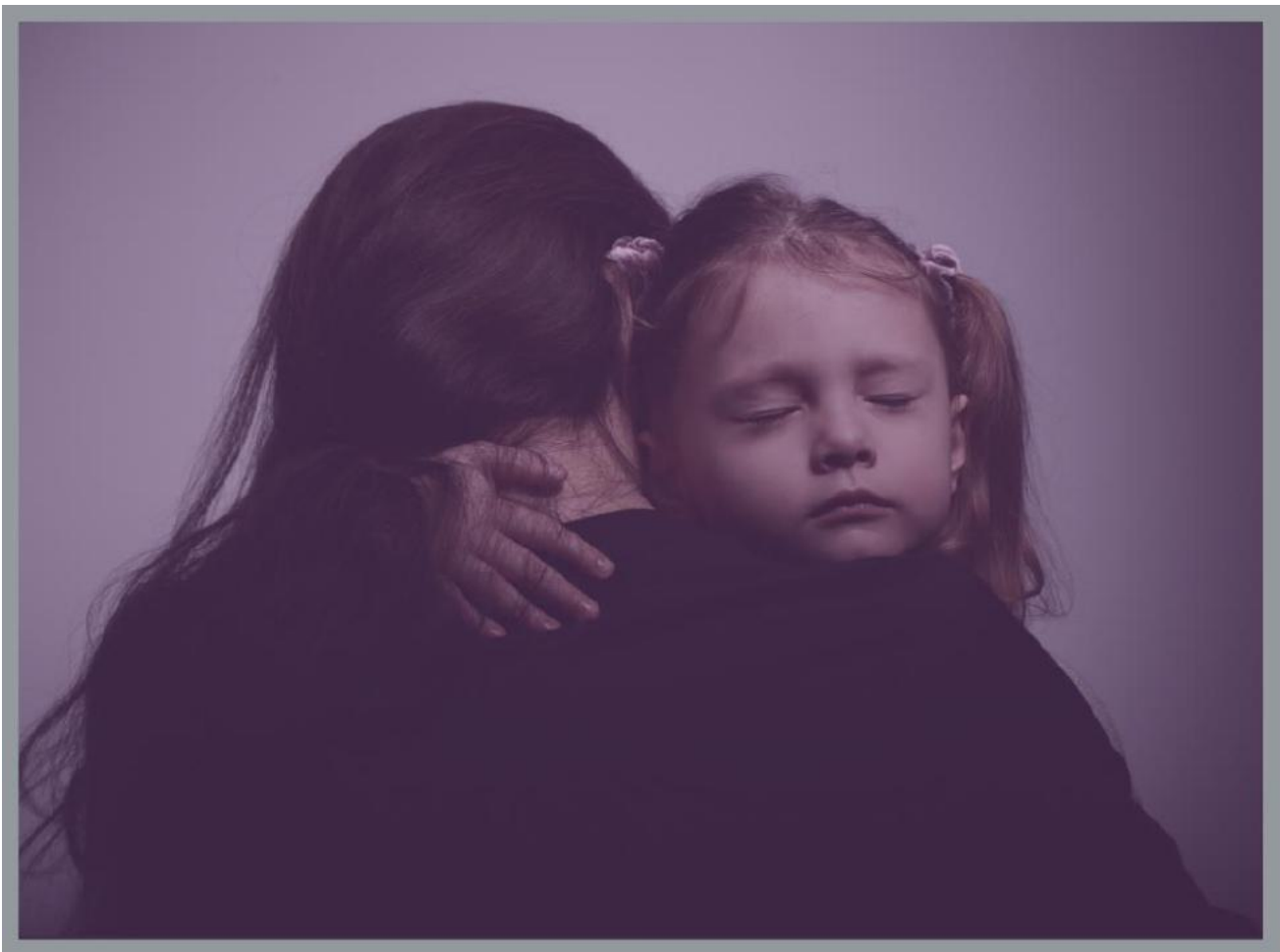


Submission to Exposure Draft – Family Law Amendment Bill 2023

Holding Perpetrators Accountable



Acknowledgment of Country

No to Violence acknowledges First Nations Peoples across these lands; the Traditional Custodians of the lands and waters. We pay respect to all Elders, past, present, and emerging. We acknowledge a deep connection with country which has existed over 60,000 years. We acknowledge that sovereignty was never ceded, and this was and always will be First Nation's land.



Contact NTV:

Please forward inquiries about this paper to No to Violence:

Email: policyandresearch@ntv.org.au

Phone: 03 9487 4500

Men's Referral Service – for men concerned about their behaviour

1300 766 491

Table of Contents

Acknowledgment of Country 1

Executive summary..... 1

Summary of feedback for consideration 3

No to Violence Submission..... 5

Bibliography 16

Executive summary

No to Violence (NTV) thanks the Attorney General’s Department for the opportunity to provide this submission in response to the Consultation Paper on the Exposure Draft - Family Law Amendment Bill 2023. Family Law reform is much needed. For too long, men who use family violence have been able to engage in systems abuse to continue their pattern of violence and abuse. This weaponisation of a legal system meant to serve Australians during the dissolution of a marriage—when they are most vulnerable—and, in many cases, when family violence is a feature, must end.

Family violence poses the greatest preventable risk factor for permanent injury and or death to women aged between 15 and 44.¹ Family violence is gendered in that it is overwhelmingly perpetrated by men against women.

No to Violence believes that working with men to address family violence is tackling the problem at the source. NTV places primary importance on the safety of victim-survivors in all interventions – this safety is supported by working with men to change their violent behaviour while offering support for those family members impacted by their abuse. We believe men who use family violence must be held accountable for their violence, and that accountability is an integral part of the process of behaviour change.

We support an integrated family violence intervention system and believe that specialist men’s family violence services must sit alongside statutory bodies; victim-survivor support services; and family services in order for victim-survivor safety to be upheld.

NTV works closely with our members, all of whom are specialist men’s family violence services and practitioners. This includes individual-based perpetrator interventions including case management, specialist fathering programs and court-based supports. 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 risks and needs assessments;
- Specialist interventions 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;
- Family violence education in the community.

The reforms put forward in this Consultation Paper will, if enacted with the requisite training and resourcing, bring significant change to the Family Law Courts. These necessary changes to the Family Law system will support the safety of victim-survivors and accountability of perpetrators.

In our submission, we suggest the following overarching approach for the effective implementation of reform to the Family Law system:

¹ True 2012, 1:10

- Family Law reform is accompanied by a cultural change to the legal and judiciary system with requisite training for the judiciary, legal system, magistrates, Independent Children’s Lawyers, family law practitioners and family report writers.
- Family Law reform is extended to improving information sharing pathways across the courts and service providers to ensure relevant information pertinent to family violence is included in service provision, safety planning, and matters of the court.
- Family Law reform is accompanied by an increase in funding for service providers, and specifically Aboriginal Community Controlled Organisations (ACCOs) and Aboriginal legal services.

Summary of feedback for consideration

No to Violence requests that the Attorney General's Department gives consideration to the following:

1. Enact proposed changes to remove equal shared parental responsibility.
2. Clarify how section 65DAAA, circumstances in which a parenting order could be changed retrospectively to address cases where a victim-survivor had already agreed to a harmful or disadvantageous parenting order, such as the consideration for retrospective or additional provisions in order to ease access, fast-track and simplify the process and to ensure family safety during such circumstances of changing parenting orders.
3. The Government ensures the Family Court adopts and implements the obligations under the National Principles for Child Safe Organisations, an outcome of the Royal Commission into Institutional Responses to Child Sexual Abuse; and that the Courts conform to Australia's human rights obligations, as a signatory to the UN Convention on the Rights of the Child.²
4. No to Violence works with the Government to ensure courts are provided with specific training to ensure they can appropriately identify family violence in cases of parenting order contravention and non-compliance.
5. The Government supports courts to work with providers of men's family violence interventions (including Men's Behaviour Change Programs-MBCPs) to ensure relevant information is part of the decision-making process regarding Family Orders, including final orders, changes, make-up time, contravention and other procedures.
6. The Government supports family safety contact work as an integral part of all perpetrator interventions, including training opportunities and adequate resourcing (even if this area is outside the scope of this consultation).
7. The Government provides new and additional funding to Aboriginal Community Controlled Organisations (ACCOs), specifically Aboriginal legal organisations, to provide advice on the implications and impact of changes to definition of 'member of family' and 'relative' for their communities.
8. Support No to Violence working with the courts to ensure all Independent Children's Lawyers (ICLs) receive mandatory and regular training on men's use of family violence and child abuse.
9. Introduce a harmful proceedings order that ensures a nuanced definition of systems abuse is embedded, and the victim-survivor is advised of the outcome of these proceedings in advance, with appropriate risk screening and assessment and safety planning to take place.
10. Work with No To Violence to ensure that family law professionals and practitioners, the judiciary and judicial staff are required to undertake regular specialist training on family violence, including systems abuse, coercive control, financial abuse, and responding to alleged perpetrators.

² Australian Human Rights Commission 2018; UN General Assembly 1959

11. Integrate a risk assessment framework within the Family Law system's case management and procedure, with the timely provision of risk assessment training on family violence to be delivered to family law practitioners, professionals, judiciary and court staff.
12. That the proposed changes in Schedule 6 be enacted.
13. That the Government ensures the redraft of Part XIVB clearly communicates the purpose of restrictions on private communications and ensures people engaging with the court understand they are able to communicate with support networks.
14. That the Government explores multi-agency information sharing processes to enact Recommendation 2 of the Australian Law Reform Commission's (ALRC) report to support the safety of all victim-survivors (even if this issue is outside the scope of this consultation).
15. Work with No To Violence (NTV) to provide family law report writers and other relevant family law practitioners, professionals and staff of the Family Law court system, on understanding the nuances of how men use family violence, by:
 - (a) undertaking NTV's free Five Essential Discussion tools (DSS-funded);
 - (b) designing and developing bespoke NTV training to tailor to different parts of the Family Law system and judiciary system, including training family report writers to recognise and appropriately record and report family violence;
 - (c) consulting with NTV on the development of regulatory options and establishment of regulatory standards for family report writers.

No to Violence Submission

No to Violence (NTV) welcomes the Government's commitment to making the Family Law system safer and more just for victim-survivors.

NTV is the national peak body for organisations and individuals working with men to end their use of family violence. While we are not a legal organisation with legal expertise, we have expertise on perpetrator behaviour and the perpetration of family violence—including systems abuse. In our thirty years of experience, we have developed a nuanced understanding of the lengths perpetrators will go to continue using violence and abuse. Too often, this includes manipulating legal justice systems as part of systems abuse. Systems abuse is used to sway family law decisions in the perpetrators favour and to exhaust the victim-survivors finances and other resources in the process.

We note that the focus of this reform agenda is rightly placed on safer access and solutions for victim-survivors. This is a commendable direction and principled approach to supporting the safety of women and children, and families who are experiencing family violence. However, the consequence is that fathers who use family violence are often invisible in discussions of family violence, avoiding their responsibility in the harm caused to their families.

NTV agrees with recent research that recommends a 'reconsideration of the Family Law system's response in favour of one that is genuinely child-centred and trauma-informed and which caters for domestic and family violence-informed and culturally informed responses.'³

While resources are justifiably allocated to assisting those who are experiencing family violence, perpetrator interventions are a crucial component of assisting women and children who may be experiencing family violence. Perpetrator interventions address the problem at its source by working with perpetrators to recognise their behaviour as violence and abuse, acknowledge and take accountability for the harm they have caused and may be causing, and shifting behaviour towards non-violence. Perpetrator interventions should be embedded in Family Law reform.

NTV is a funded provider of the Family Advocacy and Support Service (FASS) in Victoria. This program provides a proactive response to engaging with families involved in family law proceedings who are affected by family violence. Whether this is provided by a Men's Behaviour Change Program or a FASS provider (such as in Victoria), proactive services are required to engage with families in family law proceedings affected by family violence with the focus on risk assessment and safety planning for all family members to ensure safe, responsive and appropriate outcomes. Through FASS, NTV works directly with men who are involved in family law matters. The separation of men's and women's workers is critical for the safety of victim-survivors.

Aside from the potential for enhanced legislative mechanisms to support the safety of families impacted by domestic violence within the context of family law, additional resources are required to support family safety contact work as part of any existing and new men's family violence interventions (including Men's Behaviour Change Programs-MBCP). There are inconsistent practices across Australia in how Family Safety Contact (FSC) work is implemented and practised. All governments need to support regular communications between FSC workers and MBCP facilitators in order to ensure safe and quality practice.

³ Carson et al. 2022, 19

Our submission refers to matters of principle. We therefore focus on addressing perpetration of systems abuse and perpetrator behaviour through Family Law reform.

Schedule 1: Amendments to the framework for making parenting orders

No to Violence (NTV) supports the proposed changes to the legislative framework underpinning parenting orders, including changes to the section covering the factors to be considered when making parenting arrangements in the best interests of the child.

Shared parental responsibility

NTV commends the proposed change on abandoning the presumption of ‘shared parental responsibility’, which has been widely misunderstood to mean shared care. For families where violence and abuse are factors, equal shared parental responsibility is unsuitable and dangerous. This is as true for family and domestic violence cases as it is for cases with alcohol and other drug use issues, serious mental health concerns, child sexual abuse, and other patterns of problematic and abusive behaviour.

Best interests of the child

We similarly support the proposed changes to section 60CC, factors that a court must consider when determining the best interests of a child. We support in particular, the proposed amendment to remove the current two-tier structure of ‘primary’ and ‘additional’ considerations and factors, with a proposed list of best interest factors. As noted by the ALRC and cited in the Consultation Paper, ‘the most commonly raised issues in judicially determined matters were those related to the safety of the child, issues relating to a parent/child relationship and parenting capacity.’⁴

Our FASS work in Victoria demonstrates the importance of a child-focused court system. Our FASS workers have shared that too often, men who use family violence come into the Family Court system with a myopic view on *their* rights. NTV’s FASS workers continually emphasise that the Family Court process is not about men’s rights—it is about a child’s rights, and the best interests of the child, and parental responsibility for supporting those rights.

In addition, NTV asks the Attorney General’s Department to consider tightening the proposed factor of ‘the benefit of being able to maintain relationships with each parent and other people who are significant to them, where it is safe to do so’, by adding *‘and provided that any current or history of family violence or abuse be taken into consideration as to whether or not any such relationships should be continued.’*⁵ This change is recommended in light of research that demonstrates that family reports too often minimise family violence in favour of maintaining ‘meaningful relationships’.⁶ Lawyers and social service providers have identified that the concept of ‘meaningful relationship’ can be manipulated as part of systems abuse.⁷

NTV supports the principle of a specific provision for Aboriginal and Torres Strait Islander children. A specific principle, rather than including it in the list of additional considerations in proposed section 60CC(2), will better ensure the needs and cultural rights of Aboriginal and Torres Strait Islander

⁴ Attorney General’s Department 2023, 12

⁵ Attorney General’s Department 2023, 13

⁶ Rathus AM 2018

⁷ Rathus AM 2018

children are central when considering their best interests. NTV supports the inclusion of ‘language’ in addition to ‘culture’ as part of an expanded provision at 60CCC(3)(h).

Further commentary

NTV notes that many parts of the proposed Bill seek to clarify existing arrangements, such as the circumstance in which a parenting order can be changed. We seek to clarify how the Government intends to address concerns in relation to orders already previously made in contexts of violence and abuse, including consideration for retrospective or additional provisions in order to ease access, fast-track and simplify the process to ensure safety during such circumstances of changing parenting orders.

The proposed clarification on circumstances in which a parenting order could be changed may have some impact on preventing or addressing systems abuse. We seek to clarify how this would assist victim-survivors who have already agreed to unsafe arrangements under duress, out of fear, as a result of financial abuse and lack of financial resources, and/or a self-represented victim-survivor, including in cases where a victim-survivor’s education or linguistic background is not commensurate with the fast-paced adversarial legal system.

Feedback for consideration:

1. Enact proposed changes to remove equal shared parental responsibility.
2. Clarify how section 65DAAA, circumstances in which a parenting order could be changed retrospectively to address cases where a victim-survivor had already agreed to a harmful or disadvantageous parenting order, such as the consideration for retrospective or additional provisions in order to ease access, fast-track and simplify the process to ensure family safety during such circumstances of changing parenting orders.

Schedule 2: Enforcement of child-related orders

NTV supports the proposed approach to redrafting Division 13A of Part VII so long as it focuses on the well-being and safety of women and children. Coronial inquests into the murders of Jack and Jennifer Edwards; Darcey Iris; Eeva Dorendahl; and Luke Batty—all of whom were murdered by their fathers, demonstrate that the highly adversarial family court proceedings present a real and present danger to children victim-survivors.⁸ Under existing court orders, children can be forced against their will into supervised and unsupervised contact arrangements with alleged perpetrators of family and domestic violence and child sexual abuse. This is relevant for cases where abuse has been deemed likely, probable, and proven.

According to a 2022 ANROWS report on compliance with and enforcement of family law parenting orders, ‘non-compliance with parenting orders were found to arise from a complex range of dynamics, often against a backdrop of on-going family violence.’⁹ Under the existing system, children and young people lack sufficient age-appropriate agency and opportunities to be kept informed of, and provide input into post-separation decision-making relating to their care and living arrangements. Overall, this research found that the current system for monitoring, implementing, and adapting parenting orders is insufficient.¹⁰

⁸ Coroners Court of NSW 2021; Coroners Court of Victoria 2015a; 2015b; Coroners Court of NSW 2019

⁹ Carson et al. 2022, 18

¹⁰ Carson et al. 2022, 18

NTV supports in principle the proposed simplification to no longer separately provide for ‘less serious’ and ‘more serious’ circumstances of contravention. This change will require that the court is able to consistently and appropriately identify a number of factors - of the seriousnessness of any given contravention. This will include cases where an order is contravened by a victim-survivor out of safety for her child, and potentially by a perpetrator as part of a broader system of abuse. It is important that courts have the expertise required to appropriately identify family violence in the context of parenting order non-compliance and contravention.

In line with leading research, legislative mechanisms and courts must be ‘capable of distinguishing from those who are primarily responsible for perpetrating violence from those who are the primary victim of violence.’¹¹ This necessitates new and on-going training in line with the proposed changes.

We note that Community Service Orders will be removed as an enforcement measure under the Family Law Act. NTV notes that research supports this change: ‘the risk of penalties from non-compliance may deter parties from seeking protection of the courts through a change of parenting orders where there are ongoing concerns about family violence.’¹² Research has found that almost half of the participating women and one-third of participating men who did not take action in response to non-compliance because they were concerned that the other parent would be violent towards them or their children if actions were taken.¹³

NTV suggests that as part of the men’s family violence interventions, tailored, evidence-based perpetrator intervention programs for fathers who use family violence be part of the enforcement measure regime. Caring Dads, for instance, is an evidence-based intervention tailored Men’s Behaviour Change Program (MBCP) for fathers who use family violence.¹⁴ A 2020 independent evaluation of Caring Dads found that the program supported men to recognise their own problematic behaviour and the impacts of this behaviour on their children as well as enabling men to recognise the problematic behaviour and its impacts of *other* men.¹⁵ An important component of Caring Dads and more generalist MBCPs is family safety contact work.¹⁶ Family safety contact work is the process by which current or former partners of men who are enrolled in men’s family violence interventions including MBCPs, are supported for the duration of the Intervention or MBCP. The Family Court system may be particularly interested in ensuring strong family safety contact work processes for men who are engaged in family law matters. Although the topic of family safety contact may lie outside the scope of this consultation and the exposure draft bill, but to ensure the effective implementation of the proposed reform, NTV recommends enhancing the opportunity for specialist training in family safety contact work. In 2020, NTV began hosting online Communities of Practice for family safety contact workers in Victoria and around Australia. There are currently limited opportunities for training in family safety contact work. NTV suggests that Government support is needed for specific education, on-going training opportunities, and funding to support this important part of perpetrator intervention.

Feedback for consideration:

3. The Government ensures the Family Court adopts and implements the obligations under the National Principles for Child Safe Organisations, an outcome of the Royal Commission into

¹¹ Carson et al. 2022, 20

¹² Carson et al. 2022, 18

¹³ Carson et al. 2022, 18

¹⁴ ‘About Caring Dads’ n.d.

¹⁵ Diemer et al. 2020

¹⁶ In Caring Dads, this was referred to as ‘mother contact work.’ Diemer et al. 2020

Institutional Responses to Child Sexual Abuse; and that the Courts conform to Australia's human rights obligations, as a signatory to the UN Convention on the Rights of the Child.¹⁷

4. No to Violence works with the Government to ensure courts are provided with specific training to ensure they can appropriately identify family violence in cases of parenting order contravention and non-compliance.
5. The Government supports courts to work with providers of men's family violence interventions (including Men's Behaviour Change Programs-MBCPs) to ensure relevant information is part of the decision-making process regarding Family Orders, including final orders, changes, make-up time, contravention and other procedures.
6. The Government supports family safety contact work as an integral part of all perpetrator interventions, including training opportunities and adequate resourcing (even if this area is outside the scope of this consultation)

Schedule 3: Definition of 'member of the family' and 'relative'

NTV supports in principle the expansion of the definition of 'member of the family' and 'relative' to incorporate Aboriginal and Torres Strait Islander kinship systems.

We note that the flow-on effects articulated in the Consultation Paper may have significant implications for Aboriginal and Torres Strait Islander people. Given NTV's remit, we are not in a position to provide expert opinion on the burden of changed responsibility. We are, however, well-placed to request increased resourcing for Aboriginal Community Controlled Organisations (ACCOs) to provide support to people experiencing family violence, including people who are not directly victimised through family violence, but whose family members/relatives are experiencing family violence.

In particular, it will be important that if Recommendation 9 is embedded in the Family Law Act, that ACCOs are resourced to communicate these changes to their communities.

Feedback for consideration:

7. The Government provides new and additional funding to ACCOs, specifically Aboriginal legal organisations, to provide advice on the implications and impact of changes to definition of 'member of family' and 'relative' for their communities.

Schedule 4: Independent Children's Lawyers

NTV strongly supports the broad principles of ensuring children's safety, giving children a voice, including the right of young people to make age-appropriate decisions about their lives, and notes the important role of Independent Children's Lawyers (ICLs) in that endeavour.

NTV supports the proposed requirement 'that an ICL must meet with the child whose best interests they have been appointed to represent, and provide the child with an opportunity to express a view.'¹⁸ It is important that an ICL meet with the child/children they are representing if they are to appropriately represent the child/children's views and best interests. As noted in the Consultation

¹⁷ Australian Human Rights Commission 2018; UN General Assembly 1959

¹⁸ Attorney General's Department 2023, 27-28

Paper, this change is consistent with Article 12 of the UN Convention on the Rights of the Child as well as the UN Declaration on the Rights of the Child.¹⁹

In the course of ascertaining a child/children's wishes, it is possible that an ICL will learn of family violence including child abuse. It is therefore critical that ICLs have specific and specialist training in family violence and child abuse. We note that disclosing family violence including or excluding explicit child abuse is not without inherent risks to the child. There could be risks of physical and emotional reprisals from a parent whose violence or abuse has been disclosed by the child and reported back to the parent in the course of family law proceedings.

In the context of a family report, high levels of expertise and training will be required to ensure all practitioners and professionals in the Family Law system have the requisite training and skills. The legislative scheme can be amended with appropriate wording, but the specialist training and skills required are just as relevant for the effective implementation of the proposed reform.

The ICL requires specialist training, who would do less filtering and interpretation of the child's views. This lawyer should be able to lead evidence in chief from an expert and other witnesses and cross-examine, so a younger child would not have to give evidence.

Feedback for consideration:

8. Support No to Violence working with the courts to ensure all ICLs receive mandatory and regular training on men's use of family violence and child abuse.

Schedule 5: Case management and procedure

NTV supports the introduction of a new 'harmful proceedings order' to support women and children's safety and prevent vexatious litigation. The introduction of this order would empower the Family Court to address cases where a perpetrator engages in systems abuse, including but not limited to seek continuous proceedings and litigations to intimidate, harm, inflict financial damage, threaten or harass the victim-survivor (respondent). NTV is of the view that this proposed measure aligns with the intent of Recommendation 32 of the ALRC report.

NTV asks the Government to consider including a definition, acknowledgement, or reference to systems abuse as part of broader patterns of coercive controlling violence in the Family Law Act and as part of the harmful proceedings order. We note that the National Domestic and Family Violence Bench Book includes direction on systems abuse.²⁰ Systems abuse, as per the Bench Book, is when 'a party to proceedings in domestic and family violence related cases may use a range of litigation tactics to gain an advantage over or to harass, intimidate, discredit or otherwise control the other party.'²¹ Given that a harmful proceedings order would likely be made in cases of systems abuse, a clear definition could be included.

Through our work with FASS, NTV is well-acquainted with the ways in which perpetrators use systems abuse to continue their violence and abuse. In a recent case, a barrister represented himself in the Victorian Family Court. On day 28 of the trial, our FASS workers noted that he was likely to be using the trial to perpetrate financial abuse: the victim-survivor/mother had engaged a legal team at the cost of \$10,000-15,000 *per day*. A harmful proceedings order would, in this case, support the safety of the victim-survivor and child survivors.

¹⁹ UN General Assembly 1959; OHCHR 1990

²⁰ Attorney-General of Australia 2022, sec. 3.1.11

²¹ Attorney-General of Australia 2022, sec. 3.1.11

NTV suggests that family law professionals and practitioners, the judiciary and judicial staff be required to undertake regular specialist training on the gendered nature of family violence, including presentations of systems abuse. Training should support officials to develop the specific skills required to avoid collusion when engaging with alleged perpetrators and to accurately identify cases where a harmful proceedings order is required.

Unintended consequences

We note the Department's concern regarding potential unintended consequences for vulnerable parties who have, for instance, filed a poorly self-prepared application and later files a subsequent application following legal advice. This speaks to the importance of training for family law professionals and the courts. It is important that the courts are able to differentiate between cases featuring poorly prepared applications and vexatious litigation. Training for the courts and all practitioners and professionals of the Family Law system on identifying family violence, including representing and/or working with perpetrators without collusion, is critical for the successful implementation of a harmful proceedings order.

Appropriate systems need to be in place for risk assessments to ensure the safety of women and children, along with integration of appropriate referral and support services for victims-survivors, as well as referral pathways to MRS or MCBP where appropriate or available for the perpetrators. The Family Law system is one area, among several, as holding particular risks for women and children, requiring enhanced risk assessment and management practices. A risk assessment management framework could be considered for integration with the Family Law system's case management and procedure.

As noted in our 2018 submission to the ALRC, case management for litigants should be carried out by specialists who are trained in working with marginalised and at-risk individuals along with specific training in family violence.²² NTV urges that all members of the judiciary, legal practitioners and court professionals who engage with persons involved in high-risk family violence matters, to have specialist training to ensure relevant expertise and skills for identifying and understanding risk assessment and management of dynamic risks in the context of case management of family law proceedings, family law decisions and orders.

We note that the reform proposes that applications for leave would be made *ex parte* – without serving documents on the respondent – to minimise the risk of further harm to the respondent from unnecessary proceedings.

While this proposed change is intended to address systems abuse, however, there may be safety risks if a victim-survivor is not aware of a leave application and the leave is not granted. Family violence may escalate if a harmful proceeding order is made without the victim-survivor being informed about the application, and without ensuring appropriate safety measures have been taken.

There should also be no adverse inferences to be made if a victim-survivor did not wish to participate in such leave proceedings.

We suggest that if a victim-survivor had not been served with the leave application, and if the applicant's leave had been denied, which resulted in a harmful proceeding order being made by the Court, the victim-survivor should be advised of the outcome of these proceedings in advance, to ensure appropriate risk screening and assessment and safety planning could take place.

²² No to Violence 2018

We recommend that parties be advised of leave applications unless they choose to opt out as follows.

Feedback for consideration:

9. Introduce a harmful proceedings order that ensures a nuanced definition of systems abuse is embedded, and the victim-survivor is advised of the outcome of these proceedings in advance, with appropriate risk screening and assessment and safety planning to take place.
10. Work with NTV to ensure that family law professionals and practitioners, the judiciary and judicial staff are required to undertake regular specialist training on family violence, including systems abuse, coercive control, financial abuse, and responding to alleged perpetrators.
11. Integrate a risk assessment framework within the Family Law system's case management and procedure, with the timely provision of risk assessment training on family violence to be delivered to family law practitioners, professionals, judiciary and court staff.

Schedule 6: Protecting sensitive information

NTV supports the approach of ensuring children's and women's safety by enhancing and clarifying the court's power to better protect sensitive information. This includes safeguarding against situations in which perpetrators use subpoenas to gain access to a victim-survivor's medical or therapeutic records in order to threaten, harass or inflict harm. NTV is of the view that the proposed changes align with ALRC recommendation 37.²³

NTV supports changes to the admission of protected confidences as long as those changes support the safety and wellbeing of women and children and other people victimised by family violence. These changes are an important step in mitigating system abuse and the traumatising of court processes.

NTV supports the onus to be on the party seeking to admit the evidence.

We also support that a person could consent to the admission of evidence of a protected confidence relating to their own statement. Victim-survivors are the experts on their own experiences. Enabling a victim-survivor to consent to the admission of evidence of a protected confidence could support a victim-survivor's case by, for instance, providing corroborative evidence. This would in turn reduce the number of times a victim-survivor must retell their story, thereby decreasing the risk of well-documented re-traumatisation through court proceedings.²⁴

Feedback for consideration:

12. That the proposed changes in Schedule 6 be enacted.

Schedule 7: Communications of details of family law proceedings

NTV supports the proposed redrafting to clarify communication and information sharing. It is important that the redraft makes clear that persons engaging with the court are free to communicate with their support networks, as noted in the Consultation Paper. Family violence is often used to isolate victim-survivors from their support networks. It is important that the Family Law system

²³ ALRC 2019, 335

²⁴ Bluett-Boyd and Fileborn 2014

refrains from replicating—whether such replication is due to oversight or to lack of clarity—this form of abuse.

Additional Feedback – Information sharing

Although outside the scope of the current consultation and exposure draft bill, we urge that in addition to the proposed redrafting of the section on communications of details of family law proceedings, there could be better information sharing and referral pathways across key agencies for women’s and children’s safety in the context of family violence and family law proceedings.

The 2021 Coronial Inquest into the murders of Jack and Jennifer Edwards demonstrates the importance of clear and regular communication and information sharing across jurisdictions and institutions, while the Victorian Royal Commission into Family Violence identified that a lack of information-sharing between institutions, including Family Law courts, police, and firearm registries, can lead to the continuation and escalation of violence to the point of fatality.²⁵

In response to the concerns raised in the Royal Commission, Victoria introduced the Multi-Agency Risk Assessment and Management Framework and Information Sharing (MARAMIS). MARAMIS provides important insight into the utility of information sharing agreements underpinned by multi-agency risk assessment frameworks. We suggest national improvements to 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 gap, enhance risk assessment and simplify and join multiple matters. This includes requiring applicants for firearm licences to disclose if they are engaged in family law proceedings; and implementing a system for better information sharing across jurisdictions and between police, Family Law courts and firearms registries.

In addition to ALRC recommendation 56 regarding information sharing, NTV supports ALRC 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.²⁶ The framework includes:

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

Feedback for consideration:

13. That the Government ensures the redraft of Part XIVB clearly communicates the purpose of restrictions on private communications and ensures people engaging with the court understand they are able to communicate with support networks.
14. That the Government explores multi-agency information sharing processes to enact Recommendation 2 of the ALRC report and to support the safety of all victim-survivors (even if this issue is outside the scope of this consultation).

²⁵ Coroners Court of NSW 2021; Neave, Faulkner, and Nicholson 2016

²⁶ ALRC 2019, 38

Schedule 8: Establishing regulatory schemes for family law professionals

NTV supports establishing regulations to standardise requirements for family report writers. As noted in the Consultation Paper, successive reports and public inquiries have raised concerns regarding the quality and reliability of family reports. The recently published summary of submissions to the Consultation Paper on improving the competency and accountability of family report writers offers important insights and recommendations. More than 90% of stakeholders supported reform, with the majority calling for mandated competencies and standards.²⁷ Specifically, the report summary notes that some submissions ‘suggested that an understanding of family violence should form part of the definition of the family report writer.’²⁸ Academic research in the US and UK, as well as in the more limited Australian context, has highlighted that increased understanding of family violence would be beneficial for family report writers.²⁹ NTV agrees with this recommendation.

NTV calls on the Government to commit resources and funding to train all professionals that engage in the Family Law system and proceedings, including the judiciary, court staff, independent children’s lawyers, family law practitioners, family safety contact workers, social workers, psychologists, and family report writers, on understanding the gendered nature of domestic violence including coercive control, culturally inclusive practices, and risk assessment and screening.

Regulatory standards and associated compliance and quality assurance require resourcing for monitoring and continuous improvement. Additionally, relevant training and professional development is required. Without an understanding of predominant aggressors’ patterned use of coercive control and victim-survivors’ acts of resistance within such a context, there is a high likelihood that workers may collude with perpetrators and victim-survivors may be misidentified as perpetrators. This arises from a poor understanding of family violence as being based on single incidents where one party may have initiated a violent event, rather than recognising a pattern of coercive control by a predominant aggressor.

NTV requests that we are consulted on regulations and regulatory options to be developed.

As noted in the summary of submissions, there are a variety of training that may be relevant to family report writers.³⁰ This includes MARAM Framework training, training on the Safe and Together Model, and training through InTouch Multicultural Centre Against Family Violence.³¹ NTV suggests that our free Five Essential Tools (DSS-funded), is important training to support family report writers. In an independent evaluation of this training, more than 80% of participants said the training improved their understanding of men’s family violence.³² This training would give family report writers the skills they need to better recognise and address family violence in their reports. It also provides important skills in avoiding collusion with perpetrators.

Feedback for consideration

15. Work with No To Violence (NTV) to provide family law report writers and other relevant family law practitioners, professionals and staff of the Family Law court system, on understanding the nuances of how men use family violence, by:

²⁷ Attorney-General’s Department 2023, 4

²⁸ Attorney-General’s Department 2023, 4–6, 8

²⁹ Field et al. 2016, 214; Rathus AM et al. 2017

³⁰ Attorney-General’s Department 2023

³¹ Attorney-General’s Department 2023, 9

³² Ernst & Young 2021, 25

- (a) undertaking NTV's free Five Essential Discussion tools (DSS-funded);
- (b) designing and developing bespoke NTV training to tailor to different parts of the Family Law system and judiciary system, including training family report writers to recognise and appropriately record and report family violence;
- (c) consulting with NTV on the development of regulatory options and establishment of regulatory standards for family report writers.

Conclusion

While outside the scope of the proposed reforms, we note the widespread misconception that the system is 'stacked against' men. This is a growing concern in our engagement with the Victorian FASS program: more and more men who engage with FASS men's workers come to court with the unshakeable belief that the court is inherently unfair. This belief is being validated in online spaces, where men have access to men's rights activist propaganda. It is in the interest of the Family Law system to undertake work to change this harmful belief. Investing in dedicated men's workers throughout the national FASS program would be an important step in supporting men to understand the family law system, the importance of a child-centric approach, and the illegality of systems abuse.

NTV welcomes this much-needed consideration of reform of the Family Law system. As has been consistently highlighted in the ALRC inquiry and recent submissions summary, the Family Law system needs to be more responsive to family violence, including child abuse and neglect. The Family Law judiciary system requires a major cultural change for it to be designed for the people it serves, including culturally and linguistically diverse communities, victim-survivors of family violence, Aboriginal and Torres Strait Islander peoples, and children.

Bibliography

- 'About Caring Dads'. n.d. Caring Dads™. Accessed 10 February 2023. <https://caringdads.org/about-caring-dads-1>.
- ALRC. 2019. 'Family Law for the Future — An Inquiry into the Family Law System'. 135. Australian Law Reform Commission. https://www.alrc.gov.au/wp-content/uploads/2019/08/alrc_report_135_final_report_web-min_12_optimized_1-1.pdf.
- Attorney General's Department. 2023. 'Family Law Amendment Bill 2023 Consultation Paper'. Attorney General's Department, Australian Government.
- Attorney-General of Australia. 2022. *The National Domestic and Family Violence Bench Book*. <https://dfvbenchbook.aija.org.au/understanding-domestic-and-family-violence/systems-abuse/>.
- Attorney-General's Department. 2023. 'Improving the Competency and Accountability of Family Report Writers - Summary of Submissions'. Australian Government.
- Australian Human Rights Commission. 2018. 'National Principles for Child Safe Organisations'. Australian Human Rights Commission.
- Bluett-Boyd, Nicole, and Bianca Fileborn. 2014. 'Victim/Survivor-Focused Justice Responses and Reforms to Criminal Court Practice: Implementation, Current Practice and Future Directions'. 27. Australian Institute of Family Studies.
- Carson, Rachel, Rae Kaspiew, Lixia Qu, John De Maio, Helen Rhoades, Emily Stevens, Briony Horsfall, Louise Press, and Georgina Dimopoulos. 2022. 'Compliance with and Enforcement of Family Law Parenting Orders': ANROWS.
- Coroners Court of NSW. 2019. 'Inquest into the Death of Eeva Dorendahl and Greg Hutchings'. Coroners Court of NSW.
- . 2021. 'Inquest into the Deaths of John, Jack and Jennifer Edwards'. Coroners Court of NSW.
- Coroners Court of Victoria. 2015a. 'Inquest into the Death of Darcey Iris'. Coroners Court of Victoria. https://www.coronerscourt.vic.gov.au/sites/default/files/2018-12/darceyiris_044709.pdf.
- . 2015b. 'Inquest into the Death of Luke Geoffrey Batty'. Melbourne: Coroners Court of Victoria. https://www.coronerscourt.vic.gov.au/sites/default/files/2018-12/lukegeoffreybatty_085514.pdf.
- Diemer, Kristin, Cathy Humphreys, Larissa Fogden, David Gallant, Anneliese Spiteri-Staines, and Elizabeth Vercoe Bornemisza. 2020. 'Caring Dads Evaluation: Helping Fathers Value Their Children'. University of Melbourne.
- Ernst & Young. 2021. 'Evaluation of the Remote Working Toolkit Training Package'. No to Violence.
- Field, Rachael, Samantha Jeffries, Zoe Rathus AM, and Angela Lynch. 2016. 'Family Reports and Family Violence in Australian Family Law Proceedings: What Do We Know?' *Journal of Judicial Administration* 25 (212).
- Neave, Marcia, Patricia Faulkner, and Tony Nicholson. 2016. 'Royal Commission into Family Violence: Summary and Recommendations'. 132. Royal Commission into Family Violence. <http://files.rcfv.com.au/Reports/Final/RCFV-All-Volumes.pdf>.
- No to Violence. 2018. 'Submission to the Australian Law Reform Commission's Discussion Paper on Review of the Family Law System'. No to Violence. https://www.alrc.gov.au/wp-content/uploads/2019/08/family-law_398._no_to_violence_-_public_publish.pdf.
- OHCHR. 1990. *UN Convention on the Rights of the Child. General Assembly Resolution 44/25*. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.
- Rathus AM, Zoe. 2018. 'Review of Family Law System: Submission to ALRC on Discussion Paper 86'. Griffith University Law School. https://www.alrc.gov.au/wp-content/uploads/2019/08/family-law_298._z_rathus.pdf.

- Rathus AM, Zoe, Samantha Jeffries, Rachael Field, Helena Menih, and Angela Lynch. 2017. 'Good Evidence, Safe Outcomes in Parenting Matters Involving Domestic Violence: Understanding Family Report Writing Practice'. <https://aija.org.au/wp-content/uploads/2017/06/Rathus.pdf>.
- True, Jacqui. 2012. *The Political Economy of Violence Against Women*. Vol. 1. Oxford Studies in Gender and International Relations. New York: Oxford University Press.
- UN General Assembly. 1959. *UN Declaration on the Rights of the Child (1959)*. 1386(XIV). <https://archive.crin.org/en/library/legal-database/un-declaration-rights-child-1959.html>.