



**Submission by**  
**The Australian Association of Social Workers**  
**to the Australian Law Reform Commission regarding**  
**Family Violence: Improving Legal Frameworks**

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## **Executive Summary**

The Australian Association of Social Workers (AASW) is the key professional body representing more than 6000 social workers throughout Australia. The social work profession is committed to the pursuit of social justice, the enhancement of the well being, quality of life and the development of the full potential of each individual, group and community in society.

The AASW welcomes the opportunity to inform this significant review process being undertaken by the Australian Law Reform Commission in relation to Family Violence: Improving Legal Frameworks. The AASW commends the Australian Government for undertaking this.

Social work operates from an holistic perspective that considers the wider impact of social systems, structures and the environment on the individual, family and community. This is particularly important in understanding the context of domestic and family violence and child abuse and neglect, which need to be situated within the broader social structure.

The submission makes the following recommendations

### **Recommendations in relation to Family Violence Part B Sections 3 and 5**

The AASW recommends:

1. That a national register be established whereby all family violence orders made in each State or Territory are automatically registered and enforceable across all Australian and New Zealand jurisdictions.
2. That a model uniform definition of family violence be developed which could be included in the family violence legislation of all States and Territories, family law, criminal law and migration law.
3. That all States and Territories include exposure of children to violence and abuse as a category within the definition of domestic and family violence.
4. That all States and Territories review their family violence legislation to ensure it provides protection from digital/cyber abuse and harassment by technology.
5. That all States and Territories review their family violence legislation to ensure abuse of pets is identified within a definition of domestic and family violence.

6. That any examples provided within State and Territory family violence legislation are broad enough to encompass a range of behaviours, settings and relationships.
7. That the family violence legislation in all States and Territories incorporate formalised and well informed protocols for working with people from NESB to ensure adequate understandings.
8. That the statement advising 'The inclusion of examples within the legislation are for illustrative purposes to guide police and courts and should not be considered to be exhaustive or in any other way limited to these examples' be included in the legislation of each state and territory.
9. That the family violence legislation in all States and Territories specifically refers to Indigenous family violence and adequately describes kinship and blood relative to cover the broader understanding this has for Indigenous people.
10. That the family violence legislation in all States and Territories includes relationships based on informal care and this is adequately described within the relevant acts.
11. That the family violence legislation in all States and Territories includes a preamble and guiding principles underpinned by a human rights framework.

## **Recommendations in relation to Family Violence Legislation and Parenting Orders**

### **Part B Section 8**

The AASW recommends:

12. That the provisions s600CC(3) and 117AB be removed from the *Family Law Act 1975*.
13. That a review process for consent orders be instituted where there are family violence orders in place to ensure a safety test is applied before these orders are made.
14. That the family law system seek strategies to inform itself of the existence of family violence protection orders including requesting such information on all family court application forms.
15. That a national register of State and Territory protection orders also contain current Family Court parenting orders.
16. That the Family Law system adopts a risk assessment and family violence framework.
17. That family violence legislation of all State and Territory family violence legislations is amended to include a prohibition on lowering the standard of protection offered under family violence legislation to accommodate parenting orders.

18. That family violence legislation of all State and Territory family violence legislations, which have not previously done so, be amended to include consideration of s68R of the *Family Law Act 1975*.

19. That the *Family Law Act 1975* be amended to give enhanced powers to the State to vary or suspend parenting orders when it is in the best interests of the child's safety to do so.

20. That the State and Federal systems forge enhanced working relationships to ensure that the safety of children is prioritised in all decision making.

21. That perpetrators of violence are challenged to commit to change alongside being given strong consistent messages about the unacceptability of their behaviour.

22. The AASW supports a seamless response to the needs, safety and wellbeing of children within the different statutory systems and strongly recommends the development of strategies for these systems to have enhanced opportunities for intersection.

### **Recommendations in relation to Child Protection Part C**

The AASW recommends:

23. That a common definition, understanding and risk assessment framework be developed and used to identify and address children's ongoing safety issues.

24. That the unique needs and risks faced by Aboriginal and Torres Strait Islander women, women who are recent immigrants, and non English speaking women and children be considered in reviewing the court systems and the resources required to ensure inclusive service delivery.

25. That the family violence legislation in all states and territories are amended to contain provisions which reflect s68R of the *Family Law Act*. The AASW is in support of the powers contained in s68R to be utilised within the Children's Court to ensure consistency across all three jurisdictions: Family Law, Family Violence legislation and Child Protection legislation.

26. That a risk and safety framework similar to that developed in Victoria and suggests that considerations of primary aggressors be part of any assessment and investigation.

27. That child protection agencies have a greater role within family law proceedings.

28. The AASW supports the need for a more integrated system to ensure the safety of children.

29. The development of Memorandums of Understanding and protocols between federal family courts and child protection agencies.

## **Recommendations in relation to Existing and Potential Responses Part E**

The AASW recommends:

30. That the Australian Government develops Best Practice Guidelines for the development of coordinated responses to family violence.
31. That Best Practice Guidelines include the points a- i outlined in this section of the submission.
32. That adequate resources are provided at both a National, State and Territory level to ensure coordinated response are sustainable and are able to be provided in a diverse range of geographical and cultural settings.
33. That adequate resources are allocated for undertaking related research and evaluation.
34. That a national audit is undertaken on the tertiary curricula to determine gaps in course content relative to family violence and child abuse.
35. That a review is undertaken of the existing family violence competencies within nationally accredited courses to ensure they meet industry and training standards.
36. That robust links between academic institutions and NGO's working in the community be developed and maintained. This would ensure a more accurate reflection of the grass root issues encountered in the direct work with victims and perpetrators of domestic violence.

## 1. Introduction

The Australian Association of Social Workers (AASW) is the key professional body representing more than 6000 social workers throughout Australia. The social work profession is committed to the pursuit of social justice, the enhancement of the well being, quality of life and the development of the full potential of each individual, group and community in society.

The AASW welcomes the opportunity to inform this significant review process being undertaken by the Australian Law Reform Commission in relation to Family Violence: Improving Legal Frameworks. The AASW commends the Australian Government for undertaking this.

Family Violence and child abuse remain a serious issue within Australian society, having a negative impact on the health and well being of those who experience such abuse. The AASW remains strongly committed to the principle that everyone has a right to safety and security of person, and should be afforded the highest level of protection from State and Federal agencies.

When victims of family violence and child abuse intersect with State agencies at either a State or Territory level or with Federal Government agencies, they need to have confidence that their safety will be taken seriously and not further compromised by any intervention. The issues and proposals raised in the consultation certainly identify some of the critical issues that require addressing. We particularly note the lack of interface between state child protection agencies and the Family Court whereby children's safety issues are often falling through the gaps between these two systems. Furthermore, we are also pleased that the 2006 amendments to the *Family Law Act* are being reviewed, in particular the provisions to consider 'friendly parent'. This provision denies the reality of family violence which remains hidden and unaccounted for in court decision making.

Social work operates from an holistic perspective that considers the wider impact of social systems, structures and the environment on the individual, family and community. This is particularly important in understanding the context of domestic and family violence and child abuse and neglect, which need to be situated within the broader social structure. It is from this lens that this submission is written.

The AASW believes that the outcomes from this consultation process, when enacted, will result in a safer and fairer community for all: adults and children.

## **2. Family Violence: A Common Interpretative Framework (Part B: Sections 3 and 5)**

### **2.1 Model Provisions Reflecting Best Practice**

This section is responding to Part B Section 3 of the ARLC consultation paper with regards to guiding principles.

### **2.2 Guiding principles and a human rights framework**

The insertion of a preamble would provide background, context and an inspirational statement of the intent of the legislation. Further, a set of principles would guide the interpretation of the legislation. The New South Wales *Crimes (Domestic & Personal) Act 2007* has a preamble which specifically mentions the *Declaration on the Elimination of Violence Against Women* as well as the *United Nations Convention on the Rights of the Child*. Resolution 2200A of the *Declaration on the Elimination of Violence Against Women* “affirms that violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms, and is concerned about the long-standing failure to protect and promote those rights and freedoms in the case of violence against women” (United Nations General Assembly, 1993, p. 2).

Importantly, there is international agreement that violence against women is a form of discrimination and violation of their human rights (United Nations General Assembly, 2006). A human rights perspective provides a consistent platform for conceptualising and working towards addressing and preventing the devastating effects of violence on women internationally. As a professional body, the AASW subscribes to the principles of the United Nations Universal Declaration of Human Rights and associated declarations, and this underpins our guiding values and principles.

The United Nations has developed clearly articulated expectations that States have the obligation to “respect, protect, fulfil and promote human rights with regards to violence

*against women encompasses the responsibility to prevent, investigate and prosecute all forms of, and protect women from, such violence and to hold perpetrators accountable”* (United Nations General Assembly, 2006, p. 73).

The AASW recommends the containment of these United Nation’s conventions within the preamble, as a way of empowering and strengthening the legislation with an obligation to uphold the human rights of women and children who are experiencing or exposed to violence and abuse.

### **2.3 Definition examples used within legislation**

Examples provided within legislation enable judges, magistrates, prosecutors and lawyers to gain an understanding of the range of ways in which certain behaviours or offences are applied to a family violence context. These examples need to be broad enough to cover a range of settings, relationships and context.

The AASW recommends that examples of harassment and intimidation be included in any definition, with the following aspects articulated:

- reckless driving
- threatening to disclose the same sex dynamics of the relationship to family, friends, employers, police, court and others
- isolating a person from friends, family and community
- not providing timely response to medical emergencies
- preventing a person from exercising their choice of religion, language, cultural ceremonies and other cultural practices
- racist taunts
- threats to institutionalise a person, withholding medication and other necessary care
- defamatory comments and attack

In their submission to the review of the Queensland *Domestic & Family Violence protection Act 1989*, the Queensland Branch of the AASW (2010), recommended the inclusion of the following statement, to ensure that the examples provided are understood to not be exhaustive: *‘The inclusion of examples within the legislation are for illustrative purposes to guide police and courts and should not be considered to be exhaustive or in any other way*

*limited to these examples*'. The AASW again makes this recommendation to the ALRC in relation to examples contained in any revised legislation.

## **2.4 Common definition or common understanding**

In this section, the AASW provides comment with regards to the ALRC Consultation Paper Part B, Section 5 in relation to:

- Definition of family violence contained in the following laws
  - Family Violence Legislation
  - Criminal Law
  - Family Law
  - Migration Legislation
- Persons protected
- Model provisions reflecting best practice

The AASW recognises the difficulties that may exist in compelling all states and territories to agree to a uniformly worded definition. However, the family violence legislation of each state and territory needs to ensure that any definition used does not undermine the integrity of the broader model definition. Moreover, the AASW strongly supports the need for all victims of domestic and family violence across Australia, to have the same level of access to legal support.

## **2.5 Definition of Family Violence within Family Violence Legislation**

All States and Territories have enacted legislation specific to the protection of those who are, or have experienced domestic and family violence. However, as the ALRC Consultation Paper highlights, there are several inconsistencies across these legislations resulting in differing applications to both natural justice and safety.

Seeking a protection order is one avenue many victims of domestic and family violence use as a means to increase their safety. For example, in 2009, there were 21,071 applications for protection orders lodged in Queensland courts (Department of Communities, 2010). Leaving a violent relationship brings many risks and some women may flee their community, crossing state and territory boundaries seeking safety. For those communities in close proximity to state borders this is often a regular occurrence. For example: women living in northern NSW especially the Tweed Heads area may relocate to the Gold Coast believing a larger community may give them some anonymity.

Currently protection orders made in one State or Territory can be registered in any other State or Territory, after which point they become fully enforceable in that particular state. This cross jurisdictional agreement was meant to give protection orders portability. However orders are not effective outside the jurisdiction where they were originally made, until such time as they have been registered at a court in the new location. Registering of an interstate order is incumbent on the victim knowing firstly that they need to register their order, and secondly knowing the process this may involve. This uncertainty may place victims at further risk as they may unwittingly assume their protection order is enforceable when in reality it is not.

*Time for Action*, the Report of the National Council to Reduce Violence Against Women and their Children (2009), argues that this current arrangement is cumbersome and falsely assumes a high degree of consistency in domestic and family violence legislations across jurisdictions. To ensure the safe transition of protection orders across jurisdictions, *Time for Action* recommends a national register whereby all protection orders are registered and automatically enforceable across states and territories.

To enable enhanced transportability of orders, several inconsistencies in state and territory family violence legislations would need to be addressed, including the definition of domestic and family violence enshrined within each state or territory legislation.

The United Nations Declaration on the Elimination of Violence Against Women (United Nations General Assembly, 1993), defines violence against women as “*any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life*”.

Domestic violence is a complex issue manifesting itself through a variety of behaviours aimed at controlling one’s partner through fear. A broader definition of domestic violence is consistent with *Time for Action* (2009), which states that behaviours associated with domestic violence include, emotional, verbal, social, economic, psychological, spiritual, cultural, sexual and physical abuse. These behaviours encompass a continuum of violence, none of which are mutually exclusive or isolated from the other (AASW 2010).

The AASW endorses the ALRC suggestion that a more comprehensive definition of domestic and family violence, such as that contained in the *Victoria Family Violence Protection Act 2008*, could be used to give a broader definition than is currently applied in most states and territories. The Victorian definition includes sexual, physical, psychological, emotional, economic, threatening behaviours and exposing children to domestic violence as types of abuse. The AASW supports a comprehensive and holistic definition, encompassing the multi level facets of violence.

A broader uniform definition of family violence would also assist in enabling marginalised women to have enhanced access to legal protection. Women with Disabilities Australia (Swift, 1998), contend that definitions of domestic violence in state and territory legislations are far too narrow to describe the full range of domestic situations in which women with disabilities live. There are many factors which make women with a disability particularly vulnerable to violence and abuse both inside *and* outside the home. Low self esteem can act as a magnet to those who seek gratification through dominance and power imbalances fill a void created by a person's compromised independence. These factors, along with others, are all relevant in considering how effectively domestic violence legislation meets the unique needs of women with disabilities. Where definitions fall short of adequate description, legal and domestic violence systems cannot achieve justice for women clients with disabilities. Therefore, for women and men with disabilities, domestic violence needs to be more widely defined. Further issues for women with disabilities will be discussed in the section on protected persons.

## **2.6 Specific Issues Relevant to Definition**

### **Exposure of children to violence as an act of abuse in and of itself**

There is a growing body of robust research adding to the collective understanding that children are not mere “*witnesses*” to violence, but are damaged by it. Harm to children from domestic and family violence can begin in-vitro with violence perpetrated against pregnant women, continuing through childhood to adolescence to adulthood (Gevers, 1999; Shonkoff & Phillips, 2000). Domestic and family violence has significant physical and emotional harm consequences for children’s physical safety and wellbeing as well on their ongoing emotional, cognitive and social development (Kaufam & Henrich, 2000; Taft, 2002). Adverse outcomes for children can include developing higher levels of aggression, depression, anger and anxiety (Humphreys 2008; Jaffe, Baker & Cunningham 2004; Laing 2000; Walsh, 2002).

Research also tells us that in between 30% to 60% of families where domestic and family violence exists, children are also experiencing other forms of abuse (Edleson, 1999, p. 2).

Furthermore, as the *Time for Action (2009)* Report emphasised, children and young people do not need to be physically present during a domestic and family violence incident to suffer negative consequences.

### **Abuse by technology as part of a broader definition**

In developing a model definition of family violence, consideration should be given to the ways in which technology has become an integral part of people's everyday lives. The growing phenomena of *digital abuse*, has largely been overlooked in all state and territory legislation with the exception of Tasmania, which makes reference to "*harassment by technology*".

Technology has opened new avenues for manipulation and control particularly among young people in relationships. Digital harassment, sometimes referred to as 'cyber' or 'technology harassment', is an extension of verbal and/or emotional abuse transmitted via e-mails, instant messages, mobile phones, voicemails, texts, 'sexts', or social networking websites such as MySpace, Bebo and Facebook.

Digital abuse can involve:

- Textual harassment (i.e. constantly texting, instant messaging, or emailing a partner)
- Sexting (i.e. sending or forwarding nude or sexually suggestive pictures via mobile phone or online)
- Digital Stalking/Spying (i.e. checking a partner's text message or call history, or breaking into a partner's inbox)
- Cyber-Bullying i.e. spreading negative or embarrassing rumours, name calling, or making threats (MTV and Associated Press, 2009).

Almost a quarter of young people currently in some form of romantic relationship report that their partner checks on them multiple times per day, either online or on a mobile phone, to see where they are, who they're with or what they're doing (MTV and Associated Press, 2009).

With 'sexting' images, they may be shared willingly between partners whilst in an on line or real time relationship. However, when there is an argument or this relationship ends, the images remain and can be used in ways the subject never intended, constituting a new form of abuse via technology (Lenhart, 2009).

### **Abuse or threats to abuse pets**

Abuse of pets is often an inhibitor to women leaving violence relationships, as they may have both an emotional attachment to the pet, but also concerns for the pet's welfare once they leave. Pets can also be abused as a part of ongoing threats and retaliatory violence and are often additional victims of violence in environments where IPV is perpetrated.

In some instances the animals were the victims of serious abuse with some reporting fatal outcomes (Tiplady, Walsh & Phillips, in press). Ascion and Arkow's (1999) study found that 70 – 75% of women reporting domestic violence also reported that their partner had threatened and/ or actually hurt or killed one or more of their pets.

The awful reality of pet abuse was highlighted in a recent domestic violence homicide case in the Brisbane Supreme Court (R vs Falls ), in which the court was told that, Rodney Falls, had kicked to death nine family pets (Brisbane Courier Mail, June 4th 2010).

Dvconnect, the Queensland Domestic Violence Telephone Service has partnered with the RSPCA to provide short term shelter to animals to allow women and their children to leave an abusive relationship knowing that their pets will be cared for in their absence. During 2009/2010, 155 animals were provided with safe shelter allowing women and children to leave family violence (Dvconnect, 2010). This strategy came about from the anecdotal experiences of workers in Dvconnect when attempting to get women and their accompanying children to safety. While this is a valuable service for women and children, Tiplady, Walsh & Phillips (in press) found that a number of women rely on their pets for emotional comfort and do not want to be separated from them and in some instances, delayed leaving until suitable pet friendly accommodation could be found. It is reasonable to assume that the data from Dvconnect will be an underestimate of the actual number of women requiring protection for their pets (Dvconnect, 2010).

The AASW recommends that pets are protected on all state and territory family violence legislation, irrespective of who owns the pet in the relationship.

## **2.7 Family Violence Definition within Criminal Law**

The ALRC consultation paper notes that there are limited examples of definitions of ‘*family violence*’ or ‘*domestic violence*’ in the criminal laws of Australia. The only exception to this is where family violence is defined within the context of defences of homicides and only then within the *Crimes Act 1958* (Vic), and the *Criminal Code (Abusive Domestic Relationship Defence and Other Matters) Amendment Act 2010* (Qld).

A definition of family violence, together with examples to give context to specific offences, should be contained within criminal law legislation to assist in ensuring the criminal justice system is accessible to those victims who may choose to pursue criminal charges. In the first instance, there should be common definitions within State;s jurisdictions to ensure that State family violence and criminal law are underpinned with a common definition and understanding of the seriousness of domestic violence. While civil and criminal law may have differing policy objectives, the AASW supports the ALRC’s conclusion that these policy objectives would not be compromised by a uniform definition.

## **2.8 Family Violence Definition within Family Law**

Currently the *Family Law Act* has a narrower definition of family violence than that contained within many State and Territory family violence legislations. The use of a uniform definition of family violence as proposed for state and territory legislation could also be included within the *Family Law Act*. This would ensure that there is a consistent understanding of the types of behaviours and offences that constitute family violence and will be particularly helpful in those cases where s68R of *the Family Law Act* is being applied.

The AASW recommends that a common definition and understanding developed for state and territory legislation also needs to be articulated within the *Family Law Act* to ensure that people subjected to family violence have the same protection within the Family Law arena as they would within the State system.

## **2.9 Family Violence Definition within Migration Legislation**

Under the existing *Migration Regulations 1994*, family violence is defined as “*conduct which causes the alleged victim to reasonably fear for, or to be reasonably apprehensive about, his or her own wellbeing or safety.*” The focus of the definition is therefore not on the behaviour that causes the victim to reasonably fear for, or to be

reasonably apprehensive about, his or her own wellbeing or safety but rather, in the extent to which that person becomes fearful. This very narrow definition could be interpreted to have a sole focus on physical violence and the exclusion of other forms of abuse especially emotional, financial, spiritual and social isolation.

This narrow definition is outside what is determined as family violence within State and Territory family violence legislation. It would be reasonable to believe that someone could gain a protection order under family violence legislation but still fail to meet the definition criteria under *Migration Regulations 1994*.

Women from CaLD backgrounds may also lack an understanding of what constitutes domestic and family violence in Australia (Anne, 2010). This is particularly the case of new arrivals. Protection orders are often required as evidence when women may be applying for permanent residency under the *Family Violence Provisions within the Migration Regulations 1994*. The definition of family violence as applied by law in the granting of a protection order is, at present, different to the definition contained within the *Migration Regulations 1994* thus creating unnecessary confusion.

The AASW therefore recommends a uniform definition of family violence also be contained within *Migration Laws and Regulations*.

## **2.10 Protected Persons**

### **Indigenous Persons**

The AASW commends the Australian Law Reform Commission for highlighting the issue of Indigenous family violence and the heightened risk this poses to Indigenous women who are at increased risk of serious injury and death (AIC, 2010; Taylor, 2008).

The AASW notes that the *Alternative and Improved Responses to Domestic and Family Violence within Queensland Indigenous Communities* (Cunneen, 2009) provides some key recommendations that should form the basis for providing enhanced legal protection to Indigenous women and communities. Specifically, Cunneen (2009) recommends with respect to a review of the Queensland *Domestic and Family Violence Protection Act 1989* that the legislation incorporate:

- An enhanced and formal role for the Community Justice Groups or groups of Elders.
- Mechanisms that allow for the simplification of the application and orders.

- Processes that allow for greater involvement of Indigenous JP's within domestic violence courts.

The AASW also brings the ALRC's attention to the recent report by Rex Wild and Pat Anderson (2007) *Little Children are Sacred: Report of the Northern Territory Board of Inquiry into the protection of Aboriginal Children from Sexual Abuse*. What these reports all highlight is the interconnection of violence within Indigenous communities with fundamental social, emotional, economic, cultural, health and physical factors. Reviewing any legislation and associated policies with regards to Aboriginal and Torres Strait Islander people therefore requires meaningful involvement of Indigenous people in determining policies and strategies to address domestic and family violence. Doing so would further ensure understanding and appropriate adherence with Indigenous protocols and kinship systems, and the breaking through language barriers and historical elements in order to develop culturally appropriate services (AASW 2010; Aboriginal and Torres Strait Islander Women's Taskforce on Violence, 1999).

The definition of family relationships contained within the Queensland *Domestic & Family Violence Legislation 1989* provides a broad definition of 'a relative' or *kinship* and could be used as a model for those states or territories that do not provide a legislative definition to specifically address Indigenous family violence.

### **Carers**

The AASW believes Governments at both State and Federal levels need to ensure that all vulnerable groups within society are afforded protection from on-going violence and abuse. This submission makes specific comments on elder abuse and violence against people with a disability, irrespective of age.

The extent of elder abuse within Australian society is still largely unknown but is estimated at 5% of the older population (Vic Health, 2009). The concerns need ongoing vigilance and commitment to addressing the gaps given the increasingly aging population of Australia. Furthermore, anecdotal evidence often points to a lifetime of violence through the life stages which does not stop when a woman is aged. The lack of consistent national data alludes to the still hidden problem within our older population. The Victorian Government's (2005, p. 12) report, *Strengthening Victoria's response to elder abuse*, defines elder abuse as, "any act occurring within a relationship where there is an implication of trust, which results in harm to an older person". The emphasis is on the 'trust' relationship and excludes relationships

that are based on an exchange of money for services. Elder abuse predominately occurs within spousal or family relationships although is not exclusive of others including friends and neighbours.

Women with Disabilities Australia also provide critical information on the extent of violence against women with a disability who are twice as likely to experience domestic and family violence as women without disabilities (Swift, 2008). Women with disabilities seeking to escape domestic and family violence face added barriers as they may not always be catered for in existing emergency accommodation. More broadly, the issue of access is an important consideration, both in terms of knowledge of rights and supports, the ability to seek help and appropriate support in terms of advocacy and practical support, following any report of violence.

Where the abuse of either older persons or people with a disability occurs within an intimate or familial relationship, legal protection can be sought under existing provisions within state and territory legislation. However, there is inconsistency across legislation in respect to informal care relationships. Clarity is needed within family violence legislation on what constitutes an informal care relationship. Examples provided within family violence legislation also need to include these types of behaviours and relationships that may constitute elder abuse and violence towards a person with a disability.

This may include but is not limited to:

- Threats to institutionalise an individual
- Withholding medications and other forms of care
- Verbal, emotional and physical abuse
- Involuntary isolation
- Not attending to physical needs, including appropriate hygiene and medical needs
- Economic abuse
- Abuse of a position of power and dominance

The AASW recommends that State and Territory family violence legislation contain provisions for the seeking of protection orders within informal care relationships.

## Recommendations

The AASW recommends:

1. That a national register be established whereby all family violence orders made in each State or Territory are automatically registered and enforceable across all Australian and New Zealand jurisdictions.
2. That a model uniform definition of family violence be developed which could be included in the family violence legislation of all States and Territories, family law, criminal law and migration law.
3. That all States and Territories include exposure of children to violence and abuse as a category within the definition of domestic and family violence.
4. That all States and Territories review their family violence legislation to ensure it provides protection from digital/cyber abuse and harassment by technology.
5. That all States and Territories review their family violence legislation to ensure abuse of pets is identified within a definition of domestic and family violence.
6. That any examples provided within State and Territory family violence legislation are broad enough to encompass a range of behaviours, settings and relationships.
7. That the family violence legislation in all States and Territories incorporate formalised and well informed protocols for working with people from NESB to ensure adequate understandings.
8. That the statement advising 'The inclusion of examples within the legislation are for illustrative purposes to guide police and courts and should not be considered to be exhaustive or in any other way limited to these examples' be included in the legislation of each state and territory.
9. That the family violence legislation in all States and Territories specifically refers to Indigenous family violence and adequately describes kinship and blood relative to cover the broader understanding this has for Indigenous people
10. That the family violence legislation in all States and Territories includes relationships based on informal care and this is adequately described within the relevant acts.
11. That the family violence legislation in all States and Territories includes a preamble and guiding principles underpinned by a human rights framework.

## 3. Family Violence Legislation and Parenting Orders (Part B Section 8)

### 3.1 Friendly Parent Provisions

The AASW endorses concerns raised in the Chisholm Report (2010) regarding the 'friendly parent' provisions of s60CC(3) and the false allegations provisions of s117AB which can see court costs and fines awarded against victims who may not have substantive evidence to support their disclosures of violence to themselves or their children. The aim of both of these provisions is for each of the child's parents to facilitate and encourage a close and continuing relationship between the child and the other parent.

It is our view that women escaping violent relationships are severely disadvantaged by these provisions. Laing's (2010) research found that women were acutely aware they had to temper their efforts to protect their children with considerations that they may be perceived as motivated by the desire to undermine the father/child relationship. This then places women and children at considerable increased risk as the current '*friendly parent*' provision and penalties for alleged false allegations can force women to agree to consent orders for fear of being penalised if they continue with court action. This occurs even where such consent orders place their children at further risk.

Women who may withhold contact through fear of ongoing violence to themselves or their children are often described as the *alienating parent* (Brown & Alexander, 2007; Bow, Gould & Flens, 2009). Laing (2010) cited testimonies from several women whose partners had been charged and convicted of assaults and other offences. These same women were then penalised within the Family Court for trying to withhold contact. Laing (2010) concluded it was common for women to feel that their concerns for the safety of their children were dismissed as being the result of bitterness toward their ex partners.

A significant body of research has examined the notion of 'false allegation' within the Family Law Court (Busch 2009; Kaspiew, Gray, Watson, Moloney, Hand & Qu, 2009; Brown 2001; Rendell, Rathus and Lynch, 2000). Importantly, Brown's (2001) research found that 'false' child abuse allegation made in the Family Court were no more frequent than child abuse allegations in other areas and in fact, child abuse allegations in the Family Court were of a more serious nature with physical and sexual abuse found in 70% of cases.

### **Recommendations**

The AASW recommends:

12. That the provisions s600CC(3) and 117AB be removed from the *Family Law Act 1975*.
13. That a review process for consent orders be instituted where there are family violence orders in place to ensure a safety test is applied before these orders are made.

It is our members' experience that many women consent to orders that place them and their children at risk due to fear and/or pressure to consent by their legal representatives. Women have foregone their rights in order to appease their violent ex-partners and their legal representatives.

The AASW also provides feedback on the following proposals.

**Proposal 8–2** Application forms for initiating proceedings in the federal family courts and the Family Court of Western Australia should clearly seek information about existing protection orders obtained under state and territory family violence legislation or pending proceedings for such orders.

The AASW supports this proposal. It should be incumbent on the court to seek this information rather than the onus being on the victim to disclose it. This places responsibility back to the Family Law Courts to identify and appropriately manage family violence cases. The AASW has provided a recommendation in Section 1 of this submission for the establishment of a national data base of family violence orders. It is our opinion that this national data base could also include all parenting orders made by the Family Court to ensure that there is a seamless flow of information between jurisdictions.

**Question 8–3** Are additional measures necessary to ensure that allegations of family violence in federal family courts are given adequate consideration in interim parenting proceedings? If so, what measures would be beneficial?

The AASW considers that additional measures are necessary. Anecdotal evidence obtained from our membership suggests that decisions made at interim hearings tend to prioritise contact with both parents over the safety of the child and mother. This is exacerbated due to the lack of risk assessment policies and practice, lack of consideration of existing protection orders within family law and lack of appropriate and on-going interaction with child protection agencies.

**Proposal 8–7** State and territory courts hearing protection order proceedings should not significantly lower the standard of protection afforded by a protection order for the purpose of facilitating consistency with a current parenting order. This could be achieved by:

- (a) a prohibition to this effect in state and territory family violence legislation; or
- (b) guidance in relevant state and territory bench books.

The AASW strongly supports this proposal and consider (a) as a stronger option. A Magistrate could decide not to make a protection order if they are informed of existing

proceedings for parenting orders. Anecdotal evidence informs that in some courts, Magistrates granting a protection order will not consider placing children on protection orders if this could conflict with Family Court parenting orders. It is not a universal practice through the courts for Magistrates to exercise their power under s68R to vary, discharge or suspend a parenting order into an order to give maximum strength to a family violence protection order.

**Question 8–6** Do state and territory courts exercise their power under s 68R of the Family Law Act 1975 (Cth) to revive, vary, discharge or suspend a parenting order to give effect to a family violence protection order?

The AASW recommends that the family violence legislation in all States and Territories are amended to include a reference to powers under s68R of the *Family Law Act 1975* to discharge, vary or suspend any inconsistent parenting order to the extent that it is inconsistent with a family violence protection order.

**Question 8–9** Should the Family Law Act 1975 (Cth) be amended to direct state and territory courts varying parenting orders to give priority to the protection of family members against violence and the threat of family violence over a child's interest in having contact with both parents?

The Family Law Court (2010, p. 2) provides written information to parents which states “*You must do everything a parenting order says. In doing so, you cannot be merely passive but must take positive action and this positive obligation includes taking all reasonable steps to ensure that the order is put into effect. You must also positively encourage your children to comply with the orders. For example where the order states your children are to spend time with another party, you must not only ensure that the children are available but must also positively encourage them to go and do so.*”

The protection of children must be the priority of all judicial interventions and instructions at both a State and Territory level as well at a federal level. The presumptive rebuttal should be that the *child's interests* are best served by having **safe** contact with both parents, and if this cannot be guaranteed, then contact should be suspended or denied. The current

presumption that both parents have contact with their children post separation leaves many children at risk for further harm and in some cases, this has had tragic lethal consequences.

The Australian (6th April, 2010) reported on a family court decision to allow a man who had sexually abused an older daughter to spend time with her younger sisters by saying "*this is one of those exceptional cases*" where a father should be permitted to spend time with the children, provided that it was in the presence of his mother. He noted the new shared parenting law sought to ensure that "*children have the benefit of both their parents in their lives*" and the "*right to know and be cared for by both parents*". This decision was made after the judge heard testimony from the older daughter and described her as "a credible witness". What this court decision has effectively done is ignore this man's abusing behaviour and the ongoing threats to his daughters and shifted responsibility to the grandmother to ensure their safety while with their father. In this case, the Family Court has abdicated responsibility for the children's safety in lieu of ensuring the father's 'rights' to see his children.

The AASW does not believe the above is an isolated incident. All of Australia was shocked by the tragic death of Darcy Freeman who was thrown off the Westgate Bridge in 2009. Her death brought the spotlight onto the Family Court and processes and that has ultimately led to the Chisholm review of the *Family Law Act 1975*.

The AASW strongly recommends that the States and Federal systems forge enhanced working relationships to ensure that the safety of children is prioritised in all decision making. That the systems are strengthened and a framework be developed that will be operational across jurisdictions to prioritise the safety of women and children.

The AASW further recommends that perpetrators of violence are challenged to commit to change and are held accountable for their behaviour through all interventions and are given strong consistent messages about the unacceptability of their behaviour. This could be achieved in the Family Law Court system by considering prior convictions of offences relating to family violence, breaches of protection orders, reports from child protection and reports from men's behaviour change programs.

## Recommendations

The AASW recommends:

14. That the family law system seek strategies to inform itself of the existence of family violence protection orders including requesting such information on all family court application forms
15. That a national register of State and Territory protection orders also contain current Family Court parenting orders
16. That the Family Law system adopt a risk assessment and family violence framework
17. That family violence legislation of all State and Territory family violence legislations is amended to include a prohibition on lowering the standard of protection offered under family violence legislation to accommodate parenting orders.
18. That family violence legislation of all State and Territory family violence legislations, which have not previously done so, be amended to include consideration of s68R of the *Family Law Act 1975*.
19. That the *Family Law Act 1975* be amended to give enhanced powers to the State to vary or suspend parenting orders when it is in the best interests of the child's safety to do so.
20. That the State and Federal systems forge enhanced working relationships to ensure that the safety of children is prioritised in all decision making.
21. That perpetrators of violence are challenged to commit to change alongside being given strong consistent messages about the unacceptability of their behaviour.
22. The AASW supports a seamless response to the needs, safety and wellbeing of children within the different statutory systems and strongly recommends the development of strategies for these systems to have enhanced opportunities for intersection.

## 4. Child Protection (Part C)

### 4.1 Jurisdictional Intersections

In this section, the AASW provides comment on the following:

- Child Protection and Family Law
- Child Protection and Criminal Law

**Question 14–1** Can children's courts be given more powers to ensure orders are made in the best interests of children that deal with parental contact issues? If so, what powers should the children's courts have, and what resources would be required?

**Question 14–2** Should the *Family Law Act 1975* (Cth) be amended to extend the jurisdiction which state and territory courts already have under pt VII to make orders for a parent to spend time with a child?

**Question 14–3** When should state and territory children's courts have power to determine contact between one parent and another in matters that are before the court in child

protection proceedings?

**Question 14–4** What features of the Family Court of Western Australia should be replicated in other jurisdictions?

**Question 14–5** Is there any role for a referral of legislative power to the Commonwealth in relation to child protection matters? If so, what should such a referral cover?

This section looks at the specific issues of jurisdictional overlap and intersection. Feedback is sought on improving the communication of information between the child protection system and the family courts; the participation of child protection agencies in family law matters and addressing the potential for children to fall into the gaps between the two systems.

Throughout Australia, State and Territory legislations exist to provide for the protection of children. Such legislations address ‘harm’ to children through violence, abuse, maltreatment and neglect. The following provides a helpful definition of harm to children, taking into account the importance of cumulative harm.

*“Cumulative harm refers to an accumulation of risk factors. It recognises the existence of compounded experiences by way of multiple levels or ‘layers’ of neglect or maltreatment. By the time abuse/neglect is identified as having caused cumulative harm, its unremitting daily impact on the child is wide ranging, profound and exponential, covering multiple dimensions of child and family life, causing damage to the foundations of a child’s sense of safety, security wellbeing and development, which can be irreversible”* (Miller 2006, p. 8, cited in Department of Human Services, 2007, p. 23).

While Federal family courts are not charged with responsibility for investigating allegations of child maltreatment, issues of family violence and child abuse remain relevant to decisions about what is in the best interests of the child in parenting decisions. Yet, child protection agencies generally do not join these proceedings unless they are advised of the family law proceedings and judge the alleged issues of child maltreatment to be serious enough to warrant intervention (ALRC 2010). Existing provisions under the *Family Law Act* appear to be not fully appreciated or utilised. Furthermore, anecdotally the evidence suggests that child protection agencies generally do not pursue family law matters, leaving it to the Family Law Courts (See for example, Laing, 2010). This is also the case with the Family Court, they often do not contact child protection agencies to find out about allegations of abuse and often hand down decisions without fully understanding what could be happening within the family.

## 4.2 One Family, Multiple Systems

Family violence may be the catalyst for involvement in proceedings in more than one jurisdiction, increasing the possibilities of inconsistent orders which can place family members at risk of further violence and abuse.

Anecdotal evidence suggests that in cases of domestic and family violence involving children, there has been a growing tendency to respond and assess the family as individuals, that is, the children's safety, versus the mother's safety etc., rather than adopting an holistic family focused approach. Whilst we strongly support the principle that the safety of a child is of paramount importance, our experience also indicates that in general, where the mother is supported or assisted to be safe, so too will she ensure the children are safe. This then requires challenging the current paradigm which seems to see the mother as solely responsible for the safety of the children during a violent attack: what did she do to protect the children from witnessing or being exposed to violence by the partner? This removes any accountability from the perpetrator for his acts of violence. We need to challenge current expectations of what is acceptable action or attempts by a woman to keep her children safe; reviewing whether there are unrealistic expectations placed on women. Walsh (2002) argues that 'the invisible violent man syndrome' exists in the service system once the family enter child protection services as women are held accountable for keeping children safe and if she ends the relationship she is deemed to have acted protectively and the violent man is no longer visible and therefore no longer accountable.

A shift is needed, recognising that the woman is the victim, along with the children, and victims do not always have choices or opportunities, or are unsuccessful in their attempts to protect their children, in spite of the commitment to do so. This should not equate to being a 'bad mother' who was not willing or able to protect her children, (and herself) from harm, but rather, recognises that with greater and appropriate support, she could be both willing and able to do so. Such a shift involves appropriate, timely and family focused safety planning, together with a deeper understanding of the dynamics and complexities involved. A key question then is what support can be provided to the woman to keep herself and her children safe?

### **Case study: A safe mum is a safe child**

*Susan left her partner after experiencing an abusive relationship and was being supported by a domestic and family violence counselling service. Her ex partner continued to harass her and one day, smashed the house and abused her; the two children were present. A referral was made to the Department of Child Safety (DChS). The DV Counsellor met with the Child Safety Officers who asked the question 'why didn't the mother call the police quickly, what did she do to protect the children from witnessing and being exposed to this violence?' The view was that the mother had done 'nothing'. The DV Counsellor explained the ex partner had smashed her mobile phone and that she stayed behind the front door of the house to protect her children by preventing him from entering the house and abusing the family further; eventually, she called the police from a neighbour's house after she settled the children down. When asked, there appeared to be little action or investigation about the father's actions and his level of responsibility for the violence perpetrated to mother and children.*

This case highlighted the importance of exploring and challenging this perception that a woman was 'doing nothing' to protect her children and of clearly recognising the victim/s in these situations and the responsibility of the perpetrator. In other cases, Brown & Alexander (2007), argue that the child protection agencies suggest that the protective parent ends the partnership/marriage through family law court proceedings, rather than them taking action through the Children's Court. This then results in one parent taking action against the other in the Family Court, rather than working with the child protection services. A problem with all this is that some parents can become increasingly frustrated and angry as they demand urgent action to protect their child from the abusing parent. All too often, the parents cannot understand why they have to go through the family court process that involves seeking contact orders, when what they want is the authorities to prevent their child seeing the abusive parent (Brown & Alexander, 2007).

Douglas and Walsh (2010) argue that the child protection system in Australia seems to remain focused on mothers as carers who are failing in their care role if they allow children to have contact with a violent parent. In contrast, the family law system sees both parents as sharing care and mothers who obstruct contact with fathers as 'unfriendly'. This disconnect presents significant added challenges for mothers juggling the issues raised by the child protection system and the family law system (Hester 2010).

This disconnect is further discussed by Laing (2010) who argues that many women commonly encountered the belief that mothers '*fabricate*' abuse both in the family law

system and when they attempted to use other services to protect themselves and their children. Laing (2001, p. 51) cites the following example: “*The duty lawyer said that DoCS was involved. The [Federal] Magistrate flew off the handle and she said: “I have seen all this before where a mother feeds her story to DoCS, so of course they support her”.*”

There is still a widely held view by some legal sector professionals, particularly lawyers that allegations of family violence are made by mothers to gain tactical advantage over fathers where shared care is being pursued (Kaspiew et al., 2009). Laing (2010) concludes that the end result is that women may ‘filter’ the information provided to the Family Court to avoid the risk of not being believed and of being considered to be ‘unfriendly’ or ‘alienating’ her children, which could result in her not being able to protect her children from an abusive or violent father. As a result, the abuse of children becomes invisible and is ignored within the Family Court System.

The AASW recognises issues of family violence and child abuse may be relevant to decisions about what is in the best interests of the child in parenting decisions. Currently s92A of the *Family Law Act (1975)* enables a child protection worker or agency to intervene in proceedings where a child is at risk. Alternatively s91B allows for the Family Court to request intervention to protect the welfare of the child. How often these sections of the legislation are utilised is unclear, however the AASW asserts that where there is an intersection between family law and child protection, decision and orders need to reflect consideration of the ‘best interest’ of the child.

The proposal outlined in the consultation paper to establish one court to deal with issues relative to the safety and well being of children would certainly address jurisdictional overlap issues but needs careful consideration to avoid unintended consequences which may further hinder the very goals that we are attempting to achieve. The AASW supports a seamless response to the needs, safety and wellbeing of children within the different statutory systems and strongly recommends the development of strategies for these systems to have enhanced opportunities for intersection. A starting point could be the development of a common definition, understanding and risk assessment framework which could be used to identify and address children’s ongoing safety issues.

In addition, consideration needs to be given to the increased risks faced by Aboriginal and Torres Strait Islander women, women who are recent immigrants, and non English Speaking

women and children, who are particularly disadvantaged and discriminated against in their engagements with institutional processes. Therefore, the unique needs of these groups need to be considered in reviewing the court systems and the resources required to ensure inclusive service delivery.

**Proposal 14–1** To ensure appropriate disclosure of safety concerns for children, the Initiating Application (Family Law) form should be amended by adding an additional part headed ‘Concerns about safety’ which should include a question along the lines of ‘Do you have any significant fears for the safety of you or your child(ren) that the court should know about?’

**Question 14–6** What other practical changes to the applications forms for initiating proceedings in federal family courts and the Family Court of Western Australia would make it clear to parties that they are required to disclose current or prior child protection proceedings and current child protection orders?

**Question 14–7** In what other ways can family law processes be improved to ensure that any child safety concerns that may need to be drawn to the attention of child protection agencies are highlighted appropriately upon commencement of proceedings under the *Family Law Act 1975* (Cth)?

The AASW supports the importance of developing systems that ensure all matters involving children are dealt with as seamlessly as possible and involve increased coordination and integration between the child protection, criminal and civil law, family law and state family protection systems, as suggested by the ALRC. Currently, there is insufficient alignment between the systems, which has resulted in a lack of integrated and coordinated responses. The danger of this is that children and families fall between the cracks, which is unacceptable given the significance of the effects of violence on children and young people and the associated emotional and economic costs to society (AASW 2010).

Furthermore, the AASW supports the importance of the development of legislative and administrative frameworks that can facilitate an enhanced collaborative and integrated approach between justice and human services systems. This includes the importance of information sharing provisions and the use of universal risk assessment screening.

The *Family Law Act* makes provision for Magistrates hearing a domestic violence matter to change a Family Court order which conflicts with a protection order (s68R). This provision is under-utilised, often leaving the State and Commonwealth orders in conflict with each other. The AASW recommends that the family violence legislation in all states and territories are amended to contain provisions which reflect s68R of the *Family Law Act*. The AASW would

be supportive if the powers contained in s68R could also be utilised within the Children's Court so that consistency is gained across all three jurisdictions: Family Law, Family Violence legislation and Child Protection legislation.

**Proposal 14–2** Screening and risk assessment frameworks developed for federal family courts should closely involve state and territory child protection agencies.

The AASW supports the proposal of a risk and safety framework similar to that developed in Victoria and suggests that considerations of primary aggressors be part of any assessment and investigation. Domestic violence and child abuse investigations and court room decisions should not be based on 'who tells their story first' or who 'seems the most credible' but rather, on a careful and considered investigation of the facts based on a thorough risk assessment and application of primary aggressor principles.

Importantly, risk assessments need to be undertaken by professionals with the training and expertise in family violence and child abuse.

**Question 14–9** What role should child protection agencies play in family law proceedings?

The AASW recommends that child protection agencies have a greater role within family law proceedings. The existing provision of s91B and s92A of the *Family Law Act* need to be re-examined to ensure that they provide the appropriate mechanisms for the involvement of child protection agencies. Reports from child protection agencies where there have been reports of abuse or neglect need to inform decisions made within the family law proceedings to provide for the best possible outcomes for children. Importantly, child protection agencies may have been involved in undertaking extensive assessments, and/or interventions with families. Ensuring information about these assessments and interventions is heard in family law proceedings is essential to ensure the safety and wellbeing of children and young people. This provides an important layer of objective and expert evidence to more comprehensively inform court decision making. Furthermore, it is fundamental to achieving decisions that place primacy on the safety and wellbeing of the child.

**Question 14–10** Are amendments to the *Family Law Act 1975* (Cth) and state and territory child protection legislation required to encourage prompt and effective intervention by child protection agencies in family law proceedings? For example, should the *Family Law Act* be amended to provide that the court may, upon finding that none of the parties to the proceedings is a viable carer, on its own motion join a child protection agency or some other person (for example, a grandparent) as a party to proceedings? Should federal family courts have additional powers to ensure that intervention by the child protection system occurs when necessary in the interests of the safety of children?

**Question 14–12** How, in practice, can information exchange best be facilitated between family courts and child protection agencies to ensure the safety of children? Are changes to the *Family Law Act 1975* (Cth) necessary to achieve this?

When allegations of child abuse and neglect are made within family law proceedings, it is often unclear as to the role the family law system takes. Unless matters are referred to the child protection agencies within the relevant state or territory, issues may be discounted or ignored. The AASW supports the need for greater clarity and direction with regards to such situations to ensure that the safety and wellbeing needs of children and young people are actively considered.

The AASW notes the recommendation of the Family Law Council for an integrated court system whereby federal family courts have concurrent jurisdiction with state and territory courts to deal with all matters relating to children. This would include matters related to child protection, family violence and parenting orders. The AASW supports the need for a more integrated system to ensure the safety of children.

**Proposal 14–3** All states and territories should develop a Memorandum of Understanding or Protocol to govern the relationship between federal family courts and child protection agencies.

**Question 14–13** Does the variation in the content of the protocols cause any difficulties and, if so, what changes should be made to facilitate the flow of information between the family courts and child protection agencies? What measures should be taken to ensure that the protocols are effective in practice?

**Question 14–14** How could the Memorandums of Understanding and Protocols for exchange of information between federal family courts, child protection agencies and legal aid commissions be better known within courts, and beyond them?

The AASW strongly supports the development of Memorandums of Understanding and protocols between federal family courts and child protection agencies. This includes:

- articulating collaborative arrangements between family law systems and child protection systems;
- including requirements and expectations for training and education of all personnel within both systems regarding each other's roles and responsibilities and about domestic violence and child abuse in general;
- appropriate resourcing of both systems to adequately deal with all allegations of violence and abuse; and
- a willingness by all systems to take seriously the safety of women and children and attending to the importance and provision for perpetrators to be held accountable and made aware of the impact of their violent behaviour.

### **Recommendations**

The AASW recommends:

23. That a common definition, understanding and risk assessment framework be developed and used to identify and address children's ongoing safety issues.
24. That the unique needs and risks faced by Aboriginal and Torres Strait Islander women, women who are recent immigrants, and non English speaking women and children be considered in reviewing the court systems and the resources required to ensure inclusive service delivery.
25. That the family violence legislation in all states and territories are amended to contain provisions which reflect s68R of the *Family Law Act*. The AASW is in support of the powers contained in s68R to be utilised within the Children's Court to ensure consistency across all three jurisdictions: Family Law, Family Violence legislation and Child Protection legislation.
26. That a risk and safety framework similar to that developed in Victoria and suggests that considerations of primary aggressors be part of any assessment and investigation.
27. That child protection agencies have a greater role within family law proceedings.
28. The AASW supports the need for a more integrated system to ensure the safety of children.
29. The development of Memorandums of Understanding and protocols between federal family courts and child protection agencies.

## **5. Existing and Potential Responses (Part E)**

### **5.1 Integrated Responses and Best Practice**

Over the past twenty years, a large variety of domestic violence interventions have been developed both overseas as well as within Australia. Among these, are those focused on the

coordination of responses from police, courts, probation and parole, child protection, health and social services. Such interventions have been developed out of a recognition that inconsistent social responses have failed to adequately support and protect victims of domestic violence (Edleson & Tolman, 1992).

The most widely acclaimed of these coordinated approaches is the Duluth Domestic Abuse Intervention Project (DAIP) established in 1980. Underpinning the work of DAIP are eight key components considered essential to a coordinated community response:

1. Creating a coherent philosophical approach centralising victim safety.
2. Developing 'best practice' policies and protocols for intervention agencies.
3. Enhancing networking among service providers.
4. Building monitoring and tracking into the system.
5. Ensuring a supportive community infrastructure for battered women.
6. Providing sanctions and rehabilitation opportunities for abusers.
7. Undoing the harm violence to women does to children.
8. Evaluating the coordinated community response from the standpoint of victim safety (Shepherd & Pence, 1999).

Shepherd and Pence (1999) argue that institutional practices can either marginalise or centralise victim safety and that police action, in coordination with the responses of other systems, can be a significant deterrent in reducing domestic abuse. Successful coordinated intervention projects require agencies to work from a common philosophical framework which centralises victim safety and offender accountability. Victim blaming practices are then eliminated and the onus on holding the victim accountable moves from the victim to the system. Gondolf (2006) asserts, from a position of experience, that where there is a heightened level of coordination, cooperation, transparency and accountability of responses, there is a corresponding increase in victim safety and offender accountability, concluding the '*system matters*'.

Since the founding of DAIP, there have been many other models developed both overseas and within Australia based on enhancing victim safety through system reforms. *Time for Action* (2009), outlines the many barriers these endeavours face, suggesting that it is critical for such projects to have the support of the highest levels of government. There exists a strong role for the Australian government in promoting integrated responses, as part of the national agenda for action on family violence. Improved collaboration of policies, programs and services would provide a more a holistic response to domestic and family violence. As

*Time for Action* (2009) states, “*the first door must be the right door*”, whereby recovery from abuse begins at the first point of contact and continues through access to on-going legal, medical and support services.

The AASW strongly endorses developing supportive and empowering relationships with victims of family violence that provides ongoing access to assistance and services. Additionally, recognition of diversity in the community that surrounds us is paramount in order to address individual’s uniqueness and ensuring an informed understanding that ‘*one size does not fit all*’. This philosophical approach would meet the specific needs around culture, spirituality, disability, gender, age and sexuality of victims of domestic violence.

Research into the area of family support services generally has indicated the importance of integrated, long term, client focused and flexible support services, if we are to achieve sustainable and meaningful outcomes (Dale, 2004; Moran et al., 2004; PeakCare, 2003; Statham & Holtermann, 2004). Furthermore, there has been a clear recognition of the inadequacy of a ‘*one size fits all*’ focus and those services and programs need to be flexible enough to meet the unique and informed needs of individual families including children. Additionally, ensuring integrated responses involves services to men serves to strengthen a timely and coordinated referral process for perpetrators.

The AASW supports the proposal for integrated responses to family violence and child protection at a State, Territory and National level. To strengthen this, the development of any associated policies need be underpinned by a robust legislative framework. Furthermore, that policies should include the development of a ‘*Best Practice Framework*’ that clearly articulates principles of victim safety and perpetrator accountability. In addition to first line interventions we need to aim toward a zero tolerance for violence with adequate responses for those who perpetrator this.

There are many examples in Australian history where the government of the day has embraced a zero tolerance policy stance on an issue and developed a range of integrated responses to facilitate both attitudinal and behavioural change in our community. These examples include seat belts in cars, drink driving and smoking bans to name but a few. The proven track record of success has seen us all move from not even having seat belts, or driving without a thought with regard to alcohol consumption and smoking everywhere, to the situation now where we have a community whose attitude and behaviour reflects complete change. We know it can succeed.

The following case study highlights the inconsistencies that exist within systems that operate from different frameworks and philosophies, often stemming from a lack of understanding of family violence and training to provide safe appropriate interventions to all victims.

### **Case Study:**

*Joanne and Peter have three children together, the youngest aged six months and the oldest 8 years. The relationship has been characterised by domestic violence, which included coercion, control, physical violence and sexual assault of Joanne by Peter. This has been the case for eight years. Peter has also been the perpetrator of violence towards his former partners. Peter grew up in a controlling household and Joanne had experienced emotional abuse as a child. During one assault, Joanne was hospitalised as a result of the injuries sustained. Peter was incarcerated for a six months, Joanne had regular contact with him in prison, and upon his release, Peter moved back in her. More recently, Peter tried to strangle Joanne for not keeping within the budget he had set for the family's food shopping. On both occasions the children called the police. The statutory child protection authorities were called in and determined that Joanne was unable to keep the children safe as she was not willing to leave her violent relationship, despite support services being provided. They found that she showed limited insight into the effects of the violence on the children at that time. When the statutory child protection authorities took this matter to the court, the Magistrate found that the children had not experienced any harm as a result of the violence between their parents. The statutory services argued that the children had indeed experienced significant harm, psychologically and developmentally, and importantly, that they had experienced cumulative harm, particularly in witnessing the violence and playing an informer's role against one parent, however, this was rejected.*

This lack of collaboration and coordinated on family violence cases can leave victims and their children at heightened risk from ongoing abuse.

The AASW believes that integrated responses strategically and operationally are important considerations in developing the roles and responsibilities of any integrated response model.

The core elements would include:

- Leadership is a key issue to be considered to facilitate the effectiveness of any integrated response strategy. The AASW proposes responsibility for coordinating the integrated response strategies should be placed with an agency, who should appoint a designated senior position to ensure all elements of the integrated response are being met. The overall responsibility would be to establish effective practice both strategically and operationally towards stopping family violence. These are important considerations in developing the roles and responsibilities of any integrated team model.

- Common policies and objectives, which articulate and guide the purpose of each aspect of intervention. These need to include standards and competencies and best practice guidelines, client-centred referral pathways and importantly, be accessible both culturally and physically.
- Mechanisms for inter-agency collaboration including those to ensure information sharing; common assessment tools, synchronised interventions, regular co-ordinating activities both strategically (steering committees) and operationally (co-working) with coordinated leadership across services and resources.
- Provision for legal and non-legal victim support, including court support.
- Training and education programs and resources for practitioners, judicial officers and legal professionals that includes initial and ongoing training. A range of compulsory or accredited courses in line with professional role and responsibility to ensure evidence-based practice. All training and education programs need to be subject to annual reviews to ensure evidence-based practice is incorporated in a timely manner.
- Provision for data collection, research, evaluation and analysis of all aspects of the responses. This should be inclusive of people from culturally and linguistically diverse communities and includes the funding and use of professional interpreters.
- Development of services that are user informed and maintenance of an overall strategy that is victim-safety centred which can be incorporated through ongoing consultation with service users.
- Provisions for perpetrator accountability and behaviour change.
- Provision of on-going training and education to practitioners from all interconnected and interrelated services around cultural specific understandings of domestic violent situations. This training and education needs to include an understanding of the gendered analysis of domestic violence and nuances for culturally and linguistically diverse communities.

In developing a model for an integrated response structure that facilitates effective relationship development with other services, the AASW suggests the development of cross-sectoral Memorandums of Understanding to:

- Map roles and responsibilities of each service, including who takes lead responsibility, particularly where the Justice, Police or the statutory child protection services become involved; to ensure this is managed effectively to meet the safety needs of the women/victim and children.
- Clarify and identify governance accountability issues.

- Clarify funding expectations, including requirements to ensure consistency in standards, accountability, recording and reporting.
- Establish evaluation and research imperatives which are inclusive of people from culturally and linguistically diverse communities and includes the funding and use of professional interpreters.
- Establish information exchange protocols and expectations in concert with any newly developed legislative provisions to promote information exchange (AASW, 2008).

Additionally, the evaluation of existing trials would provide valuable evidence to inform the ALRC in determining the best model for achieving integrated service delivery, including lessons learnt and effectiveness of the model in achieving aims.

## **5.2 Information exchange**

Seamless and effective information exchange is critical to connections between services in supporting women. The AASW holds firmly that any information exchange needs to occur with a victim's permission to protect and maintain their privacy and self determination. Once consent is achieved, it is our experience that all too often; services are hamstrung in their ability to share information with others due to privacy and confidentiality requirements (AASW, 2008). Therefore, the AASW supports the need for information exchange provisions to be included in legislation.

## **5.3 Training**

One of the essential aspects of successful of coordinated responses is the ability to build into systems consistent and appropriate training. As the ALRC has identified, ensuring training is effective, and measuring the effectiveness of training, is a challenge. It is essential to ensure that training and education is sensitive, specific, and relevant to the needs of particular stakeholders and that training programs are designed with the ultimate aim of improving service responses to victims of domestic and family violence.

The AASW endorses the proposal outlined in the consultation paper that:

- Best Practice guidelines are developed to ensure quality family violence training.
- Mechanisms are established to identify training needs within agencies and across agencies especially with key agencies within the legal system.

- A coordinating body or expert panel is established to oversee the development of training and education specific to family violence.

While there is a great diversity of training and education programs currently in place across Australia, the way forward to achieve consistency could be to:

- Review the curriculum currently in place in universities across Australia. This should include but not be limited to law, justice, criminology, social work, human services, and psychology, nursing and medical. Including law degrees to ensure that family violence is incorporated into courses in an appropriate and inclusive manner.
- Review the existing family violence units of competency within the Community Services Training Package to ensure these units of competency remain current, relevant and applicable. The incorporation of these units of competency into training provision ensures that such training meets both industry and training standards. The *Course in Responding to Domestic & Family Violence 30692 QLD* is a nationally accredited course that has been developed by industry stakeholders to meet the requirements of the Australian Quality Training Framework (National Quality Council, 2010).

## Recommendations

The AASW recommends:

30. That the Australian Government develops Best Practice Guidelines for the development of coordinated responses to family violence.
31. That Best Practice Guidelines include the points a- i outlined in this section of the submission.
32. That adequate resources are provided at both a National, State and Territory level to ensure coordinated response are sustainable and are able to be provided in a diverse range of geographical and cultural settings.
33. That adequate resources are allocated for undertaking related research and evaluation.
34. That a national audit is undertaken on the tertiary curricula to determine gaps in course content relative to family violence and child abuse.
35. That a review is undertaken of the existing family violence competencies within nationally accredited courses to ensure they meet industry and training standards.
36. That robust links between academic institutions and NGO's working in the community be developed and maintained. This would ensure a more accurate reflection of the grass root issues encountered in the direct work with victims and perpetrators of domestic violence.

## 6. Conclusion

Preventing violence against women by men and other forms of domestic, family and intimate partner violence and child abuse and neglect requires a long term strategy to achieve the level of attitudinal, social, political and cultural change required. The AASW again commends the ALRC for undertaking this significant review into family violence in Australia with the view to improving legal frameworks and achieve a greater level of integration. commitment to establish a robust policy platform and strategy to achieve meaningful changes. Fundamental to successfully achieving this is critically drawing on the existing evidence of 'what works' and contributing to this body of evidence through a commitment to ongoing evaluation and research of policies, programs, and initiatives developed. It is only in this way that we can monitor and review the effectiveness of initiatives to determine progress. Furthermore, the voices of victims have to remain paramount throughout.

The AASW is committed to working with the Australian Government in relation to family violence and child abuse and welcomes the opportunity to participate in any further consultation process.

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