionally in an attempt to cause further distress or in a misguided attempt to reunite with a former partner (Women's Legal Service Victoria, 2018a). Tactics employed to draw out proceedings include failing to disclose pertinent financial information, unreasonable offers, and failures to communicate either with judicial officers or former partners. In some cases, it was apparent that parties who had the means of obtaining legal representation did not do so in order to delay or subvert proceedings.

NTV believes that the introduction of both a model for early determinations of family violence and statutory referrals and services (outlined in above) will provide opportunities to support compliance and enforcement measures. In our experience providing FASS, there are many men accessing court who have complex needs and face a range of challenges in engaging in legal processes, including mental health issues, neuro-diversity issues, severe trauma and language barriers. In these situations, literacy around legal systems and parenting orders can be low, and without additional assistance and supervision through the court system, this can often lead to contraventions and an unnecessary strain on an already stretched family law system.

Recommendation 4:

Provide further resourcing to the family law courts to provide assistance and supervision to help individuals and families understand legal systems and comply with parenting orders.

In addition, NTV endorses VLA's recommendation regarding reforms to support compliance in property proceedings and restate it here.

Recommendation 5:

Introduce the following reforms to improve compliance in family law property proceedings:

- *Amending the Family Law Act 1975 (Cth) to clearly set out disclosure obligations of parties and the consequences for breach of those obligations, as recommended by the ALRC in its final report (ALRC, 2019).*
- *Strengthening the court's ability to address non-compliance.*
- *Strengthening the role of registrars to establish, monitor and enforce timelines for disclosure.*
- *Introducing an administrative mechanism for the family law courts to be provided with financial information from the Australian Tax Office and;*
- *Introducing adverse adjustments to property divisions for parties who do not make full and frank disclosures.*

Reforms required beyond merging the courts

C. Beyond the proposed merger of the Family Court and the Federal Circuit Court any other reform that may be needed to the family law and the current structure of the Family Court and the Federal Circuit Court

The issues of complex needs in families and the need for an integrated and simplified court system response has been explored since the 1990s and resulted in significant law reform (Victorian Law Reform Commission, 2008), however there is more work to be done. NTV supports a strengthening of court structures and frameworks to provide a single point of entry, streamlined and simple processes, clear and consistent information and accessible forms and resources for families.

Families often do not know or understand what they are required to do, which process to follow at what point in time, and who to speak with for the most relevant information for their situation. In NTV's experience of providing FASS at Melbourne and Dandenong courts, it is often the relationships between individual professionals that ensures information sharing, coordination of services and referrals for support occur for families, rather than established processes that assist families to navigate through the system. Opportunities exist to increase the availability and use of services such as specialist men's family violence FASS staff through allowing courts to direct men to engage with the workers for short-term counselling and case management, conduct risk assessments, and complete safety planning and referrals.

NTV welcomes the Mid-Year Economic and Fiscal Outlook announcement of the screening and triage pilot program for matters being considered by family law courts (Commonwealth of Australia, 2019b). We strongly encourage this pilot is designed and implemented with a sophisticated understanding of family violence dynamics and risk at the centre; and includes establishing a model for early determinations of family violence, as recommended above. As highlighted above, the court already is able to expedite cases regarding high risk family violence, however current processes and resources prohibit this from being a systematic response.

While the pilot initiative is a positive step, NTV recommends a full rollout of a triage, screening, assessment and referral system across all family law courts.

Recommendation 6:

Introduce a streamlined court intake, triage, risk assessment and referral process that is linked to and informs a model for early determinations of family violence and statutory referrals and services.

The financial costs to families

D. The financial costs to families of family law proceedings, and options to reduce the financial impact, with particular focus on those instances where legal fees incurred by parties are disproportionate to the total property pool in dispute or are disproportionate to the objective level of complexity of parenting issues, and with consideration being given amongst other thing to banning 'disappointment fees'

Increase funding for legal assistance

The cost of engaging lawyers and navigating the court system adds greatly to families' financial stress. For those who do not qualify for legal aid yet have low incomes, legal representation in family law litigation is unaffordable. Representing oneself in a system with complex rules and procedures that rely on the competence of the advocate to present a case, is difficult (Parkinson & Knox, 2018).

In NTV's experience of providing support through FASS, many individuals must self-represent as, although they have low incomes and have no access to recognisable funds, they are not eligible for legal aid. The inability to access publicly funded legal assistance places families who already present with complex needs at further risk of vulnerability and harm, particularly in circumstances where matters are left unresolved or significantly delayed. It is essential that families can access legal assistance at the time they most need it, to address complex matters during times of elevated distress, risk, and dispute.

Recommendation 7:

Provide increased and sufficient funding for legal assistance in family law matters.

Improve processes and forms

In NTV's experience providing FASS, often self-represented litigants either submit incorrect or incomplete paperwork, resulting in delays, adjournments and increased costs. A particularly common issue is the current reliance on lengthy affidavit materials, which are often poorly completed or not provided at all, as self-represented litigants do not understand the process, level of detail or quality required, or importance.

Streamlined and simple processes using accessible forms would assist to reduce the cost, in terms of both time and resources for families as well as the court.

Recommendation 8:

Introduce streamlined and simplified processes and forms.

Delivering family law support services

E. The effectiveness of the delivery of family law support services and effective resolution of property disputes in family law proceedings.

Expanding the Family and Advocacy Support Services

As outlined above, NTV provides staffing for the FASS in the family law courts in both Melbourne and Dandenong in Victoria. This program has provided a proactive response to engaging with families progressing through the family law system, significantly increasing the focus on risk and risk assessment leading to better safety planning for all family members. The FASS partnership model integrated legal and non-legal professionals, including duty lawyer services, specialist family violence support staff for both parties, and an Information Referral Officer (IRO). The FASS partnership has capacity to work closely with family consultants and Independent Children's Lawyers and has strengthened the court's response to family violence issues.

NTV welcomed the Australian Government's commitment of \$22.6 million to extend the funding for the FASS from 2019 to 2022 (Attorney General for Australia, 2018). However, ongoing and sustainable funding is required for both the continuation and expansion of this essential service for families affected by family violence.

While beneficial for those attending the family law courts at Melbourne and Dandenong FASS is not present in rural and regional areas, resulting in inequitable access to an important service. This issue was acknowledged in the FASS Final Evaluation Report (Inside Policy, 2018) as well as the ALRC's final report on the review of the family law system (ALRC, 2019). Both reports recommended that FASS should be expanded to regional locations.

An independent evaluation conducted in 2018 indicates the effectiveness of the FASS integrated model. The evaluation found that it was an important program filling a legal and social service provision gap for family law clients with family violence matters (Inside Policy, 2018). It also found that the FASS resulted in an increased awareness of family violence, increased feelings of support and levels of help-seeking by clients as well as contributing to positive outcome for clients, both legal and social (Inside Policy, 2018).

Effectiveness of FASS

Steve approached the information desk on the morning of his court hearing in a heightened and aggressive state. Noticing this, the specialist men's FASS worker approached Steve and offered to speak with him to understand his needs. In approaching Steve this way, the specialist men's FASS worker was able to effectively open up a dialogue, explore his concerns and issues, and work with him to reduce his agitation.

By the time Steve presented to the duty lawyer he was frustrated, however no longer aggressive or agitated. The duty lawyer was able to speak with Steve clearly, and while sometimes he side-tracked into providing tangential information that minimised his use of family violence, he was able to be effectively re-directed back to the case and his legal problem on each occasion.

The specialist men's FASS worker sat with Steve throughout court proceedings, ensuring he understood the process and felt supported and heard. Following his experience, Steve reported his faith in the legal system had been "somewhat restored".

By working intensively with Steve, the specialist men's FASS worker, alongside the duty lawyer, was able to assist him to engage in the legal process in a productive and safe manner. In the past, and without this type of service, clients like Steve would have walked away from the entire court process, increased his agitation and distress at his situation, and placed his children at further risk of harm. Instead, by working with him so effectively, the specialist men's FASS worker was able to support Steve into a frame of mind where he was receptive to legal advice and willing to engage.

Recommendation 9:

Provide ongoing and sustainable funding for the Family Advocacy and Support Services.

Recommendation 10:

Expand the Family Advocacy and Support Services model to regional circuit locations.

Enhancing support to those with mental health issues

A significant proportion of clients who access NTV and its members' services to address their use of family violence present with a number of intersecting issues. These issues may be a source of personal instability, such as a drug dependency or mental health diagnoses, and/or legal confusion, where clients may have a number of issues before multiple courts.

Our extensive history in violence interventions with men has taught us that men's mental ill-health may both exacerbate the frequency and severity of violence perpetrated against family members, and that such conditions may also create barriers for men in accessing available treatments.

Men and women experience mental illness at approximately the same rates. However, through a complex interaction of biological and social determinants, women and men experience different kinds of mental illness. Commonly, women experience internalising disorders such as depression and eating disorders, and men experience conditions characterised by externalising behaviours, such as substance abuse disorder, conduct, and antisocial disorders (Afifi, 2007). Although such conditions among men can increase the risk, frequency and severity of family violence perpetration, it should be noted that the presence of mental-ill health or a mental illness is not a necessary factor for family violence to occur. As a result of tendencies towards externalisation among men, for most leading causes of death, men and boys of all ages experience higher death rates (American Psychological Association, 2018). These mortality rates are primarily related to risk taking and a lack of help seeking (Mahalik & Burns, 2011), representing a *gender and health paradox*, or the tendency in modern societies for men to experience more life-threatening chronic disease and die younger and women to live longer but experience more non-fatal acute and chronic conditions and disability.

Twenty per cent of family violence incidents recorded by Victoria police between 2013 and 2014 identified mental illness as a risk factor among perpetrators of family violence. There was a particularly strong association between recidivist-identified perpetrators and mental illness (Thomas, 2019). Though it is important to note the overwhelming majority of people with a mental illness are not violent, there are nevertheless some significant associations between, in particular, anxiety and trauma-derived conditions, and violence perpetration.

Mental health deterioration is associated with separation and relationship distress, in general. Among victim survivors, domestic and family violence is a significant risk-factor for mental disorders (Golding, 1999), and maladaptive coping among both perpetrators and victims may exacerbate an ability to traverse the family law system. NTV observes these issues in its work through the FASS, noting a large number of men presenting with a variety of mental health issues that impact on their ability to engage with court services and the process overall.

Recommendation 11:

Provide funding for a mental health support worker in the FASS partnership model, to be available at the court at all times for consultation and referral.

Expanding the use of Legally Assisted Family Dispute Resolution (FDR) Processes

Where domestic or family violence is identified, conventional FDR is inappropriate in either parenting matters or property matters. This process has parallels with couples counselling, which in the context of family violence can be unsafe and detrimental to the wellbeing of both parties.

Conventional FDR presupposes an equal exchange of views, however where one party is being controlled and/or is in fear of the other, this is not possible. This process is also likely to be further disempowering or traumatising for the victim/survivor (Roberts, Chamberlain & Delfabbro, 2015), and is unlikely to produce accountability or change in the perpetrator. These factors are largely acknowledged by the family law system; however, family violence and abuse are not systematically screened for or identified by judicial officers in order to exclude cases from this process.

Early evidence emerging on the delivery of legally assisted FDR indicates positive outcomes, with settlement rates high, particularly for those assessed as experiencing family violence risk. Legally assisted FDR models that are supported by professionals who have knowledge and skills the dynamics and impacts of family violence, hold a trauma-informed practice lens, are culturally aware and competent and have skills in working with clients with complex needs may provide additional options for families who have historically been screened out of conventional FDR.

It is critical that any legally assisted family dispute resolution program targeted at family violence matters are triaged and allocated following a rigorous, safe and evidence-informed risk assessment.

Recommendation 12:

Expand funding and access to legally assisted FDR for families where early determinations of family violence are made.

Keeping families and children safe

F. The impacts of family law proceedings on the health, safety and wellbeing of children and families involved in those proceedings

Remove the presumption of equal shared parental responsibility

In NTV's experience of fathers in the family law system the presumption of equal shared parental responsibility is used as a way for perpetrators to exert ongoing power and control over a victim survivor. Presumption of equal shared parental responsibility is not meant to be applied in cases of family violence or child abuse and is rebuttable where it is not in the best interests of the child. However, a 2009 evaluation conducted by the Australian Institute of Family Studies (AIFS) found that equal shared parental responsibility was applied in over 75 per cent of cases where both family violence and child abuse had been alleged (Kaspiew et al, 2015).

A 2017 House of Representatives committee report on family violence also expressed concern about the presumption of equal shared parental responsibility. The report stated that it 'is improperly being applied to many cases involving family violence and that is giving rise to court orders and consent orders which put people effected by family violence, including children, at unacceptable risk' (House of Representatives Committee, 2017).

NTV believes that the removal of the presumption of equal shared parental responsibility is necessary in order to address the misuse of process in family law matters. Instead, NTV recommends that each case be looked at on its merits, with an assessment of risk-relevant information, and determinations be made on the presumption of 'joint decision making about major long-term issues', as recommended by the ALRC (2019).

Recommendation 13:

Remove the presumption of equal shared parental responsibility and include provisions for 'joint decision making about long-term issues' to be based on an assessment of family violence risk relevant information and parenting capability.

Enhancing children's voices in the family law system

There is contemporary evidence that suggests that the family law system currently lacks processes to support vulnerable children, and women who are victim/survivors of family violence (Turnball, 2017). NTV works with men who use a range of abusive behaviour in order to achieve control and dominance in their relationships. To this end, the family law system is a source of continued serious victimisation for women and children experiencing family violence. Men who use violence frequently manipulate family law and child contact systems to cause enormous difficulties for women and children. Family law processes can be used by the perpetrator to accentuate tactics of financial abuse (driving her further into debt through elongating family law contests), sabotage the children's relationship with their mother (through manipulation tactics during unsupervised child access) and monitor the mother's movements and social connections.

Women's Legal Service Australia has provided qualitative evidence explicating some of the further impacts that may be incurred by women and children who are victim survivors of family violence when interacting with the family law system (Women's Legal Services Australia, 2017). Presently, family law processes are not trauma-informed, nor are judicial officers necessarily sensitive to the vulnerabilities of family violence victim/survivors. Court and Family Dispute Resolution procedures have the potential

to be misused by perpetrators in the form of vexatious claims, or prolonged and unjustified parenting order applications in order to maintain control over victim/survivors (Women's Legal Services Australia, 2017). In light of this evidence, NTV recommends the employment of less adversarial decision-making approaches and processes in the family law court system, as is discussed in other parts of the submission.

In further highlighting the voices and experiences of children, NTV believes it may be of interest to the Committee to investigate the Safe and Together Model, developed by David Mandel at the Safe and Together Institute. This model is slowly being introduced in Australia in Child Protection Services and some other welfare organisations. The Safe and Together Model is child-centred and works towards keeping children safe and [together](#) with the non-offending parent (Safe and Together Institute, 2018). The Model provides a framework for working with family violence victim/survivors to understand how the violence has restrained and limited their parenting. It also supports the process of tilting towards and intervening with fathers who use violence in order to enhance the safety and wellbeing of children. This model proactively pivots awareness and conversations to the perpetrator's use of violence as a parenting choice, and the impacts these choices have on family functioning (Safe and Together Institute, 2018).

Recommendation 14:

Investigate the Safe and Together model as a framework for working with families in the family law court system.

Extended family carers

G. Any issues arising for grandparent carers in family law matters and family law court proceedings

NTV does not have practice experience regarding issues arising for grandparent carers in family law matters, thus makes no formal recommendations. However, we strongly feel that the safety of all family members must be considered and any proposed caring arrangements should be comprehensively assessed for indicators of family violence.

Performance and monitoring of professionals

H. Any further avenues to improve the performance and monitoring of professionals involved in family law proceedings and the resolution of disputes, including agencies, family law practitioners, family law experts and report writers, the staff and judicial officers of the courts, and family dispute resolution practitioners

Family violence training for all professionals working in the family law system

NTV and its members continue to observe inconsistencies with identifying and understanding family violence among family law professionals, resulting in unsafe environments and harmful decisions being made.

Examples of harmful misconceptions about family violence and court responses

A man staring menacingly at his ex-wife in court, while the woman is pleading with the judge to do something and being ignored

A victim/survivor blamed in court for being the “architect of her own demise”, when family violence indicators were clearly present.

Experience lawyers reporting to specialist family violence staff that there is “no such thing as gendered family violence” and that “women are just as violent as men”

Collusion with perpetrators of family violence by legal professionals

A number of recent inquiries and reports have noted the importance of training and professional development in building the capacity of legal professionals to understand risk and respond to family violence. The Victorian Royal Commission into Family Violence, for example, made several recommendations regarding the competency requirements amongst legal and non-legal staff working within judicial systems and community services on matters of family law, child protection, and family violence (Royal Commission into Family Violence, 2016).

Understanding and responding to men’s family violence, including the assessment of men’s safe parenting practice in this context, is complex. Professionals who come into contact with male perpetrators through the integrated family violence, child protection and family law systems should also have the appropriate skills to work with them safely.

Men who use family violence often present well in formal professional settings, including court and mediation processes. NTV members have noted that male perpetrators use a veneer of respectability, evidence of their ‘upstanding character’ and community connections to invite legal professionals to collude with them and to discredit or blame their victims. Our members have also highlighted the tendency for men who have used family violence to use the family law system to perpetrate further abuse. For example, this may be by deliberately delaying legal processes that financially devastate their ex-partner, subpoenaing counselling records to call a victim/survivor’s mental health and/or parenting capacity into question or using the family dispute resolution process to avoid an intervention order.

It is critical that any family violence training equips professionals in the family law system with a solid understanding of the ways in which system abuse can be perpetrated, as well as specific skills to avoid collusion when engaging with alleged perpetrators.

It also remains critical that family violence is understood and responded to based on the evidence amassed over decades about its prevalence as a gendered issue. It is recognised by COAG as one form

of violence against women. Most of the violence within the home is perpetrated by men against women and children. Men are also victims of violence, but evidence indicates that men are more likely to be victimised by other men, who are not known to them, and in public spaces. Statistics and lived experiences indicate a deeper issue around violence and its foundation in gender inequality (Our Watch, 2015).

Where women have used violence against men in a family violence context, it is often found that the violence is a form of resistance, as an attempt to create space and assert autonomy. Power dynamics in these relationships are skewed, and women's violence in this context does not aim to be coercive, exert control over, or cause fear in their male partner. Men who are the primary aggressor in such relationships often present themselves as the victim of their female partner's violence as another tactic of family violence (Hayes, 2010). While it must be acknowledged there are male victims and female perpetrators, the reality is that the majority of violence is perpetrated by men against women and other men.

Recommendation 15:

Any training or modules on family violence must include information on its gendered nature; particularly in relation to women's violence as a form of resistance and how to identify such dynamics in the context of the history of the relationship and prior relationships.

Recommendation 16:

Staff in family law support services and family dispute resolution services should have skills in trauma-informed practice; understand the dynamics and impacts of family violence; are culturally aware and competent; and have skills in working with clients with complex needs.

Recommendation 17:

Any training or modules on family violence must include information on how to detect and/ or discern misuse of the judicial process as a tactic of family violence.

Family law and child support

I. Any improvements to the interaction between the family law system and the child support system

NTV makes no recommendations to this term of reference.

Pre-nuptial agreements

J. The potential usage of pre-nuptial agreements and their enforceability to minimise future property disputes

NTV makes no recommendations to this term of reference.

Other

J. Any related matters

NTV makes no recommendations to this term of reference.

References

- Afifi, M. (2007). Gender differences in mental health. *Singapore Med J*, 48(5), 385-391.
- American Psychological Association, B. a. M. G. G. (2018). APA guidelines for psychological practice with boys and men.
- Attorney General for Australia (2018) 'Additional Funding for Family Violence Services' (18 December) Media Release, Available from: <https://www.attorneygeneral.gov.au/media/media-releases/additional-funding-family-violence-support-services-18december-2018>
- Australian Law Reform Commission (2019) *Family Law for the Future – An Inquiry into the Family Law System Final Report*, Available from: https://www.alrc.gov.au/wp-content/uploads/2019/08/alrc_report_135.pdf
- Beck, C.J. and Raghavan, C. (2010) 'Intimate partner abuse screening in custody mediation: The importance of assessing coercive control, in *Family Court Review*, 48(3), pp.555-565.
- Commonwealth of Australia (2016) *COAG Advisory Panel on Reducing Violence against Women and their Children 2016: Final Report*, Canberra.
- Commonwealth of Australia (2019a) *Fourth Action Plan – National Plan to Reduce Violence against Women and their Children 2010-2022*, Commonwealth of Australia: Department of Social Services.
- Commonwealth of Australia (2019b) *Mid-Year Economic and Fiscal Outlook 2019-20*, Available from: https://www.budget.gov.au/201920/content/myefo/download/MYEFO_2019-20.pdf
- Council, F. L. (2015). Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems.
- Golding, J.M. (1999) 'Intimate partner violence as a risk factor for mental disorders: A meta-analysis', in *Journal of Family Violence*, 14(2), pp.99-132.
- Hayes, B. E. (2013). Women's resistance strategies in abusive relationships: An alternative framework. *Sage open*, 3(3), 2158244013501154.
- House of Representatives Committee 2017, para 6.124.
- Inside Policy (2018) *An Evaluation of the Family Advocacy and Support Service Final Report*, Available from: <https://www.ag.gov.au/Publications/Documents/fass-final-evaluation-report.pdf>
- Jaffe, P. G., Johnston, J. R., Crooks, C. V., & Bala, N. (2008). Custody disputes involving allegations of domestic violence: Toward a differentiated approach to parenting plans. *Family Court Review*, 46(3), 500-522.
- Kaspiew, R., Carson, R., Dunstan, J., Qu, L., Horsfall, B., De Maio, J. A., Moore, S., Moloney, L., Coulson, M., & Tayton, S. (2015). Evaluation of the 2012 family violence amendments. Australian Institute of Family Studies (AIFS).

- Kelly, F. and Fehlberg, B. (2002) 'Australia's fragmented family law system: Jurisdictional overlap in the area of child protection', in *International Journal of Law, Policy and the Family*, 16(1), pp.38-70.
- Laing, L. (2010). No way to live: Women's experiences of negotiating the family law system in the context of domestic violence. University of Sydney & Benevolent Society.
- Mahalik, J. R., & Burns, S. M. (2011). Predicting health behaviors in young men that put them at risk for heart disease. *Psychology of Men & Masculinity*, 12(1), 1-12. doi:10.1037/a0021416
- Myhill, A. (2015) 'Measuring coercive control: What can we learn from national population surveys?', in *Violence Against Women* 21(3), pp.355-375.
- Our Watch (2015) *Change the story: A shared framework for the primary prevention of violence against women and their children in Australia*, Our Watch: Melbourne.
- Parkinson P, Knox B. (2018) 'Can there ever be affordable family law?', in *Australian Law Journal*, 92(6), pp.458-76.
- Roberts, D., Chamberlain, P. and Delfabbro, P. (2015) 'Women's experiences of the processes associated with the family court of Australia in the context of domestic violence: A thematic analysis', in *Psychiatry, Psychology and Law*, 22(4), pp.599-615.
- Royal Commission into Family Violence. (2016). Report and recommendations.
- Safe and Together Institute, (2018). *About the Model*. Available from:
<https://safeandtogetherinstitute.com/about-us/about-the-model>
- Stark, E. (2012). Re-presenting battered women: Coercive control and the defense of liberty. In conference Violence Against Women: Complex Realities and New Issues in a Changing World, Les Presses de l'Université du Québec, Québec, Canada.
- Thomas, K. (2019). Research brief: Family violence perpetration and mental health. *Monash Gender and Family Violence Prevention Centre*.
- Turnbull, C. J. (2017). Family law property settlements: Principled law reform for separated families (Doctoral dissertation, Queensland University of Technology).
- UK Government, 2017. Domestic Abuse Perpetrator Programme Accessed 17 January 2020. Available:
<https://www.cafcass.gov.uk/grown-ups/domestic-violence-perpetrator-programme-%28dvpp%29.aspx>
- Victorian Law Reform Commission (2008) *Civil Justice Review: Report*, Victorian Law Reform Commission.
- Women's Legal Services Victoria (2018a) Small Claims, Large Battles: Achieving economic equality in the family law system Available from:
<https://womenslegal.org.au/files/file/WLSV%20Small%20Claims%2C%20Large%20Battles%20Research%20Report%202018.pdf>

Women's Legal Services Australia (2018b) Submission to the Australian Law Reform Commission's Issues Paper on Review of the Family Law System, Available from:
<http://www.wlsnsw.org.au/wp-content/uploads/WLSA-submission-to-ALRC-Review-of-the-Family-Law-System-fa.pdf>

Women's Legal Services Australia (2019) Safety First in Family Law, Available from:
http://www.wlsa.org.au/uploads/campaign-resources/Safety_First_in_Family_Law_Plan.pdf

Women's Legal Services New South Wales (2016) Sense and Sensitivity: Family Law, Family Violence, and Confidentiality, Available from: <http://www.wlsnsw.org.au/wp-content/uploads/WLS-NSW-Sense-and-Sensitivity-web.pdf>