



AUSTRALIAN BROTHERHOOD OF FATHERS

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

The Joint Select Committee on Australia's Family Law System was appointed by resolution of the Senate on 18 September 2019 and resolution of the House of Representatives on 19 September 2019.

May 2020

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

1 Recommendations Summary

Urgent Recommendations

Previous Reports

1. Do not adopt the recommendations of the April 2019 Australian Law Reform Commission tabled: Family Law for the Future — An Inquiry into the Family Law System: Final Report, comprising 574 pages and 60 recommendations.
 - a. Endorse the engagement of an independent multiple stakeholder and advocacy group to produce a consolidated report of all Family Law Reform reports, inquiries, studies, research and recommendations produced in the since 2005. Including analysis of:
 - i. whether they now represent sensible measures for reform
 - ii. whether they are high priority, medium priority or low priority
 - iii. and the relationship (if any) of each high and medium priority recommendation to current work in progress

Negative Recommendations

2. Do not endorse:
 - b. The merger the of Family Court and Federal Circuit Court
 - c. The introducing legislation that would criminalise breaches of family law personal protection injunctions.

Royal Commission

3. Endorse a Royal Commission to report on the impact, cost and harm of the Family Law and Child Support Systems on Australian society since enactment of the 1975 Family law Act.

Family Law Oversight Body

4. Endorse the creation of a multiple stakeholder (not solely staffed by industry stakeholders) independent statutory body (A Family Law Commission) that operates effectively and deserves public confidence, to undertake inquiries on systemic issues in relation to Family Law Associated Services.
 - a. undertake ongoing and systemic monitoring, and
 - b. conduct inquiries by reference from Government or on own motion

Collection of Data

5. The Family Court to immediately commence:

- c. The regular collation of data based on administrative sources to assess patterns in family court filings and patterns in services usage of the family law services
- d. In relation to the below research, provide the legislative mandate to access all Family Court records for the purposes of the research, including family law documents
- e. Remove publishing and reporting restrictions associated with section 121 on matters not listed as Magellan cases
- f. (The Family Law Act 1975 (Cth) be reformed to ensure that there is a clear process to be followed for bona fide researchers to be able access all records, data, files, documents and party contact details filed in family law proceedings, this rule operates as an exception to any restrictive order)

Research

6. Endorse funding and support for ongoing research, in relation to:

Family Law Reform (accessing all court files and records)

- a. Overview and status assessment of Family Law reviews, reforms, reports, inquiries (etc) and recommendations
- b. Impact and cost to individuals and to society of the Family Law System
- c. Suicide rates of those people traversing the Family Court System (parents and children)
- d. Family court statistics: populations/outcomes etc
- e. False allegations/perjury in the Family Court

Domestic violence

- f. Review of the research underpinning the Domestic Violence industry and narrative in Australia
- g. Definition, forms, causes and prevalence of domestic violence in Australian society
- h. Parental alienation status as abuse

Demographics and the Family Law system

- i. Father and Mother outcomes in Family Law System
- j. Family Law System and Aboriginal and Torres Straight Islander
- k. Family Law System and LGBTIQ
- l. Family Law System and Defence Force personnel

Family Law Practitioners

- m. Review of conduct, performance, complaints and complaints mechanism

General

- n. International Family law systems as alternate models

Recommendations to create an alternate non-adversarial model

7. Convene a cross stakeholder and advocacy group Committee to develop an alternate non-adversarial model to the current Family Law system and to develop a means to pilot, implement and test the same

Recommendations in relation to Family Law Act 1975

Urgent Domestic Violence Allegation Review Process

8. Create a process (legislative amendments made to the Family Law Act 1975 (Cth) to require a relevant court to determine domestic violence allegations at the earliest practicable opportunity to urgently assess claims of Domestic Violence in Family Court matters with 14 days of filing (to prevent unfounded allegations from becoming entrenched:
 - a. With adequate court resources and hearing time allocated to fully examine the claims and the evidence relied upon
 - b. With proof of balance of probabilities
 - c. With actions in perjury and cost orders for claims found to be intentionally false or misleading on the balance of probabilities
 - d. With an emphasis to urgently re-establish withheld access to children where safety risks are unfounded or low
 - e. No ex parte orders permitted where children are involved

Domestic Violence Definition

9. Amend the Family Law Act to include a new definition of Family Violence to include:
 - a. A national standardised definition of domestic violence, with standardised examples of behaviour
 - b. To provide for a categorisation of Family Violence according to severity and risk:
 - i. Establishment of a low risk category that includes behaviour that is: situational, separation/relationship breakdown instigated, mutual, not part of a pattern or exercise of control, represents no risk in relation to parenting or child access issues
 - ii. Other forms of serious violence that represent risk
 - iii. With the emphasis on overcoming impediments to the urgent re-establishment of meaningful access for both parents to the children

Family Violence Orders

10. Remove “admission without consent” as an option and direct those application to consideration of agreeing to Undertakings. All application for Orders should be tested on evidence (with Legal Aid available to all defendants) and no party should be coerced to concede to Orders that are grossly impactful and that have possible criminal ramifications.

False statements and perjury

11. Introduce a mandatory penalty system when allegations and statements are found to be deliberately false, including:
 - a. Financial penalties
 - b. Custodial sentences
 - c. Adverse findings in relation to parenting and child custody/access
 - d. Adverse findings in relation to property settlements
 - e. Disciplinary action in relation to culpable legal practitioners

Psychological support services

12. With the input of psychologists produce information and support services to assist separating parents at the point of entry into the Family Law System to assist people to manager their internal states through effective stress management, education and information to enhance decision-making and assist in building resilience for those navigating the system.

Property Amendments

13. Amend the Family Law Act 1975 to Introduce the following reforms to improve compliance in family law property proceedings:
 - a. To require that parties take genuine steps to attempt to resolve their property and financial matters prior to filing an application for court orders; and specify that a court must not hear an application unless the parties have lodged a genuine steps statement (Section 60i certificates to be extended to financial matters)
 - b. Streamline the legislation to reduce the width of judicial discretion, to enable parties to better understand the process surrounding the division of property, and what a reasonable division of their property interests might be in order to increase the predictability of outcomes.
 - i. Financial Settlements should be legally mandated to be set ratio, such as 50/50 split recognising the marriage as a team effort by both parties until separation whether they are in a paid or unpaid role. The only exception being if, cash, assets, inheritance or a business were brought into the onset of the marriage, which would be exempt from the property settlement
 - ii. End spousal support/maintenance claims as part of a financial settlement.
 - iii. BFA's and pre-nuptials which address all current and agreed future circumstances should be required and made enforceable (with the court providing a template)
 - c. To clearly set out disclosure obligations of parties and the consequences for breach of those obligations
 - d. Strengthening the court's ability to address non-compliance
 - e. Strengthening the role of registrars to establish, monitor and enforce timelines for disclosure
 - f. Introducing an administrative mechanism for the family law courts to be provided with financial information from the Australian Tax Office
 - g. Introducing adverse adjustments to property divisions for parties who do not make full and frank disclosures

Costs

14. The Family Law Act should be amended to:
 - a. To require that fees should be proportionate, referenced to the value achieved for the client and the legal complexity of the matter (and/or index to the value of the asset pool)
 - b. Require the parties to submit a cost budget at the commencement of proceedings. This would include orders limiting the amount of fees which can be charged, recovered or sought via cost orders
 - c. To fortify the obligation for Family Law legal practitioners to disclose and explain their fee

structures, and cost estimates. Legal practitioners should also provide regular updates and tracking in relation to costs incurred so that the client can have adequate visibility and management capability. Legal practitioners should inform clients about alternate billing methods not solely based on the billable hour, such as fixed fees, value billing and unbundled services.

- d. The conduct of legal practitioners, acting on instructions from their clients or otherwise, should also be grounds for cost orders, where, for example, it can be demonstrated that the conduct of the practitioner has unreasonably added to the cost of one or both parties.
- e. Disappointment fees payable to barristers for work that is not undertaken should be banned, or in the alternative capped as a reasonable and standard cancellation fee could be payable after obtaining leave of the court.

Application Contravention Process

15. Simplify the Application Contravention process and provide further resourcing to the family law courts to establish contravention lists at registries and regional circuit locations to allow for more contravention applications to be heard promptly, including:
 - a. Amend the Family Law Act 1975 (Cth) to provide Registrars with the power to hear and determine contravention applications.
 - b. Strengthening fines and penalties.
 - c. Establishing the capability for state police to enforce breaches to parenting orders.

Mediation

16. Section 60i certificates
 - a. Review the exemptions in relation to mediation and the operation in practice of s.60i(10) of the Act with a view to having more people involved in parenting disputes see a mediator to determine the suitability of some kind of mediation in their case.
 - b. Protection orders with no contact orders, not to be grounds for exemption from mediation.
 - c. Introduce a duty on a registrar or judge to consider making a costs orders at the first court event if a person fails to attend mediation without reasonable excuse, with a presumption that such an order will be made.

Resourcing, funding and training

17. Obtain funding for
 - a. Appoint more Judicial members
 - b. Allocate more funding to alleviate delay
 - c. Training for all judiciary, court staff, legal practitioners in relation to
 - i. Mental health of all parties before a court
 - ii. Gender neutral training

Family Law Complaints Process

18. Create a new complaints, accountability and review mechanism for:

- a. Legal practitioners practising within Family Law (including legal aid and ICL) that is actionable while a matter remains before a court
- b. For Expert/Family Report writers

Expert Report Writers

- 19. Improve the Expert Report process:
 - a. Make the family report assessment process more thorough (through provision of additional time, utilising a broader range of information, and mandatory risk assessments and/or guidelines)
 - b. Create a mandatory national accreditation for private report writers, Government should prescribe minimum standards for family consultants who are not employed by courts, and ensure that they are subject to adequate supervision and accountability mechanisms
 - c. The Family Court should maintain a publicly available list of accredited private family law report writers with information about their qualifications, experience and price as part of the Accreditation Register
 - d. The cost for the preparation of a report to be capped at \$2,000
 - e. The engagement process should be a process of consultation between the parties, not only in relation to the choice of reporters and cost but also the terms of the engagement.

Legal Aid

- 20. Legal Aid to be available for defendant of AVO/DVOs in all cases

Independent Children's lawyers

- 21. ICL to be required to meet with the children that they represent in an age-appropriate manner

Supervision agencies and contact centres

- 22. Increase accountability and oversight of contact centres
 - a. Establish regulation and accreditation across the CCS sector (staff with mandatory working with children checks as the minimum requirements), to ensure safe, professional, impartial, gender neutral and high-quality services are provided by both government funded and private services.
 - b. Prices for services to be means tested with government funding provided to all families needing to use supervision services.
 - c. Community assets including schools and daycares to keep services local and easy to access, they can be used on weekends as community contact centres to travel times and costs.
 - d. Tax free payments for supervision staff.

Judicial staff

- 23. In relation to Judicial staff:
 - a. judicial vacancies should be advertised. Applicants assessed against core competencies and experience
 - i. All judicial officers, of any court, who are required to exercise family law jurisdiction at any time should be required to have competency in a broad range of areas

including child development and health, forms of attachment (including multiple attachment e.g. in Aboriginal families), sibling relationships, addiction, mental health, violence, parental alienation and other related harms and the effects of various types of harms upon children and parents. All training should be gender neutral.

- b. The Commonwealth Attorney-General should consult Heads of Jurisdiction of all federal courts and of state and territory child protection courts the Commonwealth Attorney-General should meet with Heads of Jurisdiction at least once a year to identify/confirm upcoming vacancies and emerging need in particular registries and for specialist lists, and vacancies should be filled within 3 months of arising, unless they arise unexpectedly; if they are not, the Attorney-General should be required to provide to Parliament a statement explaining why this has not been possible.
- c. Government could require applicants to undergo prescribed training before applying for a judicial appointment.
- d. Section 22 of the Act could usefully be amended to recognise the need for, and merits of, ongoing training for judicial officers.
- e. ABF recommends that a Judicial Commission be established to cover judicial officers. This Commission should be required to receive, investigate, examine, hear and decide on the merits of complaints and to impose appropriate sanctions, having regard to the limitations imposed by Chapter III of the Constitution.
- f. Judicial appointments to be for five year terms.

Overarching obligations for all system professionals

24. The state and territory governments be involved in development of workforce capability plan.

Protected Confidences

25. Amend The Family Law Act 1975 (Cth) to provide that courts have the power to exclude evidence of 'protected confidences': that is, communications made by a person in confidence to another person acting in a professional capacity who has an express or implied duty of confidence. Draft guidelines to consider when a subpoena of sensitive records is in contemplation.

LGBTIQ

26. Review and update the modern family law system, documentation and legislation to demonstrate an integrated and thorough understanding of national, state and territory laws and legal reforms pertaining to LGBTIQ families (including international law as required).
 - a. Develop a more expansive definition of family inclusive of LGBTIQ families – across the family law system including family violence services.

Aboriginal and Torres Strait Islander services and support

27. Consult with representative groups to develop specific Aboriginal and Torres Strait Islander services and support
 - a. increase locations and funding for Aboriginal and Torres Strait Islander legal services, provide practice training to lawyers in locations with high aboriginal and TI community

members.

Defence Force Personnel

28. Consult with representative groups to develop specific Defence Force Personnel services and support.

Self Represented Litigants

29. Provide greater services and support to the increasing number of self-represented litigants, including:
 - a. in court access to duty lawyers, legal aid lawyers and in court access to mental health services.

Other Recommendations

Minister for Men

30. Establish and fund a Minister for Men, equivalent to the current portfolio of the Minister for Women.

Service for Men

31. Provide the following services for men:
 - a. Men to be included into the re-titled National Plan to Reduce Violence against Women and their Children 2010 – 2022 and associated systemic reforms.
 - b. Government funded public awareness campaigns be conducted to raise awareness of intimate partner violence against men.
 - c. Consideration should be given to providing publicly-funded services specifically for male victims of intimate partner abuse.
 - d. Consideration should be given to how services for male victims of intimate partner abuse can be integrated with services for female victims and general services for victims of family violence in all its forms.
 - e. Workers in the broader health and welfare fields should be provided with training to assist them to respond effectively to male victims of intimate partner abuse.
 - f. Tertiary education courses (social work; other health and human services) to consider the inclusion of specific training about meeting the needs of male victims of family violence and their children.

Gender Neutral funding, services and support

32. Gender neutralise all legislation, funding, services and support within the Domestic Violence industry and Family law Services, including but not limited to:
 - a. All legislation
 - b. All Family Court content, public and internal including Benchbooks
 - c. Behaviour change programs that are gender neutral
 - d. Remove all language that limits reference to traditional family structures

- i. Remove words “each” and “both” in the Act and associated documents
 - ii. Considering the use of the term 'couple' when referring to parents or 'both' parents
- e. Gender neutralise all Legal Aid services:
 - i. Legal Aid available for defendants in AVOs/DVOs matters
- f. All government department domestic violence accreditation based training using the Duluth Model (such as White Ribbon accreditation) should be abolished
- g. All services are provided equally and identically in a non-gendered manner

Child Support Reform

33. A complete reform of the Child Support System, including:

- a. Capped payments per child
- b. Introduction of a child support debit card to track expenditure
- c. Parents with shared care will not receive support payments unless there is a private agreement
- d. Payments will no longer be calculated on capacity to earn
- e. Private agreements can be negotiated between parents and managed through Centrelink.
- f. Paternity testing before a payment agreement can be made
- g. Private agreements are guaranteed by on time payments by the Centrelink
- h. Parents who refuse to pay the capped rates will incur either a higher tax rate or forfeit the amount from their tax return
- i. Outstanding child support debts will be cleared

2 The Australian Brotherhood of Fathers (ABF)

2 (a) Introduction

On 28th October 2019, Mr Leith Erikson, Founder of the Australian Brotherhood of Fathers (ABF), was invited by the Committee Secretary, to make a submission to the Joint Select Committee on Australia's Family Law System.

The ABF would like to thank the Committee for this opportunity.

On the 17 February 2019, Mr Leith Erikson was invited to appear before the public hearing of the Joint Select Committee on Australia's Family Law on Thursday 9 April 2020.

This has been postponed. We look forward to the opportunity when it again arises.

2 (b) Joint Select Committee on Australia's Family Law System.

This Inquiry is different. It is defined by its differences. It is not a duplication of previous efforts. It should not be dismissed prior to achieving its unique objectives. The recent calls to have it shut down while it is now underway, arise from family law industry stakeholders that have the greatest to lose from a reform of the industry. Their voices should be given no more weight than is appropriate in that context. Those that profit from a flawed system should not be protected over the rights of those who suffer harm and loss from it.

The voices of those who have suffered are now legion. Decades of impact on thousands of Australian families: parents and generation of children have created a sea of grief and loss. These voices must be heard, if not for themselves, but for others: those that may be harmed in the future.

The public must know. Thirty percent of first time marriages end in divorce, and sixty percent of second. Half of those divorced households contain children. Most married Australians are blissfully unaware of the Family Court System and how it may impact upon their lives, but there is a high likelihood that they will become aware, and that they will become impacted.

<https://aifs.gov.au/facts-and-figures/divorce-rates-australia>

This Inquiry has an important role to play in promoting resourcing and reform of the family law system. It also has the potential to lead meaningful consideration and responses to recent reports, and to inform public debate on the issues of a multitude of issues in relation to the family court.

Most important of all, this inquiry should be seen as the impetus for real investigation, analysis and change. Reform must not stop at the production of a report from this Inquiry.

This must be a road to change.

Instead of asking how can we improve, we need to ask is it fit for purpose?

“Prime Minister Scott Morrison said the review would look at whether the current system, which is intended to support parents and children during the end of a relationship, is fit for purpose”.

“We want to ensure families can resolve issues as quickly and fairly as possible, so everyone can move on with their lives,” the Prime Minister said.

“This inquiry will allow the Parliament to hear directly from families and listen to them as they give their accounts of how the family law system has been impacting them and how it interacts with the child support system.

“This is a serious issue that has been raised by Members and Senators across the Parliament and I look forward to the Parliament working together through this Committee to bring forward recommendations”

<https://www.attorneygeneral.gov.au/media/media-releases/joint-parliamentary-inquiry-family-law-and-child-support-17-september-2019>

2 (c) The ABF

The Australian Brotherhood of Fathers is an advocacy organisation committed to reforming the Australian Family Law System, Domestic Violence policy, the Child Support System, and associated policies and procedures. Our goal is to establish a system that focuses on the best outcomes for children, parents and families, after relationship separation and breakdown.

While the Family Law System is only one part of a complex integrated system of associated services and processes, it is the primary part.

The manner in which the Family Court and associated systems deal with divorce and separation in Australia requires significant reform. Our families deserve better outcomes, where the concept of the child’s best interests is not just rhetoric, and where parents are not destroyed in the process. Children benefit from continued meaningful time with both parents; parents benefit, society benefits. The pursuit of such a self-evident objective, one that also has unanimous support in research, should not be lost in the perpetuation of an adversarial process. A process that prevents successful and rapid transition into post relationship co-parenting, that gravely harms parents and catches children in the cross fire.

International research is unambiguous in relation to the negative impact upon children from the perpetuation of fatherlessness. This impact flows on to our society and becomes an intergenerational issue, that with the steady erosion of the rights and recognition of fathers over the last decades, has probably not yet fully impacted our society. The ABF can no longer stand by and allow flawed social and legal policy to continue to damage the future of our nation.

This documents details the many issues that we see nationally with social and legal policies that relate to family separation. Many of the issues demand urgent and immediate rectification, although they may not even be on a political radar. Some issues, such as the recognition of the concept of parental alienation as serious abuse, by way of one example,

are being resisted on the basis that recognition would acknowledge decades harm from of poor judicial decision. Such unjustified resistance is only continuing the profound harm day by day. Other issues, such as the profound delay in the processes around re-establishing access, are destroying lives every single day.

We argue that the issues are so profound and manifest, that continuing the history of incremental reform (and subsequent roll-back and erosion of the stakeholder professions) is no longer acceptable. The system, particularly where it pertains to the right and need of a child to have meaningful, continuous and urgent relationships with their entire families, needs to be taken out of the current adversarial legal system and dealt with entirely differently.

Our families need care and support to deal with the trauma associated with the break down of relationships. They need assistance to navigate the transition successfully: with the best interests of the any children at the fore: but not to the utter neglect of parental health. We believe by providing a family focused system that promotes the role of shared parenting where suitable, can prevent many of these health issues.

Both parents need to enter the system on equal and equivalent footing. At the moment this is not the case: with every single service, support and process heavily gender biased against fathers. We detail that in this document. As a result fathers are much more likely to suffer emotionally, psychologically and physiologically. They are much more likely to lose meaningful access with their children. The system takes children from heavily engaged fathers one day, removes them entirely the next, in some cases for years, and then may never again re-establish the same deep relationship and parental role that the father once had.

The legislation provides for only one valid circumstances where this scenario should be able to occur: where there is serious domestic violence. The delay in addressing such claims, the low standard of proof, the significant financial and custodial incentives for making such claims, the total absence of any ramifications for false or exaggerated claims, lawyers focused on nothing other than a binary win/lose system and the financial windfall the conflict means for them results in countless terrible outcomes for father's and their children.

This is another stolen generation and it is another gross shame on our society.

We believe implementation of basic parental rights of access should be the priority for every community leader and at every level of government.

<https://www.theabf.org.au/>

2 (d) Our unique perspective

We are uniquely placed within Australia to provide input to this Inquiry. Our organisation is has worked tirelessly to raise the profile of broken social policy and its impact on vulnerable families while working to deliver a range of services in support of fathers and their families. While the service is focused on improving policy and services in support of fathers we recognise the important role mothers play in the lives of our children and believe our objectives would benefit mothers equally.

As a result, we believe that we have Australian leading database on fathers affected by the system, including accurate statistics on domestic violence rates, gathered without the bias of gender models.

2 (e) Serve all, help all

The current system perpetuates abuse, violence and harm.

There are Father and there are Mothers that have traversed the Family Law System that are blameless victims. These are good people that the system harms.

There are Fathers and there are Mothers that have committed acts of abuse, domestic violence and criminality. These are troubled people that the system also hurts and harms further.

The ABF helps thousands of Fathers that are blameless victims. With careful consideration and using accredited behavioural management techniques, ABF also attempts to assists troubled individuals who may have committed acts of abuse, domestic violence and criminality. We believe that the system does not in all cases manage these individuals correctly. The current mechanisms that act to remove effective treatment, autonomy, privacy, reputation, dignity, respect, liberty, income, assets and access to children are not mechanisms that produce a best outcome for the troubled individuals, their children or for society.

The current system can increase, not mitigate, risk.

2 (f) Who we work with and what we do

We recommend statutory reform. The Australian Brotherhood of Fathers advocates for this reform through multiple avenues in our society.

The ABF consults and works with people from all walks of life. Within the industry, we consult with legal practitioners, mental health professionals, justice professionals, academics, advocates, journalists and most important of all, Fathers, Mothers, Children and their extended families.

We are nationally affiliated with both domestic violence charities, specialist legal services, and family support services.

3 The Family Law System

The Family Law System is defined as the “collective of the family courts (the Family Court of Australia, the Family Court of Western Australia and the Federal Circuit Court of Australia) and all family law and post-separation services, including family relationships services (such as government funded family counselling services, post-separation parenting programs, and children’s contact services) as well as legal aid, community legal sector and private legal services”. We include the Child Support Agency within this definition, as the function is intertwined.

The Family Law Act 1975 (Cth) was globally groundbreaking legislation that advanced the rights of and protections for separating families. One important aspect of the reforms of 1975 was the creation of the specialist, stand-alone Family Court of Australia (the Family Court) and its counselling and assessment services. The emphasis of the legislation, and the operation of the Family Court, has always been to promote the non-litigious resolution of issues for families in this most difficult of circumstances wherever possible.

Yet it is widely acknowledged by court users, the legal profession, the Government and judiciary alike that this once world-leading family law system has fallen far short of these noble objectives. We believe decades of an adversarial process, and decades of exploitation by legal professionals most skilled at identifying weaknesses and ambiguities in a system, have made a mockery of the original intent. Many of the elements that made the system internationally admirable have either already succumbed to assault or are currently being assailed. For example, the noble and just presumption of equal shared responsibility, a presumption many other overseas jurisdictions are trying hard to enshrine, is being assailed by vested stakeholders in this very year.

Having a system that prioritises the protection of parents and children from harm is noble, and essential. But we now have a system where those “protections” are weaponised in a disproportionately significant number of matters before the court to exploit the valuable advantage that they provide. Having a system that presumes parties will act conscientiously, produces a system where the unconscionable can run amok. Having a system which trusts that the evidence before it is truthful, produces a system that has become farcical slinging match.

There was strong support for the 2006 rebuttable presumption of shared responsibility and shared care laws that saw more shared equal time outcomes than ever before in the history of Australia Family law. Parents reported that there were more happy and contented children who had a relationship with both parents, Grandparents and extended Families. However, they see a terrible decline since 2011, where the system has broken down completely in every avenue. The 2019 Australian Law Reform Commission Report would see that decline of the rebuttal presumption embodied in legislation.

Decades of funding neglect and insufficient reform, have now produced a system that we argue, by far causes more harm than good to our society and is not currently serving the best interests of children and families in Australia. Decades of false gender based narratives have produced a system that disproportionately harms fathers and is creating intergenerational harm through fatherlessness.

An adversarial process

The Family Law System is, by its nature, adversarial. It is driven by individuals in conflict, individuals that are hurt and individual's no longer viewing their place in the world as part of a couple, family or a team. They are seeking what is now best for them, in some cases driving by animosity and they what they now individually believe is in the best interests of any children from the relationship.

Into that fray are introduced expert professionals of conflict. There are Family law practitioners that might be able to put the noble intent of the system (and the best interests of any children and their parents embroiled in the conflict) first, but this is not the experience of many within the system.

An Adversarial system, driven by acrimony of the parties and weaponised by legal practitioners is not a system that is going to achieve the best interests of those within it.

This is no more obvious than in parenting cases. It is no more harmful than in those cases. It is not more gender biased than in those cases: despite that profoundly gender neutral parenting roles Father's and Mothers joyfully now play within families. We believe that the Family Law System as it exists now is entirely unsuitable for parenting matters. An alternate non-adversarial system managed by salaried (not hourly) professionals that are objective and independent experts in people, families and conflict resolution.

2017 House of Representatives Standing Committee on Social Policy and Legal Affairs report "A better family law system to support and protect those affected by family violence", concluded that:

- The Adversarial system is inappropriate for resolving family law disputes
- Does not respond appropriately to reports of family violence
- Is inaccessible to most families
- Is open to abuse of process
- Does not respond sufficient to perjury or false allegations

https://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/FVlawreform/Report/

A recurring theme in a significant body of evidence to this inquiry, and the conclusions of other reviews, is that the current adversarial system is inappropriate for resolving family law disputes. The inappropriateness of an adversarial system to family law was identified as early as 1979. The first Chief Justice of the Family Court criticised adversarial processes, which produce win/lose outcomes, as being 'destructive of morale and [likely to] create bitterness for all'.

This is the most fundamental failure of the current court-centric system. It expects that children's best interests can be protected by a winning parent and loser parent emerging, emotionally scarred and financially bruised (if not broken) from the prolonged turmoil of affidavits and cross-examination.

Successive Parliaments and courts have sought to soften the harsher edges of the inherently combative structure inherent in the process.

Evatt, E, 'The administration of family law', Australian Journal of Public Administration, 38(1), 1, at 10.

Yet the history of the family law system, from debates on the 1975 Bill onwards, is marked by recurrent, but ultimately unsuccessful, attempts to:

- minimise conflict between parents
- minimise 'legal practitioners-led' processes and structures
- reinforce focus on children's best interests and better provide for expression of children's fears, hopes and concerns, and
- minimise legal, bureaucratic and other system barriers to support safe and healthy families, whether intact, separating, separated or blended – or all of these at different stages.

In the Australian common law system (non-inquisitorial), from which the 'family law system' derives, a court cannot make its own inquiries, and must rely only on the evidence brought by the parties. Each party must present such evidence as supports their case and challenge evidence put by other parties to the dispute. For parties represented by expert advocates, who oversee and conduct their clients' litigation, this process has been historically accepted as reliably delivering outcomes which, while not always representing perfect justice, have enabled workable resolution of disputes between government and governed, between businesses and their customers, and among other kinds of litigants.

But disputes arising from family separation are very different. Increasingly people represent themselves and struggle to present evidence. There is also an imperative to support children's ongoing relationships with both parents and other people with whom they have a meaningful relationship: this includes step/half siblings, grandparents, cousins, uncles and aunts and extended families both paternal and maternal. Where children are involved, parents and caregivers (for example) will often need to co-operate over several years in co-parenting or enabling children to enjoy those relationships

In disputes involving children, the fundamental issues are not the relative rights of the parties who are in front of the judge, but are about the rights of children who are not parties. This includes their future wellbeing, healthy development and right to know their families. Legal analysis cannot provide the answers to these questions.

Solutions to parenting disputes that protect children's best interests require outcomes that are far more nuanced than simply win/loss judgements. The win/loss nature of litigation, as perpetuated by many Family Lawyers, is simply not likely to lead to the mindset essential for a long-term co-parenting arrangement. The fact that this all intersects in many regards with the property settlement, makes matters much worse.

Despite the denials (which but-up against the stated opinions of the professionals at the coalface; both legal practitioners and members of the judiciary), it has become evident to all those involved in the system over the past 40 years that a win/lose system, applied to family disputes, attracts and incentivises making unsupported allegations, which can remain untested for lengthy periods and ultimately distort any final resolution. Despite the denials, the system and those unsupported allegations are more often than not aimed at the Father to remove him from the life of the children.

Despite well intentioned attempts at reform to roll back the combative and adversarial, and legalistic elements of the system, even when partially achieved, they are all too often eroded and the damaging features and dynamics re-established in due course. We believe that the required changes are not currently being facilitated through legislation, case law or via family law industry stakeholders (such as the Law Reform Commission). The efforts to insert problem solving, less adversarial and multi-disciplinary cooperative features to the existing system have simply failed.

The system needs to be replaced.

Such reform will not be achieved through industry stakeholders that have significant vested industry in the current regime. The objections from stakeholders with vested financial interests should be overruled.

3 (a) Previous Family Law Reports and Studies

It is beyond the scope of this submission to definitively analyse the history of reports into Australia's Family Law System, but we briefly touch on the topic here.

As stated previously, attempts to reform the Family Court System have been largely unsuccessful. Despite well intentioned attempts at reform to roll back the combative and adversarial, and legalistic elements of the system, even when partially achieved, they are all too often eroded and the damaging features and dynamics re-established in due course. We believe that the required changes are not currently being facilitated through legislation, case law or via family law industry stakeholders (such as the Law Reform Commission). The efforts to insert problem solving, less adversarial and multi-disciplinary cooperative features to the existing system have simply failed.

The overwhelming pervasive, but entirely unscientific and unsupported gender based narrative within the domestic violence industry permeates the research and official reform recommendations.

We recommend a definitive piece of research be conducted to update and consolidate previous work. This would require setting up an expert group of people to review all the reports and recommendations going back twenty years that have not been implemented and to consider:

- whether they now represent sensible measures for reform
- whether they are high priority, medium priority or low priority
- and the relationship (if any) of each high and medium priority recommendation to current work in progress

The composition of the Expert group will be critical. It should not be a stakeholder group: it should be strongly independent, objective and with no vested interest.

ABF position on the: *April 2019 Australian Law Reform Commission tabled: Family Law for the Future — An Inquiry into the Family Law System: Final Report*

<https://www.alrc.gov.au/inquiry/review-of-the-family-law-system/>

Community reactions to the final report were not positive, with the obvious exception of industry insiders. The review was prepared by industry stakeholders: those currently profiting and benefitting from the dysfunctional family law system cannot be considered impartial. The report also almost completely omits addressing the challenges and marginalisation faced by Fathers within the system.

The 2018 ALRC Review of the Family Law System proposes to undo many of the hard fought of the improvements brought about by previous changes. The most profound recommendation is pertaining

to the presumption of shared parental responsibility. This would profoundly impact children's best interests and rights to have a meaningful relationship with their Fathers. There appears to be no evidence that the many separating parents who have gone down this pathway by consent have had their experiences considered, rather we suspect that the presumption for shared care is under attack for reasons considered in respect to parents who are unable to reach any parenting agreement and take the matter to the Federal Circuit Court or the Family Court as their first and only option. There appears to be little or no account for facts which apply to a significant number of successful shared care arrangements by consent. There appears to be no organisations that put themselves forward as having a service aimed at helping separating couples successfully enter a relationship of shared care. There appears to be no funding for organisations or courses with this specific aim. There appears to be no evidence that since the legislative changes any funding has indeed been made available to implement the changes.

The ABF strongly opposes the proposal to undo the presumption of shared parental responsibility. The proposal is regressive and, if implemented, would, we firmly believe, be highly detrimental to the best interests of children. The proposal fails to acknowledge that the overall interests of a child, including with respect to safety, are best served by promoting the active involvement of both parents in a child's life, as outlined elsewhere in this submission.

The family law industry too often uses the "best interests of children" as an excuse for discounting the importance individual parent-child relationships. The most at-risk group of children in Australia are children raised without the presence of their biological father. Numerous studies have shown negative outcomes from children lacking the presence of their Dad. These include elevated risks of sexual, physical and emotional abuse. As well, educational outcomes are worse, along with rates of criminality and teenage pregnancy.

When a father is effectively replaced in a child's life by the mother's boyfriend or boyfriends or a step-father, the risks of abuse go up.

Unfortunately, the biases of the Australian Law Reform Commission extend to their treatment of public submissions. They are still yet to publish many submissions, choosing instead to cherry-pick those which support their particular agenda while not releasing others. The voices of the Mums and Dads who are affected by the (mis)management of family law cases are not being heard.

4 Domestic Violence

Almost 50 per cent of matters before the Family Court of Australia 70 per cent of matters before the Federal Circuit Court of Australia and 65 per cent of matters before the Family Court of Western Australia, involve allegations of family violence. As a result, responding to family violence has been described as 'core business of the federal family courts'.

House of Representatives Report, [1.6], citing Australian Institute of Family Studies, Evaluation of the 2006 Family Law Reforms, 2009, p. 314 and Monash University – Castan Centre for Human Rights Law (Castan Centre for Human Rights), Submission 57 to the House of Representatives Report, p. 2.

Of the matters that our legal practitioners manage, domestic violence has been claimed by the Mother in almost 100% of the cases (of those claims, almost 100% of those claims have not been tested in Court at anytime).

This figure is surely disproportionate to real world statistics and supports the notion that claims of domestic violence go hand-in-hand with adversarial family court cases.

The manner in which our legal system currently deals with the issue of domestic violence is harmful to our society. We have presented in this submission evidence that the domestic violence system, often through false or exaggerated allegations, is weaponised to hurt good people. People at the coalface of the industry: family law practitioners, members of the judiciary and police confirm the same. That is detailed in this submission.

We know from the ongoing tragedies in the media, that the system also fails to protect. Women, Men and children continue to be the victims of violence within families and within the home.

So why is such a high profile, highly funded and resourced industry failing?

Because the narrative: "that the primary if not sole perpetrator is male and that it is an issue of gender, power and control" is wrong, and it has limited explanatory power. By adhering to a false narrative we are failing to not only understand the nature of the issue, but we are implementing processes that are bound to also fail.

The ABF is in a unique position to have gathered statistics from thousands of clients and our database evidences that gender is not the primary issue in relation to domestic violence. It is an issue for a minority of violence and where it is an issue, it can be so whether a man or a woman is the perpetrator.

Recent research indicates that victim rates may even be equal between genders.

Intimate partner violence and subsequent depression and anxiety disorders Ahmadabadi, Zohre, Najman, Jakob M., Williams, Gail M., Clavarino, Alexandra M., d'Abbs, Peter and Tran, Nam (2020). Intimate partner violence and subsequent depression and anxiety disorders. *Social Psychiatry and Psychiatric Epidemiology* 55 (5) 611-620. <https://doi.org/10.1007/s00127-019-01828-1>

This is contrary to the most commonly accepted figure that one in three victims of domestic violence is male. We believe that there are multiple reasons why the rate of 33% may not reflect reality.

One in Three Campaign: source 2012 ABS personal safety survey

Nevertheless, within the Family Court system, it is Mother's who make the majority of claims and receives the necessary support and affected outcomes for doing so. Claims of domestic violence can result in immediate seizing of property, assets and exclusive access to children (and full amount of child support payable), in addition to possible criminal sanctions with significant adverse consequences.

What is Domestic Violence

While the anecdotal understanding of domestic violence is the committed acts of actual physical violence, the true definition of domestic violence is broad (and varies between jurisdictions). It can include much of the conduct that both parties might engage in during an acrimonious separation. Domestic Violence claims have a low evidentiary burden, and the court practically never applies consequences to demonstrably false claims.

We are of the belief that a combination of broad definition, low evidentiary burden, no consequences for false allegations and a financial incentive for making such claims we believe makes a mockery of the current justice system. This further becomes inequitable when it is realised that the domestic violence industry has a prominent, if not at all justified gender narrative, and the services and support available to women far exceed those available to men.

As a result, the system is immensely harmful to our society. The many letters, phone contacts and emails that this organisation has received from mums, dads and grandparents referring to the broken Court system is responsible for many lost lives because they become the victims of these unjust and discriminate laws which sent them to see no end to the tunnel and end their lives.

The false Narrative

Those advocating gender based narratives of domestic violence have been quick to dismiss this Inquiry and the terms of reference. They are the same parties who throughout their literature conflate children's interests with the Mother's interests and when referring to the acts of men mention domestic violence in the same sentence as child abuse and sexual abuse. Many of the submission to this very Inquiry have done this.

At Victoria's royal commission, the commissioner, Marcia Neave, asked pointed questions of Fergus and Renee Imbesi from VicHealth, a statutory authority that has played a leading role in promoting the gender inequality thesis. First, Neave asked: if domestic violence is at heart about gender inequality, and gender inequality has improved significantly in Australia in the past few decades, why has there not been a big reduction in violence against women?

If Scandinavian and Nordic countries in particular have good records on gender inequality, what is the evidence that there are lower incidences of family violence compared with Australia? (Nordic countries have rates of domestic violence consistently above the European average)

<https://www.washingtonpost.com/news/worldviews/wp/2016/06/10/the-best-countries-for-gender-equality-may-also-have-a-domestic-violence-problem/>

Is too much effort going into gender equality at the expense of the causes of violence more generally, whether against men or women, and how we might reduce it?

A paper by Parkinson and Knox (2018), point to flaws in the legislation that permit courts to allow disputes in which there are no credibly serious risks, to move directly into adversarial negotiations and litigation.

<https://onlinelibrary.wiley.com/doi/full/10.1002/anzf.1351>

This is an important consideration, as a lack of focus on the perpetrator as a parent who risks being denied access to their child only makes the situation worse. There should always be hope of rehabilitation and relationship recovery. The kind of attention that is paid to both victims and perpetrators matters. The asymmetry in attention and resourcing is resulting in a backlash - life becomes even less safe for victims and their children, and neither victims nor perpetrators are getting the kind of interventions they need.

Dr Emma Partridge, who spent a year researching and writing the Our Watch framework, says there is little evidence specific actions by governments have reduced the prevalence rates of domestic violence.

Prof Peter Miller, principal research fellow and co-director of the violence prevention group at Deakin University. But Miller argues there have been significant changes in attitudes in Australia and other developed nations, both legislatively and culturally. The feminist dominance of the debate now is “deeply flawed”, he says, if the goal is to prevent the tiny number of men who do commit violence from a gendered perspective from doing so.

<https://www.theguardian.com/society/2016/feb/19/australians-are-being-told-that-gender-inequality-is-the-root-cause-of-domestic-violence-but-is-it>

He says the debate now assumes domestic violence is completely different from other forms of violence, whereas they have much in common. And, he says, the gender inequality thesis ignores that women are perpetrators in a substantial minority of cases, and that there is domestic violence between same-sex couples which has nothing to do with gender inequality.

“The decision for the very small percentage of people to step over that line to strike somebody else is exceptionally complicated and it doesn’t come down to whether their attitudes towards men or women are inappropriate,” he says

“In other countries there are different discourses that are better informed by evidence – it’s not simply the gender inequality card that’s played, however important that is.”

Miller is finishing a study into the role of alcohol and drugs in family violence. He knows that views like his are unpopular and believes research is too dominated by those who take a strong feminist approach to violence against women.

<http://classic.austlii.edu.au/au/journals/CICrimJust/2018/13.html>

Thea Brown has also had difficulties researching domestic violence. Brown has been a professor of social work at Monash University for more than 25 years and is finishing off a major study into parents who kill their children. And so, when she started a research project in 2012 into domestic violence and whether men’s behaviour change programs actually changed men’s violent behaviour, she was astonished at the “harassment” she says she received.

<https://www.theguardian.com/society/2016/feb/19/australians-are-being-told-that-gender-inequality-is-the-root-cause-of-domestic-violence-but-is-it>

Brown told Victoria's royal commission into family violence last year that she had never experienced anything like it in all her years of research. She says the feminist framing of domestic violence among some groups is so strong they are nervous about academic research in case their approach is shown to be flawed. "There's a very strong ideology in some domestic violence services and it becomes an anti-research ideology because research is feared in case it threatens the ideological basis of the program," Brown told the commission. "It is a problem when ideology rather than evidence forms a basis of discussion and has the impact of stifling discussion."

<https://www.psychology.org.au/getmedia/210e21e9-ceb8-452c-b111-2319dd247885/Submission-to-victorian-royal-commission-family-violence.pdf>

To the commission and in an interview with Guardian Australia, Brown said that No to Violence, the peak Victorian body whose members run men's behaviour programs, advised their members not to cooperate with Brown's research. That made it much harder for Brown to approach men to participate, and the research was delayed for 12 months.

There are others less confident and equally frustrated that the dominance of the gender equality way of looking at domestic violence is pushing out other significant factors that, they argue, could make a big difference to reducing violence against women if they weren't so sidelined.

For instance, reports of domestic violence to police, in common with all forms of violence, is concentrated in disadvantaged areas, particularly in the regions and in remote Indigenous communities. The suggestion that domestic violence is experienced by all women in all communities is of course true, but there are pockets where it is far more pronounced.

In a study of domestic assaults reported to NSW police from 2001 to 2010, 19 out of the top 20 local government areas were rural or regional areas and the top five were all remote – Bourke, Walgett, Moree Plains, Coonamble and Wentworth. Four of the five have Aboriginal populations whose experience of violence of all kinds is far higher than that of non-Indigenous people.

<https://www.bocsar.nsw.gov.au/Documents/BB/bb61.pdf>

Alcohol's link to violence of all kinds is undeniable, including violence in the home. It is involved in about half of domestic violence incidents attended by police, and violence incidents involving alcohol tend to be more frequent and severe. Almost 45% of intimate partner homicides are alcohol-related and that rises to 87% of Indigenous intimate partner homicides, which means alcohol had been consumed by the perpetrator, victim or both.

Michael Thorn says alcohol can be considered a "cause" of violence in a public health sense but he avoids the word because it's "like a red rag to a bull" to domestic violence groups. Yet, he says, alcohol is the "low-hanging fruit" that could reduce violence now, without having to wait for generational change that may or may not happen.

<http://drinktank.org.au/2015/03/hh-michael-thorn/>

"One of the key messages around this is that when you take alcohol out of the picture for a very small group of the population who are obviously indicated as problem people, you get this huge reduction in domestic violence. We are a bit crazy not to have tried it already."

The perpetrators

The Inquiry will likely hear evidence that while “situational couple violence” (not motivated by a desire to control the life of the other person) is perpetrated almost equally by men and women, “coercive control” (a pattern of behaviour which seeks to take away the victim’s liberty or freedom, to strip away their sense of self) is predominantly or almost exclusively perpetrated by men.

Since the inception of our 1800 crisis hotline, we have been recording statistics through the administration of a survey as part of the initial screening process.

The initial findings of our research data bases are alarming.

- The dataset derives from the crisis hotline which has been in operation for 2 years (100 new interactions each week, with 300 follow ups each week)
- The research conducted focused on a sample of over 1000 Fathers, who used the crisis hotline service

Callers answered survey questions on topics such as Family Court matters, child access, domestic violence experiences and accusations. The, as yet unreleased data set, indicates:

- a. 53.6% of males had been physically assaulted by the previous female partner, up to 83.8% being subjected to other forms of abuse and domestic violence
- b. 70.4% of such domestic violence reported to police, resulted in no police action (of those that did report to police, their levels of suicidal ideation was higher)
- c. 90% of men that reported being victims of domestic violence to police received false allegations of domestic violence in return

In the Judicial Commission NSW survey of Magistrates August 1999, the Magistrate were asked for their opinion on the causes of domestic violence:

“relationship pressures play a significant role in domestic violence and are exacerbated by poverty, alcohol and drug problems. There is often a history of growing up in violence situations”

“Normal stress of life come to the fore in domestic violence”

“It is personal and mostly results from other pressures within a relationship, for example, poverty, drug/alcohol abuse”

“There is in the majority of cases, blame on both sides”

“It is undeniable that a successful relationship requires the commitment of both parties. It is also undeniable that in many domestic and personal violence matters it is impossible to conclude that either party is blameless in bringing about the confrontation which caused the problem”

“Not all complaints are one-sided. From time to time the complainant too has demonstrated violence or has otherwise been provocative. There is often fault on both sides”

“sometimes both parties act totally unreasonably”

“Women cause a lot of problems by nagging, bitching and emotionally hurting men. Men cannot bitch back, for hormonal reasons, and often no recourse but violence. The widespread notion that men are inarticulate is an urban myth propagated by feminists – anger and hurt is what hampers self-expression, not inability to formulate simple sentences”

Only 1/6 of the magistrates surveyed identified power/control (assertion of power and gender imbalance) as a cause of domestic violence.

Recent research from the UK also challenges the male control/gender imbalance narrative. In 2014 Elizabeth Bates from the University of Cumbria, along with Nicola Graham-Kevan and John Archer from the University of Central Lancashire published their study titled Testing predictions from the male control theory of men's partner violence

Bates, E. A., Graham-Kevan, N. and Archer, J. (2014), . *Aggr.Behav.*, 40: 42–55. doi:10.1002/ab.21499.

The aim of this study was to test predictions from the male control theory of Intimate Partner Violence (IPV) and Johnson's (1995) typology. A student sample (N = 1104) reported on their use of physical aggression and controlling behaviour, to partners and to same-sex non-intimates. Contrary to the male control theory, women were found to be more physically aggressive to their partners than men were, and the reverse pattern was found for aggression to same-sex non-intimates. Furthermore, there were no substantial sex differences in controlling behaviour, which significantly predicted physical aggression in both sexes. IPV was found to be associated with physical aggression to same-sex non-intimates, thereby demonstrating a link with aggression outside the family.

Using Johnson's (1995) typology, women were more likely than men to be classed as “intimate terrorists”, which was counter to earlier findings. Overall, these results do not support the male control theory of IPV. Instead, they fit the view that IPV does not have a special aetiology, and is better studied within the context of other forms of aggression.

https://www.researchgate.net/publication/237230405_Using_Johnson's_domestic_violence_typology_to_classify_men_and_women_in_a_non-selected_sample

In light of this evidence, we would encourage the inquiry to consider that perpetrators who might be seeking to extend their coercive controlling behaviour by declaring themselves as victims, may be either male or female.

It is critically important that the Committee also understand that while ‘coercive control’ is undeniably the most serious form of family violence, ‘couple violence’ is by no means minor or trivial.

Even feminist scholar Michael Johnson, one of the best known scholars of typologies of violence, acknowledges that women's violence is a serious social issue which must be addressed:

Johnson, M. (2011) . *Aggression and Violent Behaviour*, Volume 16, Issue 4, July/August 2011. pp 289 - 296.

- “women both initiate violence and participate in mutual violence and that, particularly in teenage and young adult samples, women perpetrate violence against their partners more frequently than do the men”

- “repeat, severe violence against a non-violent intimate is symmetrical by gender”
- “I and others have always noted that situational couple violence:
 - (a) is far and away the most common form of intimate partner violence,
 - (b) is perpetrated about equally by men and women, and
 - (c) can be extremely consequential.”

Contrary to popular opinion, women instigate domestic violence more frequently than men. Indeed, research is finding that women use far more emotionally controlling or bullying behaviour – coercive control – than men. It is this that can lay the groundwork for physical abuse in a domestic relationship.

In 2014 Dr Elizabeth Bates, also found that women are more likely than men to be aggressive and controlling towards their partners.

This has a significant impact on the physical and mental health of emotionally abused men. The UK Crime Survey found that 11 per cent of British men abused by female partners try to kill themselves, compared with only 7.2 per cent of women who are abused by male partners.

Research has also found that attacks on a man’s self-worth may be especially debilitating. One of the victims said: “If I told her to stop hurting me, she’d say: ‘What kind of man are you?’ She’d spit in my face and say repeatedly that I was a spineless, pathetic excuse for a man”.

https://www.biscmi.org/wp-content/uploads/2015/05/Dutton_CJS_Book_Review_CJS-DeKeseredy.pdf

In the US, the Centers for Disease Control and Prevention released data from its National Intimate Partner and Sexual Violence Survey, estimates based on more than 18,000 telephone-survey responses in the United States — roughly 5,365,000 men had been victims of intimate partner physical violence in the previous 12 months, compared with 4,741,000 women. By the study’s definition, physical violence includes slapping, pushing, and shoving.

More severe threats like being beaten, burned, choked, kicked, slammed with a heavy object, or hit with a fist were also tracked. Roughly 40 percent of the victims of severe physical violence were men. The CDC repeated the survey in 2011, the results of which were published in 2014, and found almost identical numbers — with the percentage of male severe physical violence victims slightly rising. “Reports are also showing a decline of the number of women and an increase in the number of men reporting” abuse, says counselor and psychologist Karla Ivankovich, PhD, an adjunct professor of psychology at the University of Illinois, Springfield.

https://www.cdc.gov/mmwr/preview/mmwrhtml/ss6308a1.htm?s_cid=ss6308a1_e#Table6

A US researcher has also found that women’s initiation of domestic violence is a predictor of risk to them:

https://www.huffpost.com/entry/researcher-says-womens-in_b_222746

Domestic Violence in Lesbian Relationships

While on the topic of violence against women, such violence is apparently far more frequent in lesbian relationships than between husband and wife. In the early nineties research workers were

studying relationships between same sex couples. They studied 1,099 lesbians and discovered that 52% of the respondents had been abused by a female partner or lover.

Lie and Gentlewarrior: Intimate Violence in Lesbian Relationships, *Journal of Social Science Research*, 15, 41-59.

In a 1994 study, critical review is made of feminist analyses of wife assault postulating that patriarchy is a direct cause of wife assault. Data are reviewed from a variety of studies indicating that (a) lesbian battering is more frequent than heterosexual battering, (b) no direct relationship exists between power and violence within couples, and (c) no direct relationship exists between structural patriarchy and wife assault.

https://www.researchgate.net/publication/15503361_Patriarchy_and_Wife_Assault_The_Ecological_Fallacy

In a 2015 review of literature in the *Journal of Sex & Marital Therapy* carried out by Dr Colleen Stiles-Shields and Dr Richard A Carroll from Northwestern University School of Medicine, it was concluded that domestic violence is far more likely to occur among lesbian couples as compared to heterosexual couples.

This literary review analysed previous studies and concluded that domestic violence affects about 75 per cent of all lesbian relationships. These findings were later confirmed by other reliable surveys demonstrating that women, indeed, are more protected under stable heterosexual relationships than in lesbian relationships.

https://d3n8a8pro7vhmx.cloudfront.net/marriage/pages/183/attachments/original/1469648679/Colleen_Stiles-Shields_and_Richard_A_Carroll.pdf?1469648679

These findings completely debunk the feminist narrative about domestic violence. It clearly reveals that it is entirely insufficient to explain the complexities of domestic life, including the disturbing occurrence of battering among lesbians.

Is women's use of violence primarily in self-defence?

The inquiry will likely hear evidence presented that when women use violence against their partner, it is primarily defensive in nature. We would like to present evidence to challenge this assertion.

The most recent Australian population survey on young people and domestic violence is *Young People and Domestic Violence – national research on young people's attitudes to and experiences of domestic violence*. The national research involved a quantitative survey of 5,000 young Australians aged between 12 and 20, and in-depth discussions with special groups, namely homeless youth, victims of domestic violence, and youth from different ethnic backgrounds.

(YPADV). Published in 2001 by the National Crime Prevention division of the Commonwealth Attorney General's Department and the Department of Education, Training and Youth Affairs

The YPADV study found that very little of the physical domestic violence used by either men or women was in self defence only (this evidence is provided by children and young people watching their parents' violence), and children witnessed equal amounts of violence between their parents.

Male to female violence in the study

The study also found that the items pertaining to physical violence, that is, thrown something at, tried to hit, hit in defence, hit although not being hit, threatened with knife or gun, and used knife or gun were analysed as one sub classification described as physical domestic violence. Using this definition, it was found that 23.4 per cent of respondents reported at least one act of physical domestic violence against their mothers/stepmothers. Very little of this was in self defence only; when hit in defence (i.e. 1.3% hit her because he was being hit was removed), the proportion reporting physical domestic violence was 22.1 per cent.

Female to male violence in the study

As with male to female violence, the items pertaining to physical violence were analysed as 'physical domestic violence' sub classification. Compared to the 23.4 per cent of respondents who reported at least one act of physical domestic violence against their mothers/stepmothers, 22.1 per cent reported at least one act of physical domestic violence against their fathers/stepfathers. As with male to female violence, very little was only in self defence; the percentage reporting physical domestic violence, excluding 1.3% hitting because being hit was 21.2 per cent.

<https://catalogue.nla.gov.au/Record/2699959>

What does the international research show when it comes to the use of violence in self-defence?

The (PASK) is the world's largest domestic violence research database – 2,657 pages – with summaries of 1,700 peer-reviewed studies.

<https://domesticviolenceresearch.org/>

The purpose of PASK is to bring together in a rigorously evidence-based, transparent and methodical manner existing knowledge about partner abuse with reliable, up-to-date research that can easily be accessed both by researchers and the general public. In March, 2010, the Senior Editor of the Partner Abuse journal recruited family violence scholars from the United States, Canada and the UK to conduct an extensive and thorough review of the empirical literature, in 17 broad topic areas.

Researchers were asked to conduct a formal search for published, peer-reviewed studies through standard, widely used search programs, and then catalogue and summarise all known research studies relevant to each major topic and its sub-topics. In the interest of thoroughness and transparency, the researchers agreed to summarise all quantitative studies published in peer-reviewed journals after 1990, as well as any major studies published prior to that time, and to clearly specify exclusion criteria. Included studies are organised in extended tables, each table containing summaries of studies relevant to its particular sub-topic.

The PASK study found the following when it comes to the motivation for using intimate partner violence (IPV):

- Male and female IPV perpetrated from similar motives – primarily to get back at a partner for emotionally hurting them, because of stress or jealousy, to express anger and other feelings that they could not put into words or communicate, and to get their partner's attention.
- Eight studies directly compared men and women in the power/control motive and subjected their findings to statistical analyses. Three reported no significant gender differences and one had mixed findings. One paper found that women were more motivated to perpetrate violence

as a result of power/control than were men, and three found that men were more motivated; however, gender differences were weak.

- Of the ten papers containing gender-specific statistical analyses, five indicated that women were significantly more likely to report self-defence as a motive for perpetration than men. Four papers did not find statistically significant gender differences, and one paper reported that men were more likely to report this motive than women. Authors point out that it might be particularly difficult for highly masculine males to admit to perpetrating violence in self defence, as this admission implies vulnerability.
- Self-defence was endorsed in most samples by only a minority of respondents, male and female. For non-perpetrator samples, the rates of self-defence reported by men ranged from 0% to 21%, and for women the range was 5% to 35%. The highest rates of reported self-defence motives (50% for men, 65.4% for women) came from samples of perpetrators, who may have reasons to overestimate this motive.
- None of the studies reported that anger/retaliation was significantly more of a motive for men than women's violence; instead, two papers indicated that anger was more likely to be a motive for women's violence as compared to men.
- Jealousy/partner cheating seems to be a motive to perpetrate violence for both men and women.

In an Australian study, members of 68 families with allegedly violent wives were studied to explore the nature of women's violence at home and to ascertain whether wives assault their spouses in self-defence. Accounts of children and the wives' mothers were contrasted with husbands' and wives' accounts to ensure a high degree of accuracy of the assessment of the problem and to test the validity of the spouses' accounts. Qualitative analysis revealed that the credibility of the wives' accounts of violence was highly questionable and a justification of self-defence for female-to-male violence was unfounded in a majority of cases.

A 2004 qualitative Australian study by Sotirios Sarantakos from Charles Sturt University titled *Deconstructing Self-Defence in Wife-to-Husband Violence* is also particularly illustrative¹¹. Sarantakos, S. (2004), "The Journal of Men's Studies 12, no. 3 (2004)

The results of the study revealed that neither the nature of the behaviour of the spouses nor the structure of the family context of violence, nor the answers to direct questions support the defence of self-defence. In most cases, wives assault their husbands physically and otherwise not to defend themselves but to achieve other goals, for example, to settle a conflict or to punish their husbands.

Simply, (a) wives assault their husbands when there is no "impending danger" for them or the children; (b) they hit husbands who have not been violent against them in the past; (c) they cause husbands to live in fear of their lives and of the lives of their children; (d) not wives but husbands leave the relationship, with the wives attempting to force husbands to return home; and (e) the majority of abusive wives admit that they did not hit their husbands in self-defence.

Equally important is the finding that women's allegations of DV were proven to be false. In most cases, the initial allegations of DV were modified considerably by them during the course of the study, particularly when they were faced with the accounts of their children and mothers, admitting in the end that they were neither victims of violence nor acting in self-defence. It is worth noting that

these allegations were used—and are still used—by the authorities to construct DV and to act upon it.

In the United States a study of 302 men who sustained severe partner violence revealed that: “...over half of the men reported that their women partners made false accusations against them, which included that he hit or beat her, that a restraining order was filed against him under false pretences, or that he physically and/or sexually abused the children. These findings are congruent with a previous study that showed that approximately 50% of men victims of IPV stated that their partners gave false information to the court system in order to gain custody of the children or to obtain a restraining order”.

12 Hines, D. & Douglas, E. (2010), “Partner Abuse. 2010 Jan 1; 1(3): 286–313.

Are males primarily victims of family violence from other males?

The Committee will likely hear evidence that while male victims of family violence certainly exist, much of the time the perpetrator is another male (a same-sex partner or another family member), not a female.

The 2016 ABS Personal Safety Survey (PSS) sheds light on this claim. The PSS found the majority of men that experienced intimate partner violence experienced it from a female perpetrator (93.6%). The remainder were in same-sex relationships with male perpetrators.

Australian Bureau of Statistics (2017). Personal Safety Survey, Australia, 2016 (Cat. No. 4906.0). Canberra: Australian Bureau of Statistics. Table 5.1 VIOLENCE IN THE LAST 12 MONTHS, Type of violence by relationship to and sex of perpetrator, Estimate. 106,600 males in 2016 experienced violence from a female intimate partner during the last 12 months and 113,900 males experienced violence from all intimate partners during the last 12 months.

Barriers to male victims disclosing their abuse

The evidence demonstrates that the process of family separation has negative impacts upon the health, safety and wellbeing of children and families. This is evidenced by the increase in experiences of emotional abuse post-separation, with fathers experiencing the most severe impacts in terms of control and coercion.

Children are just as likely to report seeing Mum hit Dad as Dad hitting Mum, and the most common and damaging scenario is mutual (or reciprocal) couple violence (Mum and Dad hitting each other). The evidence is clear that women’s use of relationship violence is not primarily in self-defence, and that male and female perpetrators alike can use the claim of self-defence to excuse their use of violence. Most male victims of family violence experience it from female perpetrators. The most severe form of family violence - coercive control - is not exclusively a male domain, but is also used by female perpetrators.

Male victims face many barriers to disclosing their abuse, and the policies of many government agencies including the family court can re-victimise male victims by presuming they are actually perpetrators.

Men are 2 to 3 times more likely than women to have never told anybody about experiencing partner violence. 54.1% of males who have experienced current partner violence have never told anybody about it, along with 20.9% of males who have experienced previous partner violence.

Australian Bureau of Statistics (2013), Personal Safety Survey, Australia, 2012, cat no 4906.0, ABS, Canberra. Table 23 EXPERIENCE OF PARTNER VIOLENCE SINCE THE AGE OF 15, Whether ever told anyone about partner violence. 54.1% of males and 25.6% of females

Men are also around 50% more likely than women to have never sought advice or support about experiencing partner violence. 68.1% of males who have experienced current partner violence have never sought advice or support, along with 59.2% of males who have experienced previous partner violence. (Table 17.1 EXPERIENCE OF CURRENT PARTNER VIOLENCE SINCE AGE 15, By sex of respondent), 102,400 males in 2016 did not seek advice or support after incident of violence by a current partner, while 150,300 males had experienced violence by a current partner since the age of 15. Table 18.1 EXPERIENCE OF PREVIOUS PARTNER VIOLENCE SINCE AGE 15, By sex of respondent), Estimate. 235,300 males in 2016 did not seek advice or support after incident of violence by a previous partner, while 397,300 males had experienced violence by a previous partner since the age of 15.

Australian Bureau of Statistics (2017). Personal Safety Survey, Australia, 2016 (Cat. No. 4906.0). Canberra: Australian Bureau of Statistics.

Many barriers to male victims disclosing their abuse are created or amplified by the lack of public acknowledgement that males can also be victims of family violence, the lack of appropriate services for male victims and their children, and the lack of appropriate help available for male victims from existing services. Such barriers include not knowing where to seek help, not knowing how to seek help, feeling there is nowhere to escape to, feeling they won't be believed or understood, feeling that their experiences would be minimised or they would be blamed for the violence and/or abuse, feeling that services would be unable to offer them appropriate help, fear that they would be falsely arrested because of their gender (and their children left unprotected from the perpetrator).

If the majority of male victims have never sought advice or support about experiencing domestic violence, it is no wonder they have trouble providing evidence to the family court of their partner's violence and abuse, and are often labelled a perpetrator as a result.

However, men do make up a significant percentage of victims of family violence overall, can experience severe and ongoing violence and abuse (even domestic homicide, where one male is killed every ten days on average), and there are very few resources or services available to support these men.

See and Tilbrook, E, Allan, A, and Dear, G (2010). Intimate Partner Abuse of Men. East Perth: Men's Advisory Network, May 26, 2010.

The ABF survey of 1000 Fathers indicated that there was no meaningful difference between men who reported as being victims of domestic violence and those they had not in relation to their gaining access to their children.

ABF Survey of 1000 Fathers Appendix E

Lack of support services for male victims and their children

What support services are available in Australia for male victims and their children? Some generic (i.e. not male-specific or male-friendly) support is certainly available but such services are often unaware of the unique issues faced by male victims of family violence and are therefore unable to offer effective and appropriate help. Some generic – and even specialist male – services do not believe male victims, minimise their experiences or even blame them for the abuse. Another issue is that while individual workers within generic services might be aware of the issues facing male victims, they often face workplace cultures and systems that aren't supportive.

Government-funded services are often suspicious of 'male perpetrators claiming to be victims'.

The Victorian Government's Family Violence Risk Assessment and Risk Management Framework and Practice Guides advise service providers that, "...in all circumstances where a man is initially assessed as or claiming to be a victim of family violence in the context of a heterosexual relationship, you should refer him to a men's family violence service for comprehensive assessment or to the Victims of Crime Helpline. His female (ex)partner must always be referred to a women's family violence service for assessment, irrespective of whether she is thought to be the victim or aggressor..."

Victorian Government (2012). Melbourne: Victorian Government, Department of Human Services, p41.

<https://www.vic.gov.au/family-violence-multi-agency-risk-assessment-and-management>

The Judicial College of Victoria's Family Violence Bench Book advises members of the judiciary that, "The research evidence and experience of family violence professionals unambiguously demonstrates that relatively few men in heterosexual relationships are solely victims of intimate partner violence. The majority of women who use some form of violence towards their partner have been subjected to (worse) violence by that man before, or on the same occasion. Often, men who are genuinely victims of family violence experience the violence from a same sex partner, carer or a male relative. Men who are the principle users of family violence often try to present as a victim or the victim of violence. Sometimes they succeed in convincing themselves, police and others."

Judicial College of Victoria (2014). Family Violence Bench Book. Melbourne: Judicial College of Victoria.
<http://www.judicialcollege.vic.edu.au/eManuals/FVBBWeb/index.htm#34578.htm>

Not only do these policies fail to support male victims of family violence (and fail to challenge female perpetrators who claim to be victims), but they increase the danger for male victims and their children by advising violent female partners that male victims have sought support for their violent and abusive behaviour.

We urge the Joint Select Committee on Australia's Family Law System to consider the needs of ALL victims of family violence and abuse equally, no matter their gender, geography, socio-economic status, age, ability, sexual preference, culture, race or religion, when undertaking this important inquiry.

endalldv

The only non female gender biased domestic violence charity in Australia is endalldv.

enalldv, through the crisis hotline 1800FATHER, provides the following services:

1. Victim services and support

- Crisis telephone hotline
- Crisis accommodation
- Safety planning
- Support groups
- Counselling services (developed with mental health academics)
- Legal referral services
- Family re-connect contact service
- Court support
- Emergency financial support
- Employment opportunities
- School support
- Local community referral services

2. Behavioural Change

- Behavioural change programs

3. Awareness, Education and Training

- National endalldv day (previously White Ribbon Day) 22 November
- Workplace domestic violence education
- Building of strategic industry alliances
- Indigenous Australian focus programs
- Animal abuse

4. Advocacy

- Fund raising campaigns
- Merchandise and awareness campaigns
- Law reform and advocacy

5. Research

- Independent research and research in partnership with academic institutions

Tiered definitions.

The definition of domestic violence in Australia varies between jurisdictions. The limited definition of domestic and family violence in the Family Law Act is not consistent with the broader definitions adopted by most state and territory jurisdictions that include psychological abuse, coercive and controlling behaviour, including the use of technology to stalk, harass, intimidate, abuse and control.

What is clear, is that not infrequently, the definition is expanding to include more behaviours. It now encompasses behaviours that range from criminal through to that which the general community would perceive as “bad”, but not uncommon in an acrimonious relationship breakdown, and often mutually committed.

https://www.dss.gov.au/sites/default/files/documents/05_2012/domestic_violence_laws_in_australia_-_june_2009.pdf

A reviewer of research in the area of “family violence” would quickly come to realise that data relating to such matters as prevalence and severity are difficult to capture unless that which is being measured has been carefully defined. Thus, as Hegarty and Roberts (1998) have noted, the prevalence of partner abuse in Australia has variously been estimated to be as low as 2% and as high as 28%, depending largely on the definitions used.

<https://www.dvrcv.org.au/sites/default/files/Whats-In-A-Name-Discussion-Paper-1998.pdf>

At the heart of such analyses of family violence are well-reported differences in findings from two types of studies. Those generally known as “family conflict studies” appear to paint a picture of violence that is largely situational and initiated by men and women in roughly equal proportions. By contrast, those generally known as “crime victimisation studies” paint a picture of escalating violence perpetrated overwhelmingly by men, primarily motivated by an obsessive need to control the partner and, usually, the children as well.

The difficulty arises in the Family Court System is that when domestic violence has been found, arising from any behaviours, the system is triggered: for instance the presumption of equal shared parental responsibility except in the case of family violence (Sect 61DA (2) (b) Family Law Act 1975).

To avoid this, the ABF proposes a more granular definition of domestic violence that categorises the behaviours into objective seriousness. This assessment could form part of the Urgent Domestic Violence Allegation Review Process that number 8 of our recommendations.

Consistent with these differential findings, Johnson (2005) has been developing a typology of intimate partner violence that currently posits the existence of three major categories: (a) “intimate terrorism”; (b) “violent resistance”; and (c) “situational couple violence”. The first of these, in his view, is discontinuously related to the third, and the second is largely a reaction to the perpetration of violence.

<https://journals.sagepub.com/doi/10.1177/0192513X04270345>

According to Johnson (2005), “intimate terrorism” is strongly gendered in origin and is linked to questions of control associated with patriarchal assumptions and a patriarchal culture. In Johnson’s model, “violent resistance” is a typical response by the female partner to violent behaviour. As the name implies, Johnson sees “situational couple violence” as being characterised by a greater sense of reciprocity. He has suggested that it is not fundamentally gendered in its origins.

56% of “situational couple violence” was initiated by men. In a British sample, Graham-Kevan and Archer (2003) found figures of 87% and 45% respectively for these same dimensions.

<https://psycnet.apa.org/record/2003-06107-007>

In Johnson’s typology, “situational couple violence” is seen as qualitatively different from “intimate terrorism”. It generally involves fewer incidents of less severity that do not result in significant injury. It is not seen as part of a larger pattern of control and usually does not escalate. Indeed, Johnson and Ferraro (2000) claimed that it is more likely to de-escalate or stop altogether. Ver Steegh (2005) saw this category of violence as being consistent with the “conflict instigated violence”.

<https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1741-3737.2000.00948.x>
<https://www.ssrn.com/abstract=910270>

Johnson (2005) cited Archer’s (2000) meta-analysis of intimate partner violence in the United States, in which Archer found that intimate partner violence in agency samples was heavily male perpetrated, whereas in general samples it was largely gender-symmetric.

<https://www.ncbi.nlm.nih.gov/pubmed/10989615>

Holtzworth-Munroe and Stuart (1994), for example, claimed to have identified “family only” male perpetrators, whose violence is less severe and who exhibit little or no psychopathology. In their view, the violence emanates from stress, anger and poor relationship skills; these men generally have positive attitudes towards women. Holtzworth-Munroe and Stuart estimated that about 50% of male violence in families is in this category. Similarly, Leone, Johnson, Cohan, and Lloyd (2004) suggested that “situational couple violence” is the most common form of family violence.

<https://www.ncbi.nlm.nih.gov/pubmed/11142534>
<https://psycnet.apa.org/record/2004-15844-015>

The implications of adopting a discontinuous model of violence are profound. Johnson and Ferraro (2000) put it this way:

The modelling of the causes and consequences of partner violence will never be powerful as long as we aggregate behaviours as disparate as a “feminine” slap in the face, a terrorizing pattern of beatings accompanied by humiliating psychological abuse, an argument that escalates into a mutual shoving match, or a homicide committed by a person who feels there is no other way to save her own life.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2562919/>

In 2005, Johnson was prepared to go further:

It is no longer scientifically or ethically acceptable to speak of domestic violence without specifying loudly and clearly, the type of violence to which we refer.

The False Model: Duluth

Most of the prominent domestic violence charities refer to the Duluth Model. We believe that it fails to address root psychological or emotional causes of abuse, in addition to completely neglecting male victims and female perpetrators of abuse. A purely gender based model where only males are seen perpetrators has little explanatory power. It disregards anything from one third to one half of victims, and all victims in same sex relationships.

*Pizzy, Erin (3 March 2015). "Duluth Model buries key facts on domestic violence". *Honest Ribbon*. Retrieved 17 April 2018 (About Erin Pizzezy*

Erin Pizzezy is founder of Chiswick Womens' Aid, the first ever refuge in the world for victims of domestic violence. She is a lecturer and advocate, and has authored books on domestic abuse, including the seminal "Prone to Violence." Her latest effort is her autobiography, titled "This Way to the Revolution." She is also an Editor-at-Large and adviser for A Voice for Men on domestic violence policy.

"Over the last ten years more and more academic studies published their findings which prove that domestic violence is almost equal amongst men and women and therefore the Duluth Model is defunct. Its only remaining value is as a funding source for the feminist movement. Because the feminist movement has had over forty years to create a stranglehold on any information coming out of academia, it has made it very difficult for people seeking valid information to work their way through the reams of dishonest feminist publications."

I believe that the Duluth Model is unethical coming as it does from the now thoroughly discredited idea that it is only men who are violent in intimate partner relationships. I also believe it is probably illegal"

Ellen Pence herself "By determining that the need or desire for power was the motivating force behind battering, we created a conceptual framework that, in fact, did not fit the lived experience of many of the men and women we were working with. The DAIP staff [...] remained undaunted by the difference in our theory and the actual experiences of those we were working with [...] It was the cases themselves that created the chink in each of our theoretical suits of armour. Speaking for myself, I found that many of the men I interviewed did not seem to articulate a desire for power over their partner. Although I relentlessly took every opportunity to point out to men in the groups that they were so motivated and merely in denial, the fact that few men ever articulated such a desire went unnoticed by me and many of my co-workers. Eventually, we realized that we were finding what we had already predetermined to find."

Pence, Ellen (1999). "Some Thoughts on Philosophy". In Shepherd, Melanie; Pence, Ellen (eds.). Coordinating Community Responses to Domestic Violence: Lessons from Duluth and Beyond. Thousand Oaks, CA.: Sage. pp. 29–30.

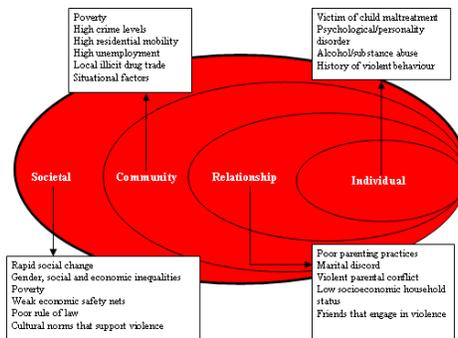
Erin Pizzezy the founder of Chiswick Women's Aid, the first ever refuge in the world for victims of domestic violence notes in an interview in *The Red Pill* that men and women are equally capable of domestic violence, though over time domestic abuse shelters have shifted to be almost exclusively for battered women. [22]

*Cassie Jaye (7 October 2016). *The Red Pill* (film)|format=requires |url= (help). *Gravitas Ventures*.*

The ABF supports the revision of the gendered based Duluth model, as a program to reduce violence.

We endorse and revision of the Duluth model to incorporate the socio-ecological model as used by the World Health Organisation. The ecological framework is based on evidence that no single factor can explain why some people or groups are at higher risk of interpersonal violence, while others are more protected from it. This framework views interpersonal violence as the outcome of interaction among many factors at four levels—the individual, the relationship, the community, and the societal.

The ecological framework: examples of risk factors at each level



1. At the **individual level**, personal history and biological factors influence how individuals behave and increase their likelihood of becoming a victim or a perpetrator of violence. Among these factors are being a victim of child maltreatment, psychological or personality disorders, alcohol and/or substance abuse and a history of behaving aggressively or having experienced abuse.
2. Personal **relationships** such as family, friends, intimate partners and peers may influence the risks of becoming a victim or perpetrator of violence. For example, having violent friends may influence whether a young person engages in or becomes a victim of violence.
3. **Community** contexts in which social relationships occur, such as schools, neighbourhoods and workplaces, also influence violence. Risk factors here may include the level of unemployment, population density, mobility and the existence of a local drug or gun trade.
4. **Societal** factors influence whether violence is encouraged or inhibited. These include economic and social policies that maintain socioeconomic inequalities between people, the availability of weapons, and social and cultural norms such as those around male dominance over women, parental dominance over children and cultural norms that endorse violence as an acceptable method to resolve conflicts.

<https://www.who.int/violenceprevention/approach/ecology/en/>

We consider that any government department or organisation that is accredited by a domestic violence charity that endorses the discredited and false Duluth model, is a sexist and discriminatory organisation. Their policies, decisions, processes and actions will be effected by a gender based bias, that will underpin and assumption that domestic violence is committed by men and that women are victims. These organisations will likely fail to provide adequate services to men, and may be a danger to men in relation to their rights, liberty, mental health and lives.

These organisations also represent a grave risk to the children of men, because it is possible that their best interests and rights to have meaningful relationships with their fathers and paternal families may be gravely impacted by the powers of these departments.

These criticism and risks apply equally to LGBTIQ families.

All such accreditations should be abolished and replaced with gender neutral training and accreditation.

5 Parental Alienation

Within Australia, the ABF has ceased referring to Parental Alienation (PA) in its lobbying and campaigning as the term received widespread negative responses from MP's, advocates, lawyers and initially lacked support by governing mental health organisations. There are ongoing efforts to have the term parental alienation and the associated syndrome included in the International Certification Of Diseases, but this has yet been unsuccessful.

The ABF deems parental alienation as family and domestic violence as the behaviours associated with PA are already referenced in state legislation as domestic violence and federal family law legislation as family violence. These definitions include restrictions of access to family members, emotional and psychological abuse, financial abuse and controlling coercive behaviours.

Parental alienation describes a process through which a child becomes estranged from a parent as the result of the psychological manipulation of another parent. Parental Alienation needs to be legally recognised in Australia for what it is: child abuse and domestic violence. Definitive research needs to be conducted on the topic within Australia. It is logically claimed that parental alienation is most commonly committed by the primary care giver, as an additional tactic to undermine the parental relationship of the non-resident carer. As most primary care givers are the Mothers, this accusation is most commonly claimed against Mothers. Those most opposed to further research and recognition of the abuse are those groups that strongly advocate for women's interests; those that have the most to lose. Yet again, they coin the concept as a gender issue, while disregarding that they themselves define many issues around abuse within an entirely gendered framework.

Even for the layman, it is no stretch to presume that some primary care givers may do less than little to maintain the relationship with the non-resident parent, even going as far to actively undermine. This seems likely and comprehensible; flowing from the damaged relationship of the parents. It is another way to hurt and abuse the estranged other parent, as well as assert control and authority over the children. That there might be flow-on effects that are damaging to the children, is also logical for the layman to conceive.

The concept is seeing increasing professional, scientific, academic and legal and support.

On April 29 2020, A highly significant Judgment in the UK Court of Appeal (Re S Parental Alienation: Cult) was delivered by Lord JUSTICE McCOMBE, Lady JUSTICE KING and Lord JUSTICE PETER JACKSON. Underlining that parental alienation is a child protection issue, this Judgment gives exceptionally clear commentary on the Court's view of the problem of a child's unjustified rejection of a parent after divorce or separation. Section 13 of the judgement:

"In summary, in a situation of parental alienation the obligation on the court is to respond with exceptional diligence and take whatever effective measures are available. The situation calls for judicial resolve because the line of least resistance is likely to be less stressful for the child and for the court in the short term. But it does not represent a solution to the problem. Inaction will probably reinforce the position of the stronger party at the expense of the weaker party and the bar will be raised for the next attempt at intervention. Above all, the obligation on the court is to keep the child's medium to long term welfare at the forefront of its mind and wherever possible to uphold the child and parent's right to respect for family life before it is breached. In making its overall welfare decision the court must therefore be alert to early signs of alienation. What will amount to effective

action will be a matter of judgement, but it is emphatically not necessary to wait for serious, worse still irreparable, harm to be done before appropriate action is taken. It is easier to conclude that decisive action was needed after it has become too late to take it”

<https://www.judiciary.uk/wp-content/uploads/2020/04/re-s-a-child-judgment290420.pdf>

ABF also concurs with the research of Edward Kruk, Ph.D, in the 2018 paper “Parental Alienation as a Form of Emotional Child Abuse: Current State of Knowledge and Future Directions for Research”. Edward Kruk is an Associate Professor of Social Work at the University of British Columbia.

Kruk examines the current state of research on parental alienation, which reveals that alienation is far more common and debilitating for children and parents than was previously believed. In extreme cases, one can make the argument that parental alienation is a serious form of emotional child abuse.

<http://www.familyscienceassociation.org/sites/default/files/9%20-%20KRUK-Parental%20Alienation%20-%20Family%20Science%20Review.pdf>

Careful scrutiny of key elements of parental alienation in the research literature consistently identifies two core elements of child abuse:

1. parental alienation as a significant form of harm to children that is attributable to human action. As a form of individual child abuse, parental alienation calls for a child protection response.
2. As a form of collective abuse, parental alienation warrants fundamental reform of the family law system in the direction of shared parenting as the foundation of family law.

Elements of Parental Alienation as a Form of Child Abuse (Cooper, 1993; Finkelhor & Corbin, 1988)

- Parental alienation involves a set of abusive strategies on the part of a parent to foster the child’s rejection of the other parent, whereby children are manipulated by one parent to reject the other.
- Parental alienation is the child's unjustified campaign of denigration against a parent, in which children’s views of the targeted parent are almost exclusively negative, to the point that the parent is demonized. For the child, parental alienation is a significant mental disturbance, based on a false belief that the alienated parent is a dangerous and unworthy parent.

<https://www.familyscienceassociation.org/sites/default/files/9%20-%20KRUK-Parental%20Alienation%20-%20Family%20Science%20Review.pdf>

Abusive Strategies

The first defining feature of parental alienation as a form of emotional child abuse centres on behaviour of the alienator. This involves implementation of a set of abusive strategies on the part of the alienating parent to foster the child’s rejection of the other parent.

(Baker & Darnell, 2006; Viljoen & van Rensberg, 2014)

1. Badmouthing
2. Limiting contact
3. Interfering with communication
4. Interfering with symbolic communication (photos etc)

5. Withdrawal of love
6. Telling the child that the target parent is dangerous
7. Forcing child to choose
8. Telling the child that the target parent does not love him or her
9. Confiding in the child
10. Forcing child to reject the target parent
11. Asking the child to spy on the target parent
12. Asking the child to keep secrets from the target parent
13. Referring to the target parent by first name
14. Referring to a step-parent as "Mum" or "Dad" and encouraging child to do the same
15. Withholding medical, academic, and other important information from target parent/keeping target parent's name off medical, academic, and other relevant documents
16. Changing child's name to remove association with target parent
17. Cultivating dependency/undermining the authority of the target parent

Effects on Child

The first element of the definition of parental alienation as a form of child abuse relates to the abusive behaviour of the alienating parent. The second constituent of the definition focuses on profoundly harmful effects on the child. In the most severe cases, these effects are profound (Balmer, Matthewson & Haines, 2018

<https://aps.onlinelibrary.wiley.com/doi/abs/10.1111/ajpy.12159>

First, teaching hatred of the other parent is tantamount to instilling self-hatred in the child. Self-hatred is a particularly disturbing feature among alienated children, and one of the more serious and common effects of parental alienation. Children internalize hatred aimed at the alienated parent, are led to believe the alienated parent did not love or want them, and experience severe guilt related to betraying the alienated parent. Their self-hatred (and depression) is rooted in feelings of being unloved by one parent and in separation from that parent while being denied the opportunity to mourn the loss of the parent, or even to talk about the parent (Warshak, 2015b).

https://www.researchgate.net/publication/281434228_Ten_Parental_Alienation_Fallacies_That_Compromise_Decisions_in_Court_and_in_Therapy

Hatred of a parent is not an emotion that comes naturally to a child. In parental alienation situations, such hatred is taught on a continual basis. With hatred of the parent comes self-hatred, which makes children feel worthless, flawed, unloved, unwanted, endangered, and only of value in meeting another person's needs (Baker, 2010). Numerous studies show that alienated children exhibit severe psychosocial disturbances. These include disrupted social-emotional development, lack of trust in relationships, social anxiety, and social isolation.

https://www.researchgate.net/publication/233468514_Adult_Recall_of_Parental_Alienation_in_a_Community_Sample_Prevalence_and_Associations_With_Psychological_Maltreatment

Such children have poor relationships with both parents. As adults, they tend to enter partnerships earlier, are more likely to divorce or dissolve their cohabiting unions, more likely to have children outside any partnership, and more likely to become alienated from their own children (Ben-Ami & Baker, 2012).

<https://psycnet.apa.org/record/2012-07212-006>

Low self-sufficiency, lack of autonomy, and lingering dependence on the alienating parent are a third characteristic of alienated children. Garber (2011) found this manifested in three ways: adultification (the alienating parent treating the child as an adult); parentification (the child taking responsibility for the parent, in a role reversal); and infantilization.

<https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1744-1617.2011.01374.x>

Alienated children are more likely to play truant from school and leave school at an early age. They are less likely to attain academic and professional qualifications in adulthood. They tend to experience unemployment, have low incomes, and remain on social assistance. They often seem to drift aimlessly through life. Alienated children experience difficulties controlling their impulses, struggling with mental health, addiction, and self-harm. They are more likely to smoke, drink alcohol, and abuse drugs, often succumb to behavioural addictions, and tend to be promiscuous, foregoing contraception and becoming teenage parents.

<https://www.familyscienceassociation.org/sites/default/files/9%20-%20KRUK-Parental%20Alienation%20-%20Family%20Science%20Review.pdf>

Kruk states that there is an emerging scientific consensus on prevalence, effects, and professional recognition of parental alienation as a form of child abuse. When it comes to the empirical study of parental alienation, the state of knowledge has advanced considerably. There has been an explosion of qualitative, quantitative and mixed methods research on parental alienation over the past decade, generating more than one thousand research and clinical studies reported in scientific and professional journals, books, and book chapters. The research may be considered robust in regard to definition and characteristics of parental alienation, incidence and prevalence rates, and most importantly, effects of parental alienation on children and parents. Abundant research suggests that parental alienation is a serious form of both emotional child abuse and domestic violence.

Kruk concurs with the need for research on effectiveness of parental alienation interventions, particularly in more extreme cases and for more quantitative and qualitative research focused on four pillars of intervention at micro and macro levels, with specific recommendations for further study of child protection responses, reunification programs, and other therapeutic approaches.

According to Sir Paul Coleridge, a former High Court Judge in the United Kingdom, 'mothers who refuse to let separated fathers see their children should have them taken away. The children should be handed over to the full-time care of the father if the mother persistently defies court orders'.

'Top judge says mothers should have children taken away if they don't let fathers see them', **Daily Mail**, 2 February 2016, at <https://www.dailymail.co.uk/news/article-1333549/Top-judge-says-mothers-children-taken-away-dont-let-fathers-them.html>

6 System abuse

Perpetuation of abuse

To address the impact of parental conflict on children and the parents, the nature of the conflict needs to be addressed. Labelling a matter high-conflict can be misleading where the conflict might be driven solely by one party. There is also no basis to assume which of the two parties it may be that is driving the conflict without detailed examination. The narrative would have it is driven by the person who might have perpetuated the conflict and/or domestic violence when the relationship was still on foot. The narrative would say that this is a continuation of the abuse and control, and the narrative would suggest that statistically this would be the Father. There is much discussion, but very little definitive research, that this abuser might continue such abuse through system and process abuse.

However, the system provides much greater empowerment to the Mother, and if it was the Mother that was the abuser within the relationship, or if the Mother now feels empowered to obtain retribution, the conflict can be powerfully sustained by the Mother. This is particularly so, where the Mother, through the mechanism available, has taken control of the home and assets, denied access to the children and is using or abusing the powers and resources of the state.

B. Eddy, *High Conflict people in Legal Disputes*, Scottsdale, AZ: High Conflict Institute Press, 2012 asserts that high-conflict legal disputes are driven more by personality than by legal or financial issues. In his view courts attract individuals with personality disorders, or traits or personality disorders, because court processes resembles their thought structure.

<https://www.highconflictinstitute.com/bookstores/high-conflict-people-in-legal-disputes-2nd-edition>

There are no marked differences in the diagnosis rates of disorders like borderline personality disorder (schizophrenia and bipolar disorder), although earlier research suggested higher rates for women. (There are some gender differences with regard to personality traits). As above, we posit that the family Law System provides women with personality disorders the ability to exert ongoing sustained abuse through control over the children, assets and future income (Child Support and Spousal Support), making it difficult or impossible for Father's to disengage from the abuse especially if they desire to maintain meaningful relationships with their children.

"Gender and women's health". World Health Organization. Retrieved 2007-05-13.

^ Sansone, R. A.; Sansone, L. A. (2011). "Gender patterns in borderline personality disorder". *Innovations in Clinical*

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7 Family Law System from Aboriginal and Torres Strait Islander groups

While most Aboriginal and Torres Strait Islander families have strong and healthy relationships, Aboriginal and Torres Strait Islander people are significantly more likely to experience domestic violence than non-Indigenous people. Family violence is not part of Aboriginal culture. However, the disadvantage, dispossession and attempted destruction of Aboriginal cultures since colonisation has meant that family violence has proliferated in Aboriginal communities.

The particular hardships faced by Aboriginal and Torres Strait Islander and culturally and linguistically diverse individuals seeking justice from the Family Law System. As has been well documented, these individuals experience a lack of access to services with culturally sensitive practices, a lack of diversity within the workforce, and client language and literacy issues. We believe this is a serious omission that signals a lack of understanding of the significant and persistent barriers and failures of the system to deliver protection and provide justice to disadvantaged individuals experiencing acute hardship.

Cost, literacy, language, bureaucratic hurdles and lack of confidence in cultural safety can all impede the access of Aboriginal and Torres Strait Islander people to the family law system. Policies made in the context of urbanised clients often do not translate well to the situation of Aboriginal people in the Northern Territory, for example. There may be a lack of trust in the courts because they are viewed as 'white people's courts'. Distrust of government agencies in matters relating to children is also a significant problem, with fears of another stolen generation could be present. Many suffer from intergenerational and complex trauma and, in some communities, violence has been normalised. Sadly the court experience for many families contributes to re-traumatisation. This affects parents, children and families.

Aboriginal and Torres Strait Islanders are particularly vulnerable to the stressors of the Family Court System. In 2017, the suicide rate among Aboriginal and Torres Strait Islander people was approximately twice that of non-Indigenous Australians.

'Causes of Death', 26 Sep 2018, Australian Bureau of Statistics, <http://www.abs.gov.au/Causes-of-Death>

Suicide prevention researcher, Gerry Georgatos has found that suicide rates among Aboriginal and Torres Strait Islander people, particularly in the Kimberley, Northern Territory and far north Queensland regions, are among the highest in the world. He describes the high rates as "a humanitarian crisis.

Indigenous suicide rates are a humanitarian crisis, NT News/AAP, 15 July 2015, archived from the original on 9 October 2015

The Family Law System needs to provide tailored approaches for Aboriginal and Torres Strait Islander groups.

9 LGBTIQ Families

The ABF supports lesbian, gay, bisexual, transgender, intersex, queer, gender diverse and non-binary parented families - including parents, carers, prospective parents and our children.

The 2016 Census found that there are now just under 46,800 same-sex couples living together in Australia. Of those who completed the census, 23,700 identified as a male same-sex couple and 23,000 as a female same-sex couple. Although an increase of 39% since the 2011 Census, these are probably largely underreported numbers.

<https://www.abs.gov.au/websitedbs/censushome.nsf/home/2016>

LGBTIQ families separate. These families often encounter challenges when seeking services that meet specific needs or which understand the complexity of a LGBTIQ family relationship with children involved.

When LGBTIQ families intersect with the legal system it is usually, but not always, because the primary relationship of at least two people identified as parents is read as, or assumed to be, a 'same sex relationship'. However, the diverse family forms in LGBTIQ families can be more complex. Formations can include, but are not limited to: step or blended families, separated families, children who are fostered, in permanent care or adopted, children conceived through assisted reproductive technology, children living across two or more primary homes as part of their parenting arrangement, families with known donors who have limited involvement initially (which may change over time), families within existing kinship networks, families with donors and/or surrogates who helped create them, either through altruistic surrogacy in Victoria or through international surrogacy arrangements.

<https://aifs.gov.au/cfca/publications/same-sex-parented-families-australia>

Exact numbers of separated LGBTIQ families are also unknown. Inclusive data collection would go a long way towards ensuring improved and increased service provision for LGBTIQ families and LGBTIQ and gender diverse people.

9 Defence Force Personnel

Our veterans are losing access to their children because their military training and service to our nation is being used against them in family law matters as the courts and politicians look the other way.

Since the end of the military draft, and as a result of greater professionalization of the armed forces, military members' demographics have dramatically changed. A substantial portion of recent war veterans are married and have children. The consequences of combat trauma have largely been inherited by family members through inadvertent exposure to symptoms, transformed family roles in the face of deployments and redeployments, child maltreatment, and domestic and interpersonal violence. While the criminal justice system has transformed in recognition that justice involvement for veterans is often a signal of unmet mental health needs and missed connections to benefits, a similar awakening is overdue in the nation's family courts. Involvement of veterans in such courts, including divorce and child custody proceedings, civil protective orders, and juvenile delinquency hearings may be a predicate to criminal involvement and may offer as meaningful an opportunity for intervention as criminal diversion.

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10 The Solutions

The Government has the three options.

1. Make no changes. When so much harm is being caused, so many lives lost and so much cost to the community, this option is indefensible.
2. Spend money on more short terms reforms to the current system. This would provide temporary relief, but require taxpayers to invest heavily in a system that enmeshes binary win/loss outcomes and is inherently unfit to do what taxpayers now expect of it. Almost all of the current submitted reform are from industry stakeholders: they would make the system worse.
3. Spend money on creating a family focused non-adversarial service that could make proper inquiry into children's development needs and offer ongoing multi-disciplinary support to children and their families to build capacity, and address the social and relational needs at the heart of family separation.

We endorse option 3. The solution to the current Family Law System in the case of parenting matters, is to disband the current Family Court and replace it with a non-adversarial system. We believe that this will save lives, prevent significant harm to Australia families, and reduce the impact and cost to our society. It is unconscionable to continue drip feeding relatively small amounts of short term money to prop up a system that is not fit for purpose and which, by its inherently combative nature, can never be tweaked into being fit for purpose.

The fact that there is a workforce already in place, including tenured judicial position cannot define the response to a need for radical change to the current adversarial system. This system is untenable and the role of a judge and court in resolving parenting issues needs to end.

Ahead of his departure as the court's top judge in 2018, Chief Justice John Pascoe used a speech at a Law Council of Australia conference on family law in Brisbane to warn about the planned shake-up of the system.

"In my view, if legislation and the ALRC do not assuage public concern, it must be time to consider a royal commission into family law," Justice Pascoe said. "This will allow comprehensive public discourse by all stakeholders on all elements of the family law system and the protection of children. Continual tinkering with the system — which we have seen for the past 40 years — in my opinion, adds to complexity, uncertainty and cost"

https://www.theaustralian.com.au/business/legal-affairs/royal-commission-proposed-for-family-law-system/news-story/5c1ab2036106b4313db6d3c140c2fea7?fbclid=IwAR3kHORBqnF06rLG6Q3j33Z96spdKOGRM3Hx9YPjv_HWqeI3kGfZPXVTYw

We do not endorse a band-aid approach, but in the interim there are many urgent reforms that need to be implemented to reduce the harm caused by the current Family Court.

These are summarised in the recommendations section at the start of this submission.

10 (b) An Alternate Model: Non-Adversarial Approach

ABF considers that the most appropriate way for truthful and complete evidence is by ensuring the court takes a more collaborative and less adversarial approach to the reception of evidence and information. The court setting and the 'win or lose approach' is not, in ABF's view, the best way to reach decisions in the best interests of children - who require their parents and family members to collaborate where possible.

The problems associated with having an adversarial or common law system for family law and the benefits of a less adversarial inquisitorial process have been well documented in this submission and elsewhere, including the report Finding a Better Way, which documents less adversarial processes that have been trialled in Australia.

http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/media-releases/2007/FCOA_Finding_better_way

The report sums up the issue:

'the common law system is not designed (nor is it satisfactory) for cases involving children, whose best interests are ostensibly the focus of the Court's attention but who nonetheless are not parties to the proceedings, nor to any extent participants in them. Similarly, the dangers associated with party self-interest, which adversarialism is accused of fostering, are particularly pernicious in children's cases and it is counterproductive for parties (almost invariably parents), who are urged elsewhere to parent cooperatively for the sake of their children, to engage in a gladiatorial contest which itself exacerbates conflict and from which only one will emerge as the winner. The disadvantages for children's wellbeing are magnified where one or both parties, for whatever reason, are unrepresented or inadequately represented, where the evidence presented fails to bring the child into focus, where one party is in fear of the other, or there are cultural or psychological reasons for their inability to participate effectively in the process.'

The ABF supports the convening a cross stakeholder and advocacy group to develop an alternate non-adversarial model to the current Family Law system and to develop a means to pilot, implement and test the same, with a focus on addressing all known existing issues and to create a system under a new Act that:

- Focuses on family wellbeing and child development in separating families
- Abandons processes built around lengthy, expensive and combative litigation, which force parents into binary win/loss outcomes in relation to their children
- Makes better and more integrated use of services that meet families' social, emotional, health and financial needs and that divert more families from litigation, at earlier points of time
- Has a stable, ongoing funding base that properly recognises that family wellbeing and healthy child development are vital to a vibrant, prosperous and resilient Australia

11 Terms of Reference

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

- i. the process, and evidential and legal standards and onuses of proof, in relation to the granting of domestic violence orders and apprehended violence orders, and*
- ii. the visibility of, and consideration given to, domestic violence orders and apprehended violence orders in family law proceedings;*

Information Sharing

The ABF has no objection to the logical streamlining and improving of processes for the facilitation of Justice. We therefore support the principle of information sharing with the proviso that where confidentiality is paramount, it is protected; and that information-sharing protocols and actions are supported by comprehensive guidelines and training. Information sharing frameworks and protocols, however, must be implemented carefully.

We note that currently information used within the Family Court and Justice systems is frequently based on evidence with low evidentiary burdens, containing untested allegations, with little to no ramifications for those allegations being made falsely. Information sharing may just facilitate the continuation of grossly unjust outcomes, system abuse and harm to families and children. Father's are the most common victims of this injustice. Safeguards must address this issue.

We do not support the provision of any information that can be used to set up databases that derive information from published lists (court lists etc) that can be defamatory and do not take into account the pending or unproven status of Domestic Violence matters. These defamatory repositories have previously been set up by private organisations.

AVOs and DVOs

Domestic Violence Orders (DVO's) and Apprehended Violence Orders (AVO's) are not being used for their intended purpose. Police and courts issue restraining orders to protect victims, not so those orders can be used as a tactic to gain the upper hand in a divorce or a child custody matter along with the financial rewards they bring. Many parents are playing the victim where they are in fact the perpetrator.

Here are some of the many reasons why parents are taking out DVO's/AVO's:

- To gain an advantage in a divorce;
- To quickly put a parent out of the house without an eviction or a court mention hearing;
- To get vengeance;
- To control or manipulate a parent, or get leverage in some way;
- To put a parent in jail;
- To emotionally and psychologically damage the other parent;
- To get financial support or compensated from social services or a victim's compensation groups;
- To misrepresent a parent as being dangerous to officials and or the children;
- To give the applicant a chance to relocate far away without the other parents consent;
- To put the accused under financial pressure and place them a situation where they will potentially be homeless and be unable to have the children;
- To buy them time to manipulate, brainwash and coach the children;
- To isolate a parent from their child, including extended family;
- To quickly get custody of the children without a hearing;
- To stop a parent from modifying custody after the child expresses a desire to live with them;
- To gain 100% custody for child support purposes;
- To give them a reason to tell the children that the other parent is so dangerous that they had to get a restraining order to protect themselves;
- To gain benefits from victim support services like new phone, change locks free of charge;
- Socially isolate someone;
- To give the applicant justification to defame the other parent. To make them look like the child's protector and saviour and the best parent.
- To keep everything in the house once the other parent is removed;
- To allow the complainant to get a new boy/girlfriend into the picture, and the other parent out.

Domestic Violence/Restraining Orders have severe consequences for the alleged offender, and also for the relationship between the alleged offender and his or her children, since the order would likely put strain on the parent-child relationship. Due to the inherent gender bias in the false narrative perpetuated by the primary domestic violence charities, such as the discredited White Ribbon, Father's are more often than not the ones that suffer. A restraining order is something no one should consider obtaining without a serious, valid threat to his or her physical safety.

Some divorce lawyers are routinely and unethically advising their clients to take out an AVO/DVO as well as move interstate.

With these types of cases you don't have to prove anything. A subjective claim of fear and allegations are as good as a conviction as there is a presumption of guilt, particularly against men accused of domestic violence. The police and courts hold the view that the right to protection outweighs the right to fair process.

When an AVO/DVO is placed on a parent there is nowhere to go for free legal help or advice if you are falsely accused as the perpetrator. You cannot obtain legal aid to represent yourself and no free legal advice given to you will encourage you to defend it. The government websites simply advise and corral the defendant into consenting without admission, even though they have done nothing wrong. This is often a profound mistake to make in relation to a Family Court matter.

<https://www.legalaid.nsw.gov.au/publications/factsheets-and-resources/is-someone-making-an-avo-against-you>

The alleged abuser is put into an emotional pressure cooker; some would say it fits the definition of torture. It grinds people down to where they are exhausted, feel helpless, their thoughts become clouded and they have nowhere to turn. It appears who ever gets in first wins while the other parent spends most of their life defending themselves.

Hearings are taking at least six months to be heard, so this buys the applicant time to manipulate the children and gain financially.

The alleged abuser's ability to hold certain type of employment or secure new employment, especially jobs for the government where they are required to hold a firearms licence or jobs that involve working with children, is often severely compromised.

In parental alienation cases most parents accused of abuse are never formally charged, tried or convicted, because there is little to no evidence to support the allegations made against them, events that most likely never happened. An accused party is never found "innocent", the best you can hope for is that the charges are "unsubstantiated". There is no recourse against a false allegation and defamation proceedings are expensive and difficult to win.

While a restraining order is in place parents can be withheld from children's lives. Children miss out on seeing their parent on their birthday, school holidays and on Father's Day or Mother's Day. Special events like graduation, sports carnivals, award nights or times when the child just wants to spend time with their parent, the child misses out.

Case study accepted by the committee as confidential

Case study accepted by the committee as confidential

Prevalence of misuse

According to David Collier, a retiring judge from the Parramatta Family Court, such accusations have now become a 'major weapon' in the war between parents who wish to secure full custody of their children. Unfortunately, some excellent parents have completely lost any access to their children. This is particularly so when non-residential parents are falsely accused of child abuse and neglect, and even the sexual molestation of their children. Even after the Department of Child Protection (DCP) and the family courts entirely clear the innocent parent of any wrongdoing, more often than not the courts end up keeping the custody with the parent who made the false allegations.

Harriet Alexander, 'False Abuse Claims are the New Court Weapon', Sydney Morning Herald, Sydney/NSW, July 6, 2013 <<http://www.smh.com.au/national/false-abuse-claims-are-the-new-court-weapon-retiring-judge-says-20130705-2phao.html#ixzz31YnbCikQ>>.

Adam Blanch, 'Vigilante Justice: Feminism's Latest Attack on Human Rights', On Line Opinion – Australia's E-Journal of Social and Political Debate, 22 August 2014.

The overwhelming majority of magistrates in Australia share this popular perception that family violence orders (FVOs) are often sought for solely collateral reasons which are unrelated to authentic fear or real violence.

Patrick Parkinson, 'How Widespread are False Allegations of Abuse?' News Weekly, Melbourne/Vic, June 25, 2011.

Adam Blanch, 'Vigilante Justice: Feminism's Latest Attack on Human Rights', On Line Opinion – Australia's E-Journal of Social and Political Debate, 22 August 2014, at <http://www.onlineopinion.com.au/view.asp?article=16613>

For instance, a survey of 38 magistrates in Queensland revealed that 74 per cent of them agreed with the assumption that FVOs are often used for tactical purposes.

Belinda Carpenter, Susan Currie and Rachael Field, 'Domestic Violence: Views of Queensland Magistrates' (2001) 3 Nuance 17, 21. See also: Patrick Parkinson, Judy Cashmore and Judith Single, 'The Views of Family Lawyers on Apprehended Violence Orders after Parental Separation' (2010) 24 Australian Journal of Family Law 313, at 317

Similarly, a survey of 68 magistrates from New South Wales indicates that 90 per cent of them agreed with the statement that these orders are often sought as tactical devices to aid applicants with family law disputes, including depriving the former partners of any contact with their children. There was a general concern that DVOs were too easily obtained and were not often reflective of the real situation between the parties.

J Hickey and S Cumines, 'Apprehended Violence Orders: A Survey of Magistrates' (Sydney/NSW: Judicial Commission of New South Wales, 1999), at 37.

Judicial Commission NSW survey of Magistrates August 1999 (63) Quotes from the Magistrates included:

"yes yes yes, too many are using them as a lever in Family Court proceedings." "Yes.. In many cases it is the family law issue, such as access to children which feeds the potential violence. If the family law issues are resolved satisfactorily the basis for a DVO often disappears"

“yes. The local court is unable to predict what effect a final AVO has on family court proceedings. AVOS are very easily obtained and one has the feeling often that they do not accurately or honestly reflect the real situations between the parties. I suspect AVOs are often given disproportionate weight in family court proceedings which could lead to injustice (and probably does)”

“Cannot ignore possible tactical role of AVO applications vis-à-vis some family law proceedings”

“One must be aware that AVOs are used as a tactical weapon in family law disputes. Often the reason advanced by an applicant for an AVO is “the legal practitioners told me to get one” and “family law proceedings are pending or contemplated”

“Any suggestion of domestic violence orders to further family proceedings should be very closely scrutinised

The great majority of respondents (90%) agreed that DVOs were used by applicants in Family Court proceedings as a tactic to aid their cases and deprive their partner from access to children

“A Magistrate should be able to resolve the matter fairly and have regard to the rights of the children to have contact with both parents”

“It is disputes around contact to children which created the circumstances complained of. The delays in the Family Court determining questions of contact are a significant cause of domestic violence”

“I do know that it can be, and is used as a lever in some cases. A regrettable tactic”

“The court must be very vigilant to ensure its operation is not tainted by such practices”

Some Magistrates believed that women were advised by their legal practitioners to apply for orders and the Family Law Act needs to be amended to overcome this problem.

“This is true. In one case at: Liverpool court a complainant actually admitted that this was the reason her legal practitioners had told her take out the complaint. She agreed she had no actual problem with her partner!”

“A complainant once appeared in court without her legal practitioner (a prominent local legal practitioner with a busy family law practice). She did not understand why her legal practitioners had not attended court and told the court she did not wish a restraining order – she never had – but was advised by that legal practitioners it was necessary to help her family law case”

35% of the magistrates thought DVO processes were unfair to men. Some expressed concern that many defendants (most often a male) were not represented in court or had no assistance or support. Conversely the person in need of protection (most often a female) had support groups or the police to assist them in obtaining the order.

“A system which provides police prosecutor and facilitate support groups for complainant/PINOP, the majority whom are women, should provide legal assistance to men as a matter of fairness”

“This is certainly true at any objective level. All outside support is directed to female complainants and men frequently complain in court about the obvious gender bias. It is too easy to make a complaint which can have implications such as the removal of a person from their home, on an interim basis at least, for reasons of malice”

A few magistrates thought that orders were too easily available, and were made merely because they were sought. Consequently, men feel it is hopeless to argue, and consent to the orders rather than go to the time and trouble of defending the matter.

“They are not (defended), partly because many magistrates are reputed in the profession to make orders merely because they are sought and without adequate evidence. Men feel it is hopeless to argue. Moreover, many respondents are unrepresented and cannot properly test the evidence or marshal their own evidence. They behave in a passive, defeated way”.

Others viewed the lack of discretion in bringing these matters to court as a denial of natural justice. The consequences to men in relation to exclusion orders and contact with children was also thought to be harsh.

“Yes if there is an incident – the man is always arrested – his views, opinions and rights are generally ignored. The requirement that complaint must issue is a total denial of natural justice”

“This point really revolves around the issue of children. If there are children of the relationship and a non-residence order is sought by the female partner and mother the consequence of the order is more dislocating to men”

“The procedures are more helpful or geared towards assisting women. More needs to be done in assisting men. Quite often AVOs are used in conjunction with custody matters and it would appear to gain some advantage”

30% of respondents thought that more discretion should be available to police to filter out DVO cases they considered to be frivolous.

“The court should have the power to order court costs in matters inappropriately instituted or conducted by police where defendants have as a consequences suffered significant financial loss. The police have just become a law unto themselves in these matters”

“AVOs should be much harder to initiate. At present there is nothing to prevent them from being used maliciously. The disruption that can be caused to someone’s life simply by virtue of making of a compliant in considerable”

This is also confirmed by an analysis of 68 families with allegedly violent wives conducted by Dr Sotirious Sarantakos. He is an Associate Professor of Sociology at Charles Sturt University and his study reveals that a considerable number of ‘women’s allegations of DV were proven to be false’.

As noted by Dr Sarantakos, in such cases ‘the initial allegations [of domestic violence] were modified considerably by them during the course of the study, particularly when they were faced with the accounts of their children and mothers, admitting in the end that they were neither victims of violence nor acting in self-defence’.

Sotirios Sarantakos, 'Deconstructing Self-Defence in Wife-to-Husband Violence', (2004) 12 (3) *The Journal of Men's Studies* 277, 287

One of the most insidious consequences of the politicisation of the debate on domestic violence relates the undermining of traditional procedural rules that are normally applied to govern our adversarial system of justice.

Kenneth J Arenson, 'When Some People Are More Equal Than Others: The Impact of Radical Feminism in our Adversarial System of Criminal Justice' (2014) 5 *The Western Australian Jurist* 213, at 217

At a minimum level due process requires sufficient evidence to convict. Further, due process requires that proceedings be designed to allow a person charged with a criminal offence or accused of a civil wrong to be heard in a regular court and be fully informed in a timely fashion of the nature of the accusation(s).

Christine Sypnowish, 'Utopia and the Rule of Law', in David Dyzenhaus (ed), *Recrafting the Rule of Law: The Limits of Legal Order* (Oxford/UK: Hart Publishing, Oxford, 1999), at 180.

Due process entails, at least in criminal prosecutions, a presumption of innocence and the right to a fair and impartial adjudication. This necessitates, among other things, that the accused shall receive a fair and timely opportunity to respond to the allegations and prepare a defence.

Family violence orders (FVOs) lack the proper application of due process because the evidentiary standards are dramatically relaxed. In more extreme cases, the vast majority of such orders have no evidentiary foundation and are often granted on a 'without admissions' basis that have virtually no evidentiary value in themselves.

An analysis of court files in New South Wales reveals that the courts often deal with such cases in less than three minutes and are resolved by consent without admissions. The information provided in such complaints is typically brief and tends to focus on one single incident. Further, references to 'fear' are included in a routine or habitual manner, 'frequently as a bald statement to conclude a complaint without any reasoning or thematic connection to the victim's experience'.

P Parkinson, J Cashmore and A Webster, 'The Views of Family Lawyers on Apprehended Violence Orders After Parental Separation' (2010) 24 *Australian Journal of Family Law* 313, at 317.

Having only a few days to defend from an accusation of domestic violence is not nearly enough time. This is compounded by the undeniable stress caused by being evicted from the home by armed police officers at the behest of the domestic partner.

Far more often than not, the respondents will have lost access to their children and even their joint bank accounts too. This is because the applicant might have spent several months or even years with a lawyer planning to file such an order.

In sharp contrast, the accused is given only a couple of days to prepare a defence. Following a final hearing, those who are adjudicated guilty through such precarious process will have his life and reputation forever tarnished.

David N. Heleniak, 'The New Star Chamber: The New Jersey Family Court and the Prevention of Domestic Violence Act' (2005) 57 (3) *Rutgers Law Review* 1009, at 1014-16.

And contact with his children may also be banned, particularly when the mere existence of the restraining order makes any contact impossible.

There is a widespread view that some lawyers have instructed clients to seek restraining orders even when they are palpably unjustified.

Parkinson, above n.11, at 324.

Rather than being honestly motivated by legitimate concerns about feeling safe, a person may seek a AVO simply because he or she is legally advised to look for any reason to apply for such an order when facing a family law dispute.

As a result, law-abiding citizens have been caught in police proceedings and evicted from their homes by ex parte orders that seriously violate the most basic elements of due process – including advance notice of the proposed action, the right of facing the accuser, and the opportunity to refute the allegation.

The WA Law Reform Commission recommended that legislation should provide a fair and just legal response to domestic violence. Above all, the Commission's Final Report stated that:

[A]s Legal Aid confirmed, this does 'not mean that fairness and the protection of individual rights are not important considerations.' In this context, it is vital to acknowledge that not every person who applies for a violence restraining order is a victim of family and domestic violence and not every respondent is a perpetrator. As noted in the Discussion Paper, the current restraining order system is not without its critics in terms of its overuse or abuse. Although it is true that most applications for violence restraining orders are properly made, sometimes they are unmeritorious or otherwise used for tactical purposes in family law litigation. And yet, many lawyers consider that violence restraining orders, in particular those applied for after proceedings have been instituted in a family law dispute, may actually exacerbate conflict and decrease the prospects of the parties reaching agreement, with a consequent impact upon legal costs.

Because an interim violence restraining order can be made on the uncorroborated evidence of the applicant, the potential for abuse is very real. One example repeatedly mentioned to the Commission during its consultations is where the person protected by a violence restraining order is the perpetrator and the person bound is the victim. Further, it is important to acknowledge, from the respondent's perspective, the potential consequences of a violence restraining order: exclusion from the family home, prohibition of contact with children, inability to work, and general restrictions on day-to-day activities. Additionally, a respondent is liable to serious consequences under the criminal law for failure to comply with the order (including an interim order).

For these reasons, the justice system must ensure that the legal rights of all parties are respected and, in particular, that respondents to violence restraining order applications have a right to be heard within a reasonable time. Additionally, the importance of ensuring that the legal system responds to family and domestic violence in a fair and just manner supports the provision of better and more reliable information to decision makers at the outset, thus enabling more accurate and effective decisions to be made.



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ABF experience with clients

It has become obvious to the ABF after a very short period of time talking to parents and family members at the domestic violence courts, family courts and via the phone support service 1800FATHER, that there is an extreme level of emotional pain as parents were navigating their way through the family law system. Many detailed experiences of domestic violence perpetrated against them while they themselves were defending allegations brought against them by their ex partners. These allegations often saw protection orders made that restricted access to children, with Magistrates suggesting the order has been made on a "just in case basis" which can be sorted out in family court.

Volunteers over time found it easy to identify parents who had no access to children from parents who had been provided with regular access. The parents with access were significantly more optimistic about their future and their ability to care for and raise their children.

The timeline of parents experiencing crisis had the following similar patterns leading to an appearance at the family court;

- The relationship ended and an allegation was made of domestic violence;
- A civil or police protection order was made;
- Notice to appear in court is delivered (in most cases);
- The respondent attends court and is advised to consent without admission;
- The respondent agrees believing this will bring an end to the matter;
- The protection order is made with conditions allowing contact with children;
- Text or email message seeking access is deemed a breach;
- Magistrate finds that a breach occurred order is varied to include children and no contact;
- The parent is restricted access all the way through to first family court mention;
- Because of the extended time between contact supervised access is ordered ICL appointed;
- Contact centre is booked for intake and supervised access begins

This time line from the last seeing your children to being offered supervised access can be 6 to 9 months. Because of this the non-resident parent through no fault of their own would be provided with 2 hours of supervision each 14 days. Many fathers and their families believe this is where they have been failed by the legal system. As protection orders are being used to abuse their children and fathers on the lead up to parenting orders. In many instances there has been no history of violence in the relationship and fathers are deemed perpetrators of family violence simply because their relationship has ended.

Ninety five percent of parents that engaged with ABF volunteers detailed events leading up to family court that were so similar in detail that it would suggest there is a process being followed by the aggrieved that will provide the mother with primary care of the children. The common denominator through the entire process is the allegation of violence which was made in many cases just prior to mediation where child access was stopped immediately. The respondent fathers then found themselves dealing with a legal system that in their words "had found them guilty of domestic violence" before appearing before any court. For the record many fathers describe experiences with police who are abusive and dismissive of their statements of innocence, showing little regard for their own version of events or concerns for their children's safety.

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Parental and Property Rights

Each year thousands of innocent Australians are issued with FVOs that evict them from their homes (and often alienates them from the lives of their children) without due process or any significant issue of physical safety or fear for safety involved.

Since these orders are often granted on an ex parte basis, armed police officers evict surprised owners from their properties without any evidentiary hearing or admissions. Since these orders nullify the legal right of homeowners to occupy their homes, it basically creates a crime out of the ordinarily innocent act of returning home.

All a person will need to do is head off to court with their silver-tongued lawyer and tearfully explain that they have a reasonable fear of something bad happening. There will then be an automatic presumption in favour of granting a AVO or DVO. And all of the above can take place without the alleged perpetrator even being informed. The first time he, or she, might know of what is being said about them is when they return home to find the locks changed and a police officer serving them with a copy of the order.

Hence a property right is nullified and the family is transformed into a public space in which the state 'deliberately and coercively reorders and controls private rights and relationships in property and marriage – not as an incident of prosecution, but as its goal'. In this legal context, Jennie Suk of Harvard Law School concludes that '[t]he police presence is required in that space and the state gains a foothold for its supervisory presence and control in the home'.

Jeannie Suk, 'Criminal Law Comes Home' (2006) 116 *Yale Law Journal* 1, at 31.

Since AVOs require the respondent to immediately vacate the family house, such orders have profound implications to parental rights. They often restrict parental contact with children, which may result in supervised parenting time or no parenting time at all. Clearly, when an accusation is made the stakes are extremely high. This is contrasted by the incredibly low burden of proof that is often applied to these orders, which is then exacerbated by the abbreviated manner in which court hearings are held.

Remarkably, even if the accusation is based on trivial or uncorroborated allegations, an ex parte interim DVO still evicts the accused from the home. This makes the person who has been accused the only individual in the world who is specifically prevented by law from seeing his/her children without the accuser's permission.

Warren Farrell, *Father and Child Reunion: How To Bring the Dads We Need to the Children We Love* (New York: Tarcher/Putnam, 2001), at 198. Parliamentary inquiry into a better family law system to support and protect those affected by family violence

These orders, separating parents from their children for years and even life, are sometimes issued without the presentation of any evidence of wrongdoing. A parent receiving the order must immediately vacate his home and make no further contact with his children. If he tries to contact with his children, then the alleged victim may contact the police and a pro-arrest policy for domestic violence will make sure the innocent person is summarily arrested.

In many states, Police have a pro-arrest policy for family and domestic violence whereby arrest is expressed to be the 'preferred option' (COPS Manual, DV 1.1.4.1.). The Police expressly informed the

WA Law Reform Commission that the accused are usually arrested for breaching a violence restraining order or a police order.

This is extremely serious since the Chief Justice of Western Australia, Wayne Martin, stated to the WA Law Reform Commission that such a presumption of arrest 'will almost inevitably produce injustice and hardship in some cases'.

Chief Justice of the Supreme Court of Western Australia, Submission No. 24, 27 February 2014. 2.

Under the current provisions, the police may enter a person's premises following a false or unsubstantiated report of family violence. For instance, Section 62B the Restraining Orders Act (WA) sets out the powers of police to search and enter private premises in certain circumstances involving family and domestic violence.

The Misuse of Restraining Orders Published on June 7, 2017 Amanda Sillars Parental Alienation | Education | Research | Generational Lived Experience | Public Speaker

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

False Allegations

False allegations occur within the Family Court System. To suggest they do not is to deny the reality: the experiences of parents going through the system, the opinion of the judiciary and the opinion of family law practitioners. The issue is simply a matter of scale impact. Parents, Judiciary and Family Law Practitioners claim that false allegations are rife. To the extent that the jurisdiction as it operates now, is a farce and that it is ineffective in the application of justice. Given the impact of the system that we have outlined above, this is yet another imperative for the system to be replaced urgently.

The opposition opinion on the issue of the prevalence of false allegations does not hold up to scrutiny and must be silenced as it perpetuates harm and impedes justice and reform.

In Canada, where much of the allegation research has been conducted, Bala and his colleagues noted that “a range of circumstances may lead to a parent making unfounded allegations of abuse after parental separation”:

- allegations that are made knowingly with the intent to seek revenge or manipulate the course of the litigation; or
- allegations that are made in the honest but mistaken belief that abuse has occurred, often due to some misunderstanding or misinterpretation of events; or
- allegations that are made as the result of an emotional disturbance or mental illness of the accusing parent.

Bala, N. M., Mitnick, M., Trocmé, N., & Houston, C. (2007). Sexual abuse allegations and parental separation: Smoke screen or fire?. *Journal of Family Studies*, 13(1), 26-56, at 37.

While allegations of family violence and abuse have for some time represented the core business of the court, the other side of the coin cannot be ignored – that a sizeable proportion of allegations cannot be substantiated.

Jaffe, P. G., Johnston, J. R., Crooks, C. V., & Bala, N. (2008). Custody disputes involving allegations of domestic violence: Toward a differentiated approach to parenting plans. *Family Court Review*, 46(3), 500-522.

Opinion of Family Law Practitioners

Those that work within the industry day to day, and those who are best placed to assess the credibility of both their client's and their opponents evidence, family law practitioners, state that they believed that false allegations of intimate partner violence were made in 30-80% of cases.

(Haselschwerdt, Hardesty, & Hans, 2011)..

Of the matters that our legal principals manages, domestic violence has been claimed by the Mother in almost 100% of the cases (of those claims, almost 100% of them have not been tested in Court at

anytime). This figure and supports the notion that claims of domestic violence go hand-in-hand with adversarial family court cases.

The rebuttal to this compelling opinion is that it is contrary to research and that that research somehow academic studies trump real-world experience and practice. This argument actually appears in the Australasian Institute of Judicial Administration (2017) National Domestic and Family Violence Bench Book, 4.1.

Advocates stating that rate of false allegations is low often quote these two pieces of research conducted in Australia and conducted in Canada.

The Australian study actually states:

“As noted in Chapter 1, it is not possible to directly determine the prevalence of “true” and “false” allegations of family violence or child abuse within the confines of this study. However, one way in which we can begin to approach that question is to note the extent to which such allegations were corroborated.

So, for example, in the first panel we see that 82% of allegations of spousal violence in the general population of Family Court cases were not supported by any form of corroborative evidence, while 14% of allegations in that group were supported by one piece of corroborative evidence.

Most individual allegations of spousal violence and child abuse were made in the absence of any information that may support them (top row, top panel in Table 6.2). This absence was especially pronounced for allegations of child abuse raised in the fmc general litigants sample (92% vs 71–82%). Where any evidence was raised, usually only one piece of evidence was cited”

Moloney, L, et al, “Allegations of Family Violence and Child Abuse in Family Law Children’s Proceedings – A Pre-Reform Exploratory Study” (2007), Australian Institute of Family Studies, Australian Government.

The Canadian research states:

“A custody or access dispute creates an emotionally charged context, within which intentionally false allegations of maltreatment are more likely to occur. In the CIS-1998, approximately 15,000 of the estimated 135,573 investigations involved a custody or access dispute (see Table 7-10(b) in Trocmé et al., 2001). Intentionally false allegations were made in 12% of these. 14% suspected. 34% unsubstantiated. Only 40% substantiated. Intentionally false allegations of abuse and neglect are serious issues confronting child protection services, the legal system, and families. The number of unsubstantiated allegations of maltreatment occurring in the context of parental separation raises important questions regarding the efficacy of existing screening procedures”

Knott, T, Trocme, N and Bala, N, “False Allegations of Abuse and Neglect” (2004), Centre of Excellence for Child Welfare, Health Canada.

Opinion of Judicial Members

We have already quoted the Judicial Commission NSW survey of Magistrates August 1999 above, in relation to applications for DVOs. The survey of 68 magistrates from New South Wales indicates that 90 per cent of them agreed with the statement that these orders are often sought as tactical devices

to aid applicants with family law disputes, including depriving the former partners of any contact with their children. There was a general concern that DVOs were too easily obtained and were not often reflective of the real situation between the parties.

In 2013, a retiring Family Court Justice David Collier, retired from Parramatta Family Court after 14 years on the bench. It is rare for Family Court judges to speak publicly about their views, but he stated:

"If a husband and wife really get down to it in this day and age, dirt flies," Justice Collier said.

"The worst are those mothers who direct false allegations of abuse against former partners"

"When you have heard the evidence, you realise that this is a person who's so determined to win that he or she will say anything. I'm satisfied that a number of people who have appeared before me have known that it is one of the ways of completely shutting husbands out of the child's life"

"It's a horrible weapon."

"Such cases are fraught for Family Court judges. Once an allegation has been made it is impossible to ignore. The court must deem whether there is an "unacceptable risk" of abuse occurring in the father's care."

"They're difficult to disprove. The allegation lingers there."

<https://www.smh.com.au/national/false-abuse-claims-are-the-new-court-weapon-retiring-judge-says-20130705-2phao.html>

The overwhelming majority of magistrates in Australia share this popular perception that family violence orders (FVOs) are often sought for solely collateral reasons which are unrelated to authentic fear or real violence. For instance, a survey of 38 magistrates in Queensland revealed that 74 per cent of them agreed with the assumption that FVOs are often used for tactical purposes

Belinda Carpenter, Susan Currie and Rachael Field, 'Domestic Violence: Views of Queensland Magistrates'

Opinion of Police Officers

If a person made a report of a crime that didn't happen, you would likely receive criminal charges once the deceit was discovered. However, with domestic abuse charges, this is not the case. Courts practically never charge the accuser in a false domestic abuse case. The emphasis is that they want everyone to feel comfortable enough with the legal system to come forward in actual cases of abuse.

We recommend further research as to the opinion of the police in relation to the prevalence of false allegations.

What the public believes

In Australia, a telephone survey of 2000 people in Victoria found that 46% of respondents agreed with the statement that: "women going through custody battles often make up claims of domestic violence to improve their case". Men and women in the general population were equally likely to hold this view that women fabricate allegations to gain a tactical advantage in custody disputes

Community perceptions of domestic violence ISSN: 1445-7288 Australian Institute of Criminology Published: 19/12/2006
Taylor & Mouzos, 2006.

The public knows that false accusations of domestic violence are made, but virtually never punished when the claim is disproved. In a survey with over 12,500 respondents, more than half agreed with the statement that 'women going through custody battles often make up or exaggerate claims of domestic violence in order to improve their case', and only 28 per cent disagreed.

Patrick Parkinson, 'How Widespread are False Allegations of Abuse?' News Weekly, Melbourne/Vic, June 25, 2011.

The findings from the 2017 National Community Attitudes towards Violence against Women Survey (NCAS) reveal beliefs among Australians relating to family separation and violence. For example, more than two in five Australians (43%) believe that women make up or exaggerate violence in order to secure tactical advantage in disputes about where children will live after separation or divorce, with men more likely to believe this than women (49% vs 37%).

K Webster, K Diermer, N Honey, S Mannix, J Mickle, J Morgan, A Parkes, V Politoff, A Powell, J Stubbs and A Wards. (2018). Australia's attitudes to violence against women and gender equality. Findings from the 2017 National Community Attitudes towards Violence against Women Survey (NCAS) (Research report, 03/2018), ANROWS.

The number of young people suggesting that men and women are equally likely to perpetrate domestic violence has increased from 23% in 2009 to 36% in 2017. The survey was administered to two random samples: (a) 2000 Victorians 18 years and over, and (b) an oversample of 800 adults from specific culturally and linguistically diverse (CALD) backgrounds.

Findings from the 2017 National Community Attitudes towards Violence against Women Survey (NCAS)

In the United States a study of 302 men who sustained severe partner violence revealed that:

"...over half of the men reported that their women partners made false accusations against them, which included that he hit or beat her, that a restraining order was filed against him under false pretences, or that he physically and/or sexually abused the children. These findings are congruent with a previous study that showed that approximately 50% of men victims of IPV stated that their partners gave false information to the court system in order to gain custody of the children or to obtain a restraining order".

12 Hines, D. & Douglas, E. (2010), "Partner Abuse. 2010 Jan 1; 1(3): 286-313.

A recent (UK) link between how money motivates mother's to lie (and ruin the lives of their children and their fathers):

"Thousands of parents falsely claim domestic abuse in order to access legal aid and stop estranged partners from seeing their children, a shared parenting charity claims. Families Need Fathers says parents are being encouraged by some solicitors to file for non-molestation orders - injunctions used in urgent abuse cases.

New figures show a 30% rise in orders made after legal aid was axed in everything but abuse cases in family courts in 2012.

The charity suspects that solicitors' firms are talking parents into seeking such orders because it enables them to qualify for legal aid, from which both the legal profession and the complainant could benefit.

A spokesman for the charity said: "We're getting a lot of people coming to us talking about false allegations, whether it's grossly exaggerating events or even completely fabricating them."

Jerry Karlin, chairman of Families Need Fathers, said the result of the government's "well-intended but ill-conceived changes" to the family courts system was a 30% increase in non-molestation orders (NMOs) to 25,000 a year. In some regions of England and Wales the increase has been as much as 900%. In others there has been a 150% rise, according to information obtained by Families Need Fathers.

"These (NMOs) are used in allegations of abuse and they don't have to be true to obtain access to legal aid." "Non-molestation orders have gone up by several hundred per cent since the legal aid changes in some districts," he added.

The outgoing president of the High Court's family division, Sir James Munby, described false allegations as a "vice in the system".

<https://www.bbc.com/news/education-44628179?SThisFB>

The ABF survey of 1000 Fathers indicated:

- 72.3% of those surveyed reported having to respond to false allegations of domestic violence
- 90% of men that reported being victims of domestic violence to police received false allegations of domestic violence in return

ABF Survey of 1000 Fathers Appendix E

How the family Court treats false allegations

Judicial Officers of the Family Court have powers in respect of the proceedings including, the power to issue a charge of contempt of court for swearing a false oath or misleading a court, or referring them to the Director of Public Prosecutions for consideration for criminal prosecution for perjury and related criminal offences. The Act and the Rules of the court establish duties of full and frank disclosure and any findings of failure in compliance may result in more generous findings in favour of the innocent party. Under the Act, the judge can also order costs. (in financial proceedings, non-compliance by a litigant with duties enables a judicial officer to adopt a robust approach when completing the Section 79/Section 90SM decision making pathway.

Section 117AB was inserted into the Family Law Act 1975 (Cth) ('Family Law Act') to address this particular concern. The section mandates that a court must make a costs order against a party who 'knowingly made a false allegation or statement in the proceedings.' From 7th June 2012, however, section 117AB was removed from the Family Law Act via the Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011 ('Family Violence Act').

The powers are exercised in relation to property matters, particularly more generous findings in favour of the innocent party where full and frank disclosure had not occurred. Our gravest concerns arise in relation to parenting matters. Considering the prevalence of false allegations, we see an inadequate exercising judicial powers in response (amount of prosecutions versus know rate of false allegations).

We have already discussed that the system currently incentivises the making of false allegations by providing both custodial but also significant financial incentives for successfully doing so. The lack of adequate judicial response is the final straw in the creation of a farcical jurisdiction: eradicating any final disincentive. We are mortified by recent decision where the court has found that the fact that a parent who is prepared to mislead a court, is not directly related to parenting arrangements that might be implemented for children. That is, a parent who disrespects authority enough to commit a criminal offence; an action that should cast doubt on the merit of not only their entire case before the court but also their capabilities as a parent able to met the development needs of their children, is still consider the best option for the parent.

Either new powers need to be created or the court needs to apply the existing powers.

Further Research and evidence on false allegations

What is clear is that there is a general paucity of rigorous and methodologically sound international research on this topic and little Australian context. Consequently, in this area of family law, anecdote appears to have indeed reigned supreme and this can be to the significant detriment of effective policy development.

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The Link between Child Support Payment and False Accusations

Contrary to popular belief, child support payments have nothing to do with fathers abandoning their children, or renegeing on their marital vows, or agreeing with a divorce. Since in a 'no-fault' system nobody can contest their divorce, such payments are awarded ostensibly and without any reference to 'fault' whatsoever. The payment of support is an entitlement to be automatically assessed on non-custodial parents.

Accordingly, support payments can be a financial reward for divorced parents who make very difficult for non-custodial parents to develop a meaningful contact with their children. In view of the financial reward acquired from such support payments, the position of some custodial parents is that the non-custodial parent should not be allowed to spend any time with their children. A parent who holds temporary custody may decide to procrastinate as much as possible in custody litigation, thus preventing the other (innocent) parent any right of access to their children. When this awful reality takes place, a parent will lose access to their children through no fault or agreement of his volition.

There have been many accounts of non-custodial parents who are falsely accused of child abuse and neglect, and even the sexual molestation of their children. Some non-custodial parents lose access to their children even after the Department of Child Protection (DCP) entirely clears them of any wrongdoing or 'unsubstantiated' allegation. When both DCP and the family court clear this parent of any wrongdoing, more often than not the court still keeps the custody of the child with the false accuser; i.e., the custodial parent who has maliciously made such false allegations.

To make a false accusation of violence has become a common strategy used to alienate a parent from his children. The strategy consists in the ability of the custodial parent to defame the non-custodial parent without the slightest need of proof.

According to Dr Adam Blanch, a provisional psychologist and counsellor working in Melbourne; The more a single parent can restrict the other parent's access to the children the more financial support they receive from the alienated parent and the government, and a [FVO] even when based on allegations that have been unsubstantiated is a great weapon in the fight for primary custody and restricted access.

<https://www.onlineopinion.com.au/view.asp?article=20466&page=3>

Non-Compliance and Enforcement of Orders: Contravention Applications

The primary purpose of enforcement proceedings for noncompliance with an order is to try to ensure compliance with the order. Orders are not an “invitation” or “a request”. They are orders of a Court exercising the laws of Australia. The orders are directed towards a father and a mother and it is expected that they be obeyed in substance and in spirit.

Compliance with respect of parenting orders can be a source of great frustration for both clients and practitioners. As the Explanatory Memorandum to the Family Law Amendment (Shared Parental Responsibility) Act 2006 describes, breaches of court orders are a major source of conflict and distress to all parties involved.

https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r2494

Contravention procedures, quasi-criminal in nature, are technical, expensive, can delay the substantive proceedings, are not heard in a timely fashion, are poorly understood by self-represented parties, are reported to be like a “toothless tiger” and by the time it is heard, the parenting issues have moved on.

We consider that where one party alleges non-compliance of a parenting order, there ought to be a simplified Application Contravention process. There should a provision of further resourcing to the family law courts to establish contravention lists at registries and regional circuit locations to allow for more contravention applications to be heard promptly. This would include:

- a. Amending the Family Law Act 1975 (Cth) to provide Registrars with the power to hear and determine contravention applications.
- b. Strengthening: actual fines and penalties
- c. Speeding up: urgent interim hearing
- d. Processing through magistrate court: urgent hearings

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

Merger

The ABF does not agree with the proposed merger of the Family Court and the Federal Circuit Court.

Complete reform and replacement of both the law and court structure, is necessary to ensure the system protects and promotes the rights of all Australians. This must be the priority for Parliament. Reinstating the Government's flawed proposal to merge the Family Court and Federal Circuit Court will not fix the problems.

Despite widespread community concern and opposition, and notwithstanding the establishment of this Inquiry, the Government has indicated it intends to reintroduce the merger bill to Parliament this year. The ABF calls on the Government not to reintroduce the merger proposal during the course of this Inquiry as the Inquiry's work (and subsequent work) is too important to pre-judge.

Family Delays and Court Funding

The single most significant driver of legal costs in family law is delay in having matters proceed through the courts. (It is easy to see how the system incentivises family court lawyers to delay matters).

It is known within the industry that some judges dockets have risen to 500-600, whereas 300 is considered to be an absolute minimum to give enough attention to cases. Making decision without assigning adequate time and with a limited understanding of the facts and issues can result in dangerously incorrect decision making.

The Government stated in May 2018 that the national median time to trial had increased from 10.8 months to 15.2 months in the Federal Circuit Court (an increase of 40.7%), and from 11.5 months to 17 months in the Family Court (47.8%),²⁰ from 2012-13 to 2016-17.

Question Number and Title: AE18-014 - Family Court of Australia trends, Senate Standing Committee On Legal and Constitutional Affairs, Additional Estimates 2017-18 (February 2018).

The latest annual reports of both courts paint a concerning picture of a system under significant strain. Despite achieving a clearance rate of 102 per cent in 2018-19,¹¹ and finalising more cases than were filed during the year,¹² the Family Court has a backlog of 2,979 cases.

<http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/annual-reports/>

The backlog in the Federal Circuit Court increased from 17,088 cases in 2017-18 to 17,478 cases in 2018-19.¹⁴ Further, the Federal Circuit Court disposed of 62 percent of final order applications within a year, falling significantly short of its target of 90 percent.

<https://www.fedcourt.gov.au/digital-law-library/annual-reports>

Despite best efforts, the challenges faced by judicial officers struggling to meet these caseloads adversely affect the quality of outcomes delivered for parents and children. The challenges also pose a threat to the work, health and safety of those Judges. Some industry stakeholders report that this can manifest in behaviour from judicial officers that has been described as “bullying” and unbecoming of the bench. It should be noted that these professionals are experiencing vicarious trauma on a daily basis.

This trauma probably goes some way to explaining, but not justifying, the hostile treatment that Father’s get while navigating the system from all participants, including government staff.

The time pressures compel conservative interim decisions, delays and adjournments that result in very restrictive interim orders that may separate children from parents for years. These are irretrievable years and irretrievable development opportunities. The absence of contact is then often used to underpin final orders with restricted access based upon broken down or alienated parental relationships. Broader costs and impacts to the community also result from family breakdowns not being determined in a timely manner.

The consequences of delay include increasing complexity of cases over the period spent waiting for trial, as the lives of children and their parents continue to change, new partners and children often become involved and financial positions change. If the proceedings involve allegations of abuse, violence and risk, the determination of those allegations become all the more difficult with the passage of time. Cases are not simply dormant while awaiting trial – interim determinations are often required to be made in this period with an increasing and compounding effect on delay, where Judges have to devote time to holding the lives of children and families together until a final hearing date can become available.

The lack of resources also compels the court to abdicate it’s judicial responsibility to third parties. The power and influence wielded by the single expert report writer (and the ICL) have become disproportionate. This in term drives up costs, with some Sydney based expert reports writers now charging \$20,000 per report, for what might amount to a few days of effort, with very little transparency, review, and a not inconceivable chance of incorrect findings.

At the core of so many of the issues confronted by the system is a chronic and sustained lack of proper funding and resources for the Family Court and the Federal Circuit Court of Australia (Federal Circuit Court), and a mismanagement of those resources. This includes a failure to appoint and maintain sufficient and appropriately experienced judicial officers and associated staff and insufficient funding to maintain the counselling and assessment services previously provided by the courts.

We state this with a significant caveat.

Many of the industry stakeholders advocate for greater funding. Such funding would alleviate some of the failings of the current system: such and delay and flawed decision making, but the system would remain inherently flawed. Arguably more funding would just perpetuate a flawed system and delay urgent reform.

(Budgeting for the family law system is admittedly complicated by the fact that efficiency statistics, raw data sets and disposition rates are not reliable measures of the success of the system. Considerable caution must be attached to reliance upon statistics produced as to the performance of courts generally and in the family law sector. Published numbers of case completions are often

skewed by the inclusion of uncontested proceedings (orders made by consent) and divorce completions which are uncomplicated and take up little of the Court's resources. Decision-makers must consult with and listen carefully to the concerns and experiences of stakeholders including court users, the judiciary and the legal profession in order to gauge the quality of justice that the system delivers).

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

- i. capping total fees by reference to the total pool of assets in dispute, or any other regulatory option to prevent disproportionate legal fees being charged in family law matters, and*
- ii. any mechanisms to improve the timely, efficient and effective resolution of property disputes in family law proceedings;*

Cost

The financial cost of proceedings in family law matters can be very high. Many people who seek legal advice won't go ahead with a case, simply because it costs so much. There is also a great cost to parties in terms of time and the stress associated with ongoing litigation. Much collective wealth is distributed to third parties if the matter goes to the court.

In the 2014 Productivity Commission Report of Access to Justice Arrangements it was noted that: Legal practitioners generally charge their clients hourly rates ranging from \$350 to \$600.

<https://www.pc.gov.au/inquiries/completed/access-justice/report>

Lawyers bill not just for the courtroom, but the preparation of the case beforehand — that includes meetings, drafting documents, interviewing witnesses and reviewing statements. Charge out rates vary according to the area of law and a lawyer's experience.

The size and location of the law firm can also play a part, with country lawyers usually charging less. In NSW, solicitors typically charge from around \$300 an hour and their daily court rate can be upwards of \$3,000. The daily court fee for a junior barrister to work with a solicitor can start at \$5,000. Senior barristers command around \$10,000 a day.

Then there is the controversial concept of disappointment fees: barristers charging for hearings never heard because the matter settled prior. A financially crippling concept that appears to discourage settlement.

Family law solicitors say much of their time is spent in mediation, with court being an expensive last resort. NSW-based solicitor Kayte Lewis says settling a family court matter in mediation typically costs around \$20,000. If it went to litigation, the cost would be more like \$100,000.

Many parties before the Family Court are financially stressed, but have just sufficient assets to be excluded from legal aid, which results in a high number of self represented litigants. According to a survey by (formerly known as) Queensland Public Interest Law Clearing House, 73% of clients said that they were self representing because of the cost of legal representation.

<http://www.lawright.org.au/cms/download.asp?ID=66000>

There is some evidence that the effect of divorce on assets lasts into older age and this negatively impacts on income in later life. Australian Institute of Family Studies Senior Research Fellow, Dr Lixia Qu said more Australians will experience divorce in the future and this has long-term financial implications for them and the Australian income support system.

<https://aifs.gov.au/publications/economic-consequences-divorce-six-oecd-countries/export>

“Divorce has a big impact on both men and women whose assets continue to fall behind married households and this impacts significantly on retirement income for divorced men and women who remained single, making them more reliant on government support to get by,” she said. The Australian Institute of Family Studies has found divorced people aged over 55 had less disposable income and fewer assets than their married counterparts.

The research also found that men were worse off than women when it came to household disposable income.

Cost, complexity and delays contribute significantly distress and disquiet about the family law system. The existing ‘one pathway for all’ is not useful, and denies access to justice for those many families not in a position, for whatever reason, to avail themselves of the avenues currently available. Most importantly, families should have access to options that are proportionate to their resources.

Commercial Model

When legal services are delivered through a commercial model, the primary stakeholders are investors and activities are prioritised based on the ability to generate a return. Activities are primarily focused on return to investors. It follows then that the client focus and care is marginalised, or charged for at the same rate as legal fees. Perhaps it is unreasonable to expect legal practitioners to provide this non-legal support, but parents are extremely vulnerable at this time of change and conflict: especially when negotiating an unfamiliar system. Discussing a significant history of personal matters may also make them in turn feel vulnerable and connected to the legal practitioners.

In pursuing those financial interests, the legal practitioners may compromise the client relationship in a multitude of ways. They are not, for example going to antagonise a member of the judiciary by relentlessly pursuing a client’s interests, however just and urgent, if it means that they are going to compromise their ongoing professional relationship and their standing before that Judge. Likewise many parents in the system, experience the industry as being a “fraternity”, with opposing legal practitioners having relationships on some level, along with ICLs, expert, and court registry staff etc. This is perceived particularly acutely (this fraternity perception can be particularly acute for self-represented parents).

Some legal practitioners, maybe from smaller firms, are committed to doing their best to provide ethical services and a less adversarial approach, despite the commercial imperatives that they face. Many legal practitioners are not. Conflict, intransience and hard bargaining may be perpetuated by the clients themselves, especially those with high-conflict personalities, but often it is the legal practitioners themselves in the way they perceive their role and their industry. It may be the legal practitioners themselves with the personality disorder.

Undoubtedly, legal practitioners are financially incentivised to prolong matters and keep them courts. Legal practitioners, often the sole confident in relation to a client’s matter with whom they may

spend many hours with over the course of a multiple year matter, have significant influence over a client's approach, demeanour, expectations, self-focus and willingness to settle: often contrary to the interests of the children in a matter. This is particularly the case where parents might be unaware of the many conciliatory options available and the benefits of mediation at any time.

At all stages the focus should remain on settling the dispute, at the earliest possibility, and at the least cost. It is often no difficult to identify which party is sustaining the matter: it could be the one rejecting pleas and offers to settle.

The non-adversarial model proposed to this document goes one very large step further. The provision of all services via salaried professionals with a case turnover as opposed to case prolongation focus.

The case of Simic & Norton [2017] FamCA 1007

The parties in the long fought Simic v Norton (names changed) claimed that by the time the parties settled, the Mother and father had accrued more than \$860,000 in legal fees. The extraordinary legal charges accrued in the dispute prompted the presiding Judge Benjamin to refer lawyers to the legal services commission.

In the judgment, he noted he had previously expressed concern about the high charges of lawyers in property and parenting proceedings, but his concerns "have seemingly gone unheeded". His judgment said:

"In the Sydney registry of the family court I have observed what seems to be a culture of bitter, adversarial and highly aggressive family law litigation.

Whether this win at all costs, concede little or nothing, chase every rabbit down every hole and hang the consequences approach to family law litigation is a reflection of a Sydney-based culture by some or many litigants or whether it is an approach by some legal practitioners or a combination of both, I do not know.

Whichever is the cause, the consequences of obscenely high legal costs are destructive of the emotional, social and financial wellbeing of the parties and their children. It must stop

The children of these parties depend upon the income and assets of their parents to support them," he said. "Yet, in this case, the costs of the proceedings have taken a terrible toll on the wealth of the parties and consequently their ability to support and provide for their children."

One of the children in the matter was hospitalised during the case, suffering severe mental health issues.

Case study accepted by the committee as confidential

Capped fees for property matters

We support capping legal practitioners fees to improve access to justice for people who have limited resources in order to ensure that fees charged do not outweigh the value of the available property pool. This could be achieved by setting a cap on fees as a percentage of the overall property pool available for division. Such an approach would require a cap on fees for each stage of the negotiation and litigation process to avoid the fee cap being reached prior to the matter resolving by agreement. Fee capping in stages would also serve to prevent legal practitioners ending their retainer and abandoning clients prior to matters being resolved and/or reaching final hearing. We acknowledge that there are a number of private law firms adopting the practice of fixed fee services and we support a move toward that model.

Alternate ways of managing costs within the current system

As in UK and New Zealand, Australia should adopt the approach of the courts ordering the parties to submit a cost budget at the commencement of proceedings. This would include orders limiting the amount of fees which can be charged, recovered or sought via cost orders. The Family Law Act should be amended to require that fees should be proportionate, referenced to the value achieved for the client and the legal complexity of the matter (and/or index to the value of the asset pool). Fees derived solely from the time spent by a legal practitioners and their seniority are no longer acceptable as is increasingly the case in competitive high-value Corporate Law.

A survey conducted by the legal Services Counsel (legal Services Council, Consumer Survey Report (2017), found that a significant proportion of consumers do not understand their likely costs, their rights in relation to costs (and avenues of complaint), even after reading the required cost disclosure material. The Family Law Act should be amended to fortify the obligation for Family Law legal practitioners to disclose and explain their fee structures, and cost estimates. Legal practitioners should also provide regular updates and tracking in relation to costs incurred so that the client can have adequate visibility and management capability. Legal practitioners should furthermore inform clients about alternate billing methods not solely based on the billable hour, such as fixed fees, value billing and unbundled services (such as proofing documents drafted by clients etc.).

The conduct of legal practitioners, acting on instructions from their clients or otherwise, should also be grounds for cost orders, where, for example, it can be demonstrated that the conduct of the practitioner has unreasonably added to the cost of one or both parties.

Unbundled legal services

Family law disputes for the most part do not require a full legal representation model and are more suited to the more affordable unbundled legal services model. The development of unbundled legal services has grown largely out of the family law jurisdiction which lends itself particularly well to this more cost effective way of receiving legal advice and assistance. Practitioners who do not have a limited scope retainer consider themselves obliged to manage all communications between their client and the other party, including negotiating minor parenting issues and routine disclosure. These practitioners are also not willing to perform discrete legal tasks. More recently some private practitioners have decided to set up shop offering discrete legal services on a limited retainer agreement with the client and will perform tasks such as drafting documents at a fixed price or reviewing documents already prepared by the client. We consider that changes are required to the Australian Legal practitioners' Conduct Rules and State Barristers' Conduct Rules to recognise, legitimate and provide a supportive framework for legal practitioners to provide unbundled legal

services. Furthermore, legal training ought to include the teaching of unbundled legal services to students in a practical setting to encourage future legal practitioners to use the practice.

Disappointment fees

Payment to barristers for work that is not undertaken should be banned, or in the alternative capped as a reasonable and standard cancellation fee could be payable after obtaining leave of the court. For the “working poor” who engage barristers at the interim hearing stage alone, the need to pay “disappointment fees” can be devastating in a context in which parties have already been pushed to their emotional and financial limits.

Mechanisms to improve the timely, efficient and effective resolution of property disputes in family law proceedings

The primary concerns the ABF has identified in relation to Property settlements are the unreliability and inconsistency of decisions, and the weaponising of domestic violence applications to achieve a financial advantage.

There have been many journal articles written about the law on family law property matters in Australia discussing the inconsistent and uncertain judgements that follow. Australia has one of the most discretionary systems of property division in the world.

Participants in the system are faced with uncertainty in relation to the judicial outcomes concerning a myriad of issues, including the handling of superannuation entitlements, substantial pre-relationship property, inheritances, assets acquired after separation, and third party debts (and other areas). There is also significant uncertainty and inconsistency in relation to the treatment of domestic violence in property cases. These uncertainties and lack of predictability impact the entire jurisdiction and most commonly reduce the likelihood of parties achieving an early settlement, and this in turn increases costs. We believe this issue, along with the many other profound issues that we have referred to are simply unacknowledged and unaddressed by the Family Court.

One of the many areas where the inconsistencies of the system are apparent is the treatment of property interests where there are claims of domestic violence. It is debatable whether property settlement should be another area of law that attempts to address domestic violence, there is no clear message from the Family Court as to how these matters should be dealt with.

The general approach in *Kennon v Kennon* [1997] FLC 92-757 has been to accept that certain conduct during a marriage may have adversely impacted on the party's function within the relationship, ability to contribute, make those contributions more arduous, and could be a factor considered in property settlements. As is typical for the jurisdiction, subsequent decisions have blurred the doctrine: there need not be a course of conduct, the repetition need not be frequent, and it need not be during the marriage.

As the case law currently stands, if there is some sort of "bad behaviour", at any point during the marriage or after, that's happened more than once, the victim should receive more in the property settlement. In accordance with our own practitioner's experience, a figure is then "arbitrarily" plucked out of the air, in the realms of a 5 to 15% adjustment. We claim that this indefinable principle goes so far as to be useless in providing any predictive value, essential for increasing the likelihood of settlement.

Further, it is extremely difficult for families (even with legal advice) to make a reliable prediction of how an individual judge might apply the Act in their particular cases; families cannot get useful guidance on how the Act will be applied in even commonly-arising circumstances. This is because the Act confers on judges very wide discretions, requiring judges to take into account numerous and complex factors in reaching their decisions. This is one reason why for property and financial matters however, parents are half as likely to use FDR, three times more likely to use legal practitioners and twice as likely to use courts. This trend even applies to families with asset pools of \$40,000 or less.

AIFS submission 396, cited ALRC Report 135, paragraph 8.9-8.10.

We propose simplification of the law of property division so that it is fit for purpose for ordinary Australians.

The law in relation to property disputes has been an issue long neglected by successive governments. Senior members of the family law profession, who do not have the benefit of much knowledge of how other systems sort out property disputes, have been fiercely resistant to change, as have some of the most conservative judges of the Family Court. So far, their claims that no reform is needed have won the day; but it is time now that the Government forces through change with or without the support of senior members of the legal profession, many of whom have the most to gain financially from the current chaos in the law.

Patrick Parkinson, 'Why Are Decisions on Family Property So Inconsistent?' (2016) 90 Australian LawJournal 498.

We recommend streamlining the legislation to enable parties to better understand the process surrounding the division of property and what a reasonable division of their property interests might be.

The Family Law Act should provide a clear and easily understood framework that provides sufficient guidance for courts, legal advisers, and the public on the factors that are to be considered when adjusting the property and financial interests of parties on the breakdown of a relationship. Such a framework should assist parties to negotiate a division of their assets that is just to both parties and in the best interests of any children of the parties, without resort to formal dispute.

One option is the application of a simple 50/50 formula.

This law could mandate that any assets taken into a defacto or marriage union continues to be the sole asset of that owner and only any future joint purchase of assets would be split 50/50 in a future financial settlement. This would be the effect of recognising the marriage as a team effort by both parties until separation whether they are in a paid or unpaid role. The only exception being if assets or a business were brought into the onset of the marriage which would be accepted to go to court for a judge ruling on financial settlement. The benefit of this would be removing the opportunity of clients and legal practitioners to "fight" for financial gain out of greed enabling a fair deal for all and free up the courts to deal with complex cases. Also there would be no need for pre-nuptial agreements at all and divorcees would feel financially secure their assets are protected going into a new defacto relationship or marriage.

Case study accepted by the committee as confidential

e.the effectiveness of the delivery of family law support services and family dispute resolution processes;

Associated Family Law Services

There are many intersecting services that fall under this topic.

- Police
- Child Protection Services
- Family Dispute Resolution Practitioners and Mediation
- Report writers and family consultants
- Supervision agencies and contact centres
- Legal Aid
- Judicial Staff
- Obligations of all system professionals
- Oversight Commission

The ABF position in relation to all Family Law Services and support is that they be entirely gender neutral in both their availability, access, services and support, but also in content. The experience in accessing those services should be indistinguishable between men and women As we have stated in our submission on domestic violence, all within our community should have equal access to services. Such access should be based solely on objective need.

We have police departments proclaiming that they are domestic violence accredited (with such training based on rejected and outdated sexist models such as the Duluth model), Legal Aid that in reality is primarily available to women, crisis and support services that presume male victims might be perpetrators, charities that only provide services to one gender, and people within the support and services industry that bring significant gender bias to their roles. There is no valid or ethical reason why this should be the case, and why a large subset of victims are denied access to essential services. This situation exists only because those who have lobbied for the current status quo have done so most successfully and piggy backed off the earlier movements for equality that largely if not entirely achieved their goals decades ago.

Police and government department accreditation

Police departments that received accreditation and training from domestic violence charities that base their content of the sexist and rejected Duluth model, should have that accreditation disregarded and replaced. (This should also apply to any government organisation that received the same accreditation). By way of example, Queensland Police received White Ribbon Workplace accreditation (based on the Duluth model) in 2017. this training provides Qld Police with the false gender based narrative in relation to domestic violence that undermines their ability to carry out their jobs, justly, correctly and safely. It also contrary to the reality of domestic violence as experienced by those at the coalface: family law practitioners, judiciary and police themselves.

<https://www.facebook.com/QueenslandPolice/photos/a.10150704734123254/10156130447138254/?type=1&theater>

<https://www.whiteribbon.org.au/understand-domestic-violence/what-is-domestic-violence/controlling-relationships/power-and-control-wheel/>

After many years of criticisms, including scrutiny around the management of finances and treatment of staff, White Ribbon has since gone into receivership. It seems inconceivable that a charitable organisation that operated on both government grants and public and corporate donations would be criticised in relation to the management of finances, and the provision of actual real-world services and support to victims, and finally meet its demise because of the inability to manage the millions that had gone through its coffers in good faith. It can be seen as an abuse of trust of both public and private money and a failure for victims: female victims only, in this case.

<https://www.smh.com.au/opinion/as-its-dramatic-debt-is-revealed-can-white-ribbon-survive-20190219-p50yx1.html>

These are additional reasons why government departments need to disregard accreditation.

There are now national domestic violence charities, such as EndallDV, that provide gender neutral workplace training.

State Child Protection Services

Child protection agencies can make mistakes. They can make an error in relation to risk by either separating a child from its household incorrectly, or worse failing to act with a child is genuinely at risk. Of significance though, is that most state child protection agencies operate more effectively, appropriately and responsively than either the Family Court or the state based courts that hear AVO/DVO applications.

In response to allegations, more protection agencies:

- Require corroboration or substantiation
- Have an internal process that is multi-tiered with the input of an independent (to the assessing team) legally qualified, before the matter is then legally assessed again by the litigation team
- Has a Case management process that attempts to work with the parents
- The powers to remove children normally have strict review periods (such as 3 or 28 days)
- Have a balance of probabilities standard of proof
- Legal Aid is available for the respondent
- Has an appeal process
- Has a complaints mechanism (which in some states has been criticised and revised)
- Can commission independent reports
- The Departments pay for all related costs (such as reports and workshops etc)
- Has a strongly pro-reunification approach acknowledging that children should be with their parents where there is no or a managed risk

Compare this to a DVO/AVO application in a local court: where an applicant can obtain a protection order of uncorroborated subject allegations, that can force a Father immediately from his home and children. This could be in place for years.

Or the Family Court at urgent interim hearing, where allegations with a low level of evidentiary requirement may also result in the removal of a Father from his home and his children's lives until a final hearing, which could be years later.

Many state child protection agencies are also accredited with domestic violence training that is based on the discredited and harmful Duluth model. This means that those departments will have a false understanding of domestic violence and be biased in their assessment of perpetrator and victim. These accreditations need to be abolished.

Family Dispute Resolution Practitioners and Mediation

Family law proceedings are often adversarial in nature, and as such exacerbate conflict and trauma and are not in the best interests of children or adults. It is recommended that every effort should be made to avoid families being exposed to the ongoing high family conflict of Family Court proceedings and the adversarial process generally. The use of other Family Dispute Resolution processes such as Mediation should, in almost every matter, be the first point of call.

A study conducted three years ago by Judge Harman in Parramatta and Albury demonstrated that a relatively small minority had attempted mediation prior to filing even in parenting cases. With 62.4% of parents in 2014 reporting that they did not attempt to use non-adversarial family dispute resolution to resolve their dispute and with only 41.3% of parents in the same year reaching an agreement through family dispute resolution, more efforts need to be made to increase genuine non-adversarial attempts to resolve family law disputes in the interests of preventing further psychological trauma to parents and children.

J Harman, 'Should mediation be the first step in all Family Law Act proceedings?' (2016) 27 ADRJ 17.

Domestic Violence is an exception to FDR in parenting matters: s.60I (9)(b) Family Law Act, with a s.60I certificate being obtainable in those cases.

Nearly a third of all s.60I certificates issued were because the other party failed to attend. More than half of all litigants came to court without having a s.60I certificate, relying no doubt on the exemptions in the legislation; but it is not clear to what extent those reasons were scrutinised, or other dispute resolution options explored, before the parties joined the long list of those waiting for hearing dates.

J Harman, 'Should mediation be the first step in all Family Law Act proceedings?' (2016) 27 ADRJ 17.

Section 60I itself provides that even when a party claims an exemption from attempting mediation, "the court must consider making an order that the person attend family dispute resolution with a family dispute resolution practitioner and the other party or parties to the proceedings in relation to that issue or those issues." Section 60J provides that even where the exemption applies, "a court must not hear the application unless the applicant has indicated in writing that the applicant has received information from a family counsellor or family dispute resolution practitioner about the services and options (including alternatives to court action) available in circumstances of abuse or violence."

Family Law Act 1975 (Cth) s.60I(10)

The Act therefore expresses a strong intention first of all that prior to filing, mediation will be

attempted in parenting disputes, and secondly that even where somebody comes to court without a section 60I certificate, the court should consider the possibility of referring them out to a dispute resolution process. Of course, that need not be face-to-face mediation. There are a range of alternatives by which negotiations could occur, including shuttle mediation or mediation by video so that the parties do not need to meet in person. Legally assisted mediation has also proven beneficial in cases where there has been a history of family violence.

The question is whether more than lip service is in practice paid to the legal requirements contained in ss.60I and J of the Act. There does not seem to be any systematic gate keeping process that explores the efforts the parties have already made to attend dispute resolution or otherwise to access counselling and support services. One way of dealing with situations where a section 60I certificate is issued because one party has failed to attend mediation is that the court would have a discretion to impose an immediate cost penalty at the first mention if the failure to attend mediation is without reasonable excuse and the result of the court event is an order that the person attend a dispute resolution process. The cost penalty might be both a lump sum to defray the legal costs of the other party for the mention, and some payment in respect of court costs.

The community is still not fully aware of alternative dispute resolution options such as Mediation, and unfortunately some Family Legal practitioners don't advise their clients of Mediation as a preferable option. There has been acknowledgement within the legal industry, that some Family Legal practitioners actually exploit the Family Law Act 1975 provision for the "exception to Family Dispute Resolution/Mediation due to Domestic Violence" whereby the Family Dispute Resolution/Mediation process is completely bypassed due to Domestic Violence allegations.

The s.60I (9)(b) Family Law Act exception is too broadly expressed and all too readily activated in no-one's interest other than the legal practitioners. We feel that except where the impact of violence is severe, FDR is not only preferred by the parties, but it is in the best interests of all, including the children. s 60I certificates should be issued only if it is clear that mediation options have been exhausted or if both sides agree to continue to negotiate via a collaborative process.

We believe that Family Dispute resolution Practitioners too readily facilitate the exception to FDR. When Family Dispute Resolution Practitioners issue a Section 60I Certificate, they need to feel safe enough to be honest with regard to whether a client has indeed made a genuine effort or not. It is well acknowledged that Family Dispute Resolution Practitioners avoid using the "party or parties did not make a genuine effort" Section 60I Certificate, due to the harassment that can ensue from either the client, or the client's Family Legal practitioners in the aftermath.

Report writers and family consultants

Expert reports should not be seen to replace judicial decision making, but with time-poor courts, it is often seen as exactly that. There is widespread disquiet about the practices of private report writers (ie those not employed in the courts), whose reports are relied on in court and which can prove difficult (and expensive) to challenge, particularly for self-represented litigants. We receive substantial volumes of concerns about the quality of private reports in children's matters, and consider greater oversight and accountability to be essential. Concern has also been expressed about the fees charged by some private report writers, and the delay for production of reports. Families are often forced to delay court proceedings while they wait for lengthy periods to receive family reports.

At the moment the engagement process appears to be a closed shop, like many other associated services within the industry. The engagement process should be a process of consultation between

the parties, not only in relation to the choice of reporters and cost but also the terms of the engagement. The Family Court should maintain a publicly available list of accredited private family law report writers with information about their qualifications, experience and price as part of the Accreditation Register.

ABF supports mandatory national accreditation for private report writers, Government should prescribe minimum standards for family consultants who are not employed by courts, and ensure that they are subject to adequate supervision and accountability mechanisms. Consideration should also be given to regulating fees that can be charged.

Alternatively, the courts should be funded to employ a full complement of family consultants who would, as public officials, be subject to accountability measures relating to training, ongoing professional development, and complaint-handling. The Act should also provide for family consultants to be involved from as early a stage as possible in families' engagement with the courts.

The Australian Government should task the Family Commission to develop a national accreditation system with minimum standards for private family report writers as part of the newly developed Accreditation Rules. ABF would further recommend greater oversight and accountability of report writers whose work is to be relied on in court.

Supervision agencies and contact centres

The default court position between interim hearing and final orders, where there are any allegations of domestic violence, abuse or risk, appears to be to order supervised access. This is unsatisfactory on multiple grounds.

The time between interim hearing and final orders means that the system of supervision may be in place for years. Often, just after a relationship breakdown, this means a parent (once again most often the father) transitions from a significant, meaningful live-in parenting arrangement to an to maybe 2 hours a week of closely supervised and controlled access at a cost. This change and loss of meaningful contact is very impactful upon the parent being supervised and on the children who no longer have the connection and time with that parent.

Often supervision is sought not for reasons pertaining to parental capability, but on the back of domestic violence allegations made by a parent, subject to all of the issues around such claims referred to elsewhere in this document. The restricted access is often also used as leverage for the property settlement while that remains before the court: where the child is held as emotional blackmail for a favourable outcome.

To practically any parent, and change in care-giver status to supervised access is humiliating, invasive and psychologically harmful. Many of the agencies administer their duties unprofessionally, and with bias towards the primary care giver. Their staff have significant variance in capabilities and qualifications. The agency can become perceived as yet another service within the industry that is hostile, biased and unsupportive.

The cost is also extraordinary and can amount to tens of thousands of dollars over years if it remains in place. Often the engagement process requires the mandatory provision of reports prepared at additional cost. Many parents cannot afford these services.

The delay in intake processes and commencement times, particularly for government subsidised agencies can be extensive and in-turn crippling to child-parent relationships.

We have received regular reports of the following agency conduct:

- Lawyers for the primary care giver drafting orders referring only to agencies with which they have an existing favourable relationship
- Despite there being many agencies and new agencies trying to provide services to the market, legal practitioners seem to funnel referrals through to agencies with long waiting lists
- The Mother making false defamatory statements on the intake process, resulting in the agency refusing the engagement (despite court orders): and this refusal then being used against the father in proceedings
- The management and supervisors displaying unprofessional conduct and gender bias
- Excessively unjustified restrictions on the visits disproportionate to risk
- Excessive scrutiny of the visits, including standing over the supervised parent with a notebook
- Control over who may attend the visits: often excluding extended families
- The Primary care giver colluding with the agency to find grounds to have the supervision terminated and this then used against the father in proceedings
- New (gender neutral) agencies unable to enter the market because of the closed-shop nature of the industry

Some agency staff state that in their opinion up to 80% of supervised access is not warranted and only applied as a tactic before the court and a form of abuse and control. ABF recommends that in many cases their needs to be another tier of “controlled” access between supervised visits and unconditional access.

There is a current lack of accountability and oversight when operating a private or full fee paying CCS in Australia – there are no requirements whatsoever to operate such a service. This total lack of oversight is having negative effects on father’s as the primary customer, vulnerable children and family members who are accessing some of these services. We have had significant reports of unconscionable and unprofessional conduct by these services.

Government funded CCSs are subject to the Families and Children Activity Administrative Approval Requirements and the Children’s Contact Services Guiding Principles Framework for Good Practice but are not subject to an accreditation process either – ABF considers while there is a need for regulation across the CCS sector, to ensure safe, professional, impartial, gender neutral and high-quality services are provided by both government funded and private services.

Legal Aid and ICLs

Legal Aid should be available to all on the basis of need and financial circumstances. This should include making representation available for defendants of AVO/DVO applications.

The role of Independent Children’s Legal practitioners has not provided an effective mechanism for children’s participation, noting the findings presented in the 2014 evaluation by AIFS and the findings

presented in a report from the 2018 AIFS study. It is an inevitable consequence of unreasonable expectations and function creep.

Anderson, Graham, Cashmore, Bell, Beckhouse and Alex, Independent Children's Legal practitioners: Views of Children and Young People, 2016

The Independent Children's Lawyer is regularly criticised for not adequately representing the views of the child. Many children reported negative or counterproductive experiences with the ICL's representing them (as did many parents in the matters), including the need for more interaction, and to have court outcomes and how their views are expressed to the court's decision making process explained to them.

Children often never meet their court appointed independent children's legal practitioners (ICL) and receive little to no consistent information about court processes. There is no requirement for the independent children's legal practitioners to have any specific training on children's developmental, psychological and emotional needs, child welfare or the impact of domestic and family violence on children, which means children are often left unsupported and unheard.

Many Fathers state that the ICL seems hostile, bias and not impartial. Professional bias and/or experience leading to these sorts of comments compounds in situations where there is little time and a distressed or aggressive party to deal with. We strongly recommend that any improvement in the court's ability to compel truth-telling and provision of complete evidence extend to these professionals.

Case study accepted by the committee as confidential

Judicial staff

ABF considers that:

- judicial vacancies should be advertised and applications solicited, making clear that applicants will be assessed against core competencies and experience, as articulated in the proposed workforce capability plan
- the Commonwealth Attorney-General should consult Heads of Jurisdiction of all federal courts and of state and territory child protection courts the Commonwealth Attorney-General should meet with Heads of Jurisdiction at least once a year to identify/confirm upcoming vacancies and emerging need in particular registries and for specialist lists, and vacancies should be filled, at the latest, within 3 months of arising, unless they arise unexpectedly; if they are not, the Attorney-General should be required to provide to Parliament a statement explaining why this has not been possible.
- Government could require applicants to undergo prescribed training before applying for a judicial appointment. That training could be developed by the National Judicial College of Australia.
- We concur with the observation of the National Judicial College of Australia that section 22 of the Act (if amended) could usefully be amended to recognise the need for, and merits of, ongoing training for judicial officers.

ABF recommends that a Judicial Commission be established to cover at least Commonwealth judicial officers exercising jurisdiction under the new Act. This Commission should be required to receive, investigate, examine, hear and decide on the merits of complaints and to impose appropriate sanctions, having regard to the limitations imposed by Chapter III of the Constitution.

All judicial officers, of any court, who are required to exercise family law jurisdiction at any time should be required to have competency in a broad range of areas including child development and health, forms of attachment (including multiple attachment e.g. in Aboriginal families), sibling relationships, addiction, mental health, violence, parental alienation and other related harms and the effects of various types of harms upon children and parents. All training should be gender neutral.

For financial cases, judicial officers should understand the effects of financial abuse and control through financial means and the effects on parties and children and deprivation and lack of resources.

Case study accepted by the committee as confidential

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

Impact on families

The Family Law System causes grave intergenerational harm Australians. It is time that we exposed and quantified this, and addressed it as the risk and burden it represents to our society.

The Family Law System harms good people and fails to protect good people. The Family law System triggers troubled individuals and facilitates further harm. After decades of increasing emphasis on violence and corresponding “protections”, tragedies perpetuated by both men and women vividly demonstrate the total inability of the system to protect families.

It drives thousands of people to their deaths by suicide. For every one of those successful suicides there are 30 attempted suicides. On the spectrum to self harm there are tens of thousands of more individuals gravely harmed and no longer productive functional parents, partners or members of our society.

For every harmed parent, there may be children suffering.

The Family Court is the area of law by which most people will come into contact with the justice system. In 2018, 49 032 divorces were granted in Australia (Australian Bureau of Statistics), representing a divorce rate of approximately 41% and nearly half of all divorces involve children under the age of 18 years old. 19,594 Applications were filed in the Family Court with 14,081 consent orders finalised in 2018-2019.

Family Court Annual Report 2018-2019

There has been a slow but inexorable rise in the numbers of people with children separating over the last 20 years. About 40 per cent of all children will experience one of their biological parents living elsewhere by the time they are 15–17 years old – an increase from around 25 per cent some 20 years ago.

Australian Bureau of Statistics, Family Characteristics and Transitions, Australia, 2012-13, ABS 4442.0 (released February 2015).

D de Vaus & M Gray, 'The changing living arrangements of children, 1946–2001' (2004) 10 Journal of Family Studies

The Attorney General said that we have a responsibility to ensure that systems in place to assist families are as efficient as possible and that the system itself does not exacerbate that trauma of family breakup, especially for children.

“Court reforms to help families save time and costs in family law disputes” Media release 30 May 2018

On the contrary, the Family Law System intervenes in the dissolution of marriages/defactos, and makes this life transition disproportionately agonising and harmful. Divorce ranks behind only one other catastrophically traumatic event that a person can experience: the death of a partner. Many have pleaded that loss of access to a child is like experiencing perpetual and unresolved grieving.

The Family Law System can impact and take away some of the most fundamental and important elements of a person's life, reasons for being and the components that define a person:

- Life plans and ambitions, hopes and dreams
- Family, and access to children
- Access to and ownership of a home
- Financial security
- Physical and mental health and wellbeing
- Employment and career
- Liberty and reputation
- Individual control and security

People who undergo divorce face a variety of psychological issues. The Separation process itself can significantly increase stress and trauma. Common emotional and psychological effects of divorce include:

- Grief and loss
- Guilt
- Anxiety/stress
- Depression
- Insomnia
- Substance abuse
- Identity crisis

In the association for Psychological Science 2009 "Under pressure: The Impact of Stress on Decision Making", Science daily , 16 September 2009, found prolonged exposure to stress, as occurs in the Family Law System impairs decision making. Elevated stress:

- Cognitive resources are deteriorated
- Undermines balanced and logical decision making
- Reduces the capacity of working memory
- Causes premature closure in evaluating alternative options
- Lowered ability to distinguish important from less important detail
- Increased insensitivity to changes in outcome value
- Causes self fixation
- Ignorance of negative consequences of their choice on others

<https://www.sciencedaily.com/releases/2009/09/090915174459.htm>

The studies have shown that both the structural and functional changes triggered by stress are reversible when the stress is reduced. Assisting people to manager their internal states through effective stress management, education and information at the point of entry into the Family Law System, could greatly enhance decision-making and assist in building resilience for those navigating the system.

Bendaghan, S., Goette, L., Thoresen, J. C., Loued-Khenissi, L, Hollis, F., & Sandi, C. (2017), "Acute stress alters individual risk taking in a time- dependent manner and leads to anti-social risk", European Journal of Neuroscience, Vol 45, pp. 877-885

Prolonged uncertainty about parenting arrangements and finances, coupled with legal cost and the mutual blame casting encouraged by the adversarial process can have a significant impact on peoples health and wellbeing.

Prolonged family conflict can utterly deplete the emotional, physical, social and financial resources of families, drive them into hopeless cycles of debt, inhibit productive workforce and social participation, and cause intergenerational conflict and welfare dependency. We know that prevention and early intervention can stop this cycle before it fastens its grip. There is, therefore, every reason for society to take all possible steps to shift social expectations that judicial resolution is inevitable, is the 'gold standard' for family dispute resolution, or guarantees ultimate vindication for aggrieved adults.

The grief, the loss, the pain, frustration and disempowerment felt by Australians engaging with the family law system happens largely out of public view. The laudable aim of wrapping family law proceedings around with a cloak of privacy and dignity has rendered invisible the daily hurts endured by children and parents for over 40 years. It allows death, loss, pain, trauma and financial ruin to trickle, day by day, into our broader community. Its invisibility permits systematic under-resourcing and de-prioritising relative to those public issues which can display, to galvanising effect, the effects of chronic underfunding and political disengagement. It allows for family law practitioners to engage unmitigated in some of the most unconscionable conduct within our society. Conduct that can kill. It allows policy makers to believe that a dysfunctional and dangerous family law system is just another, albeit regrettable, part of modern society, enabling them to prioritise other, more publicly visible problems that can be managed with media-friendly fixes.

This trauma not only impacts the children and families before the courts - but also those assisting them at all levels - from judicial officers to front desk workers, from legal practitioners to legal assistants and those involved in other forms of counselling and dispute resolution.

As Many as 21 Fathers a week

The ABF produced a suicide awareness campaign called 21 Fathers based on reports made by other men's advocacy groups including Lone Fathers, The Men's Rights Agency and Dads In Distress who suggested a base number of 3 fathers a week were ending their lives as a result of the stress and grief around relationship breakdowns, divorce, separation from children, financial duress and navigating the Family law System and Child Support Agency.

This is a profoundly serious proposition. This death rate (~1092) would be on par with the national road toll (1182 in 2019), but instead of attracting millions of dollars of funding, is it invisible, unstudied and disregarded by the community.

This controversial figure has been questioned: and we agree, a more precise figure needs to be obtained through research. The criticisms levelled at the figure, focus of the precision of it and the fact that current research, data and information indicates that we cannot know with conclusively certainty that this figure is correct. Is uncertainty a basis to dismiss the carnage?

We concede the exact figure is currently unknown, but the catastrophic suicides rates are unequivocal, and the link between calamitous events such and divorce/relationship breakdown and suicide unequivocal. From the data that we have, and in the absence of definitive focused research we can still conclude that the actual number of suicides of Father's going through divorce in Australia is profound and devastating to our society, our families and our children.

<https://bmcpublihealth.biomedcentral.com/articles/10.1186/s12889-016-3702-9>

The 21 Fathers was derived from conservative assumptions resulting in a figure of around 19.6 male suicides as week due to family court issues.

- Australian Suicide rate (2017) 3,128.

"Causes of Death", 26 September 2018, Australian Bureau of Statistics, <http://www.abs.gov.au/causes-of-death>

- Since 2014, on average, six men have committed suicide every day in Australia (42 a week). The number of men who die by intentional self-harm every year is nearly double the national road toll—2,348 suicides compared to a total of 1,225 road deaths in 2017

Australian Bureau of Statistics (ABS), in 2017

- In Australia, 48% of all suicides in 2000 were by 35 to 64-year-olds; an additional 13% were by 65 year olds and over.

Australian Institute for Suicide Research and Prevention, *Australian Institute for Suicide Research and Prevention, 2011, archived from the original on 10 March 2012*

- In 2017, about 75% of people who died by suicide were males and 25% were females (three times greater rate)
- The Australian Institute of Health and Welfare now reports that the suicide rate for men aged 20 to 39 years has risen by 70 per cent over the last two decades

Wendy McElroy, 'Are Fathers' Rights a Factor in Male Suicide', *Fox News*, January 15, 2015, at <https://www.foxnews.com/story/are-fathers-rights-a-factor-in-male-suicide>

- The Australian Family Association, 'Submission to the Parliamentary Inquiry into the Child Support Program' submissions reveal an alarming level of suicides by post-separation fathers who are alienated from their children. After analysing the suicide rate amongst non-residential fathers, that submission reported that 'the death rate amongst child support payer fathers is double the rate of Australian males who do not have administrative child support assessments'

The Australian Family Association, 'Submission to the Parliamentary Inquiry into the Child Support Program', 31 January 2015, p 6.

- In an academic paper by Susan Beaton and Peter Forster. Published by the Australian Psychological Society, these two experts in suicide preventions explain that 'suicide is the number one killer of men under 44 years' in Australia, and that the dramatic increase in male suicide is at least partially due to 'marriage breakdown ' coupled with 'poorer social support among ... divorced males'.

Susan Beaton and Peter Forster, 'Insights into Men's Suicide', Australian Psychological Society, August 2012, at <https://www.psychology.org.au/inpsych/2012/august/beaton/>

- Global suicide rates of males are highest in those western countries with gendered approaches to Family Law, such as Australia.

https://www.griffith.edu.au/__data/assets/pdf_file/0033/359754/GriffithMen_WEB.pdf

- For every suicide there are between 20 to 30 unsuccessful attempts

<https://www.blackdoginstitute.org.au/resources-support/suicide-self-harm/facts-about-suicide-in-australia/>

- In a 12 month period, from July 2015 to June 2016, there were 112,637 ambulance attendances for men experiencing acute mental health issues.
- A report provides further detail on self-harm related attendances, stating there were 30,197 in the 12 month period (306 male per 100,000), including self-injury, self-injury ideation (or threat), suicidal ideation (thoughts), suicide attempt and suicides, and almost all of these cases were transported to hospital. There were almost twice as many ambulance attendances for suicidal ideation than attempts, but both often involved police

https://www.beyondblue.org.au/about-us/about-our-work/suicide-prevention/beyond-the-emergency?utm_source=facebook&utm_medium=organic&utm_campaign=beyondtheemergency_may19&utm_demo=all&utm_targeting=followers&utm_format=link&utm_create=infographic&utm_objective=traffic&utm_id=beyondtheemergency0003&fbclid=IwAR3WYsk1jTkb1YbVmsZ1oiNny3S_5VXUmtXC99gI995ZcE8_kLPg1gZgmq

- Suicide and self-inflicted injuries were found to have contributed a total of 49,916 DALYs, with more than two-thirds accounted for by males. (DALY describes the "amount of time lost due to both fatal and non-fatal events, that is, years of life lost due to premature death coupled with years of 'healthy' life lost due to disability").

Begg et al., 2007

- Using a large nationally representative sample, Sociology Professor Kpsowa of the University of California at Riverside, noted that the risk of suicide among divorced men was 2.4 times higher than that of their married counterparts. (Amongst women, however, there was actually no statistically significant differentials in the risk of suicide by marital status categories). Indeed, divorced men were nearly 9.7 times more likely to commit suicide than comparable divorced women. This leads to the conclusion beyond any reasonable doubt that marital status, especially divorce followed by the loss of access to children, has strong net effect on mortality from suicide, 'but only among men'

Augustine J Kpsowa, 'Marital Status and Suicide in the National Longitudinal Mortality Study' (2000) 54 Journal of Epidemiological Community Health 254-261, p 254.

- According to professor Kpsowa, divorce following the loss of contact with their children has become a major factor of male suicide. 'As far as the divorced man is concerned, he has lost his marriage and lost his children and that can lead to depression and suicide', Professor Kpsowa says.

Augustine J Kpsowa, 'Marital Status and Suicide in the National Longitudinal Mortality Study' (2000) 54 Journal of Epidemiological Community Health 254-261, p 254.

- If matter goes through court to trial: Mothers 4 times more likely to get sole parental responsibility, Fathers 15 times more likely to get no contact orders than mothers. (along with corresponding financial benefits from property settlement, maintenance and CSA).

<https://aifs.gov.au/publications/parenting-arrangements-after-separation>

- 50.5% of those surveyed going through the Family Court system did not have contact with their children (as a subset of 82.4% that had restrictions of access of some kind). Those without contact had higher mental health issues (including an alarming 20.3% with suicidal ideation: which is far higher than those levels in the general population)

The ABF Survey of 1000 Fathers Appendix E

- The suicide rate amongst Aboriginal and Torres Strait Islander peoples is more than double the national rate. In 2015, suicide accounted for 5.2% of all Indigenous deaths compared to 1.8% for non-Indigenous people

ABS, Causes of Death, 2015

Professors Kpsowa further wrote: "Some analysts argue that societal institutions tend to ignore or minimise male problems as evident in suicide statistics. For instance, in many jurisdictions ... there seems to be an implicit assumption that the bond between a woman and her children is stronger than that between a man and his children. As a consequence, in a divorce settlement, custody of children is more likely to be given to the wife".

Dr. Kpsowa suggested that society has undervalued the strength of paternal-child bonds, and thus underestimated the traumatic effect of severing those bonds through our typical custody arrangements. Further, we fail to appreciate the catastrophic financial impact of divorce on men, and the anger and resentment engendered by losses of both property and status in the wake of a divorce settlement.

In the end, the father loses not only his marriage, but his children. The result may be anger at the court system especially in situations wherein the husband feels betrayed because it was the wife that initiated the divorce, or because the courts virtually gave away everything that was previously owned by the ex-husband or the now defunct household to the former wife.

Events could spiral into resentment (toward the spouse and “the system”), bitterness, anxiety, and depression, reduced self-esteem, and a sense of “life not worth living”. As depression and poor mental health are known markers of suicide risk, it may well be that one of the fundamental reasons for the observed association between divorce and suicide in men is the impact of post divorce (court sanctioned) “arrangements”

Augustine J Kpsowa, 'PostScript: Divorce and Suicide Risk' (2003) 57 Journal of Epidemiological Community Health 993.

Of course, the problem is not restricted to Australia. In the UK, a study commissioned by the Samaritans involving eleven leading social scientists concluded that marriage breakdown and a family court system perceived to favour women with the custody of children and the family home (even where these men are unemployed and have nowhere else to go) are significant factors in the suicide of countless men. When marriages fail, the research paper concluded, ‘men are less likely to be awarded full custody of their children, more likely to be displaced from the family home and have less access to their children’. This means the loss of personal identity, social status and respect. Adding to loneliness and the natural isolation of so many men in their mid-life, these are significant causes the high risk of male suicide.

Clare Wyllie, Stephen Platt, Julie Brownlie, Amy Chandler, Sheelah Connolly, Rhiannon Evans, Brendan Kennelly, Olivia Kirtley, Graham Moore, Rory O'Connor and Jonathan Scourfield, 'Men, Suicide and Society: Why Disadvantaged Men in Mid-Life Die by Suicide', Samaritans Research Report, September 2012, p.25, p43

'Men and Suicide: Why It's a Social Issue', Samaritans, July 2015 p.10.

The causes of suicide are complex. Factors that may contribute to suicide include:

- stressful life events
- trauma
- mental illness
- physical illness
- drug or alcohol abuse
- poor living circumstances

All of these elements could be present in a divorce in the Family Court System

By contrast, there are protective factors that make us more resilient and can reduce suicidal behaviour, such as:

- supportive social relationships
- a sense of control

- a sense of purpose
- family harmony
- effective help-seeking
- positive connections to good health services available

The Family Court System impedes or harms these protective factors.

The Impact on Mental Health

The impact of family law proceedings on the health, safety and wellbeing of children and families involved in those proceedings has been outlined above. The extended duration of family law proceedings and current court backlogs, coupled with the complexity of proceedings and the uncertainty of entitlements and outcomes, negatively impact the mental health of both the adults and children involved in the proceedings. Many adults who experience a relationship breakdown and subsequent family court proceedings experience psychological distress. Separation and/or family law proceedings may exacerbate existing mental health issues or contribute to the development of a mental health issue.

(Royal Australian and New Zealand College of Psychiatrists RANZCP)

RANZCP has found:

- The mental health of adults and children is negatively impacted by relationship separation and family law proceedings.
- The nature of the family law system exacerbates difficulties experienced by families during proceedings, particularly families with complex needs.
- Clearer pathways should be developed between the family law system and mental health services to ensure that individuals and families can access the support and treatment they need during and after family law proceedings.
- To protect the mental health and wellbeing of individuals and preserve the therapeutic relationship between the individual and their medical practitioner, medical and, in particular, psychiatric records should be more rigorously protected from being released by subpoena.

Mental health and wellbeing of adults

Separation 'is associated with increased rates of depression, suicidal behaviour and overall high levels of mental health problems'. Research has demonstrated that there is a bidirectional relationship between separation and mental health issues, indicating that 'separation leads to increased rates of mental health problems but also that mental health problems lead to increased risks of separation'. Therefore, many individuals come to separation and subsequently family law proceedings with existing mental health issues. As a result of existing mental health issues, these individuals may be more vulnerable to the stressors associated with family law proceedings.

Mental health issues and associated vulnerability may be compounded by factors such as family violence, child protection issues, migration, housing stress and involvement in the criminal law system.

Fitzroy Legal Service and Darebin Community Legal Centre. Submission to ALRC Family Law Review. 2018. Available at: <https://d3n8a8pro7vhmx.cloudfront.net/fitzroylegal/pages/77/attachments/original/1525820408/ALRCReviewsubmissionMay2018.pdf?1525820408>

These complex social and economic factors and their interaction with mental health are challenging for the family law system to address and can exacerbate separation-related needs. Individuals and families with complex needs may also have difficulties understanding the processes, terminology and rules associated with the family law jurisdiction and repeating their 'story' many times. Navigating these challenges may aggravate existing mental health issues, particularly for individuals who are self-represented or change their legal representative multiple times.

House of Representatives Standing Committee on Social Policy and Legal Affairs. A better family law system to support and protect those affected by family violence. Canberra: Commonwealth of Australia; 2017.

Australian Law Reform Commission. Review of the Family Law System: Discussion Paper. Queensland: Australian Law Reform Commission; 2018.

Family Law Council. Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems: Final Report. Canberra: Commonwealth of Australia; 2016. Available at: <https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Documents/Families-with-Complex-Needs-Intersection-of-Family-Law-and-Child-Protection-Systems%E2%80%93Interim-Report-Terms-1-and-2.pdf>

Given this, the Family Law System should specifically be developing and applying policies that act to minimise risk to the mental health of all that appear before it; father's and mothers. As the system operates at the moment, it does the very opposite, and driven by layers and acrimonious parties it actively seeks to damage the mental health of participants.

Mental illness and stigma

Twenty per cent of family violence incidents recorded by Victoria police between 2013 and 2014 identified mental illness as a risk factor among perpetrators of family violence. There was a particularly strong association between recidivist-identified perpetrators and mental illness (Thomas, 2019).

<https://www.aph.gov.au/DocumentStore.ashx?id=5474d948-c688-4463-a9b7-4b7252ec2dde&subId=679536>

It is important to note however the overwhelming majority of people with a mental illness are not violent.

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

<https://link.springer.com/article/10.1023/A:1022079418229>

Biases and stigma in relation to mental illness operate within the family law system to negatively impact those who are parenting with mental illnesses and/or disabilities. The Family Law Act 1975 (Cth) allows the Court to consider a parent's capacity to 'provide for the needs of the child' in making parenting orders. However, courts may equate mental illness or disability with an incapacity to properly parent, due to misconceptions about the nature of a particular mental illness or disability.

This can affect parenting orders made, and reduce the time that a parent experiencing mental illness or a disability spends with their child, despite the mental illness or disability having no effect on the parent's parenting capacities or adversely affecting the child's best interests.

Pascoe J. Litigants with Mental Illness. *Australian Family Lawyer*. 2013; 23(2): 21-26.

Ryan J. Mental Health and Family Law - A Question of Degree. *Federal Judicial Scholarship*. 2006;

It is the ABF's experience that parents presenting with mental illness, whether is an existing illness or if it is related to the stresses of divorce and the Family Court System, are dealt with very poorly by the court. In our opinion, this borders of discrimination of behalf of the court, and almost criminal activity on behalf of the legal representatives who may target the frailties inherent in the illness of the opposing party.

This targeting is not symmetrical. In our experience, mental illness of behalf of the father will be seen as an issue in relation to parenting, risk and behaviour: even if this illness is a product of the system or actions of the other party. Practically any mental illness on behalf of the Mother will be presented as resulting from the actions of the Father and given that likelihood that the Mother has primary care, will be seen as actions of the Father negatively impacting the children by impeding her ability to provide care.

A further agony is suffered by those within the system. The definition of domestic violence in several jurisdictions now includes "threats of suicide", as a form of emotional abuse amounting to domestic violence. This is perhaps the ultimate betrayal of those most needing help. Father's with suicidal ideation risks having that fact defined as domestic violence should they have ever turned to their spouse for support. Such individuals are also deemed a "risk" by the system, and Father's that disclose their pain will have this used against them in parenting matters. As we will see below, Father's cannot even safely turn towards mental health support, as the subpoenaing of their medical records will disclose such ideation anyway.

All this adds up to many law firms advising desperately unwell Father's to not risk seeking support, except from trusted friends and family, if available. Those friends and family also face the challenge that if they escalate the Father to emergency services, their actions will be responsible for this being used against the Father in parenting matters.

Many Father's feel understandably feel they have no-one to turn to; that the system gives them no-safe option for support, and they often chose not to seek any.

For about 21 father's per week, this ends catastrophically.

We have already identified how the Family Court System can cause mental illness or exasperate existing mental illness. The sustained and prolonged stressors of the system are very difficult to navigate for the healthiest and most resilient of individuals. Those suffering from benign mental illness but who function well professionally, within the community and as a parent may find their ability to cope severely compromised within every stage of the system. The resultant coping mechanisms, anger, frustration, venting, etc are misinterpreted and used against them. It is for this reason that we strongly advocate for mental health training for all within the system from law enforcement personnel, court administrative staff and most importantly, judicial members.

Appropriate training should be available to the above family law professionals in relation to mental health issues and disabilities so that proper assessments can be made in relation to whether the parent's mental illness affects their capacity to parent. This training would decrease the tendency to equate mental illness with a lack of capacity, or with dangerous behaviours, eventually allowing more parents with a mental illness to care for and spend time with their children in a meaningful and safe way.

We do not endorse family law practitioners attending such training.

It is the nature of their industry for many to look to weaponise knowledge for the advantage of their client and case. We feel that family lawyers will just continue what we now know happens: and that is to exploit mental health issues to trigger outcomes, and to stigmatise opponents before the court.

Patient–psychiatrist confidentiality: the issue of subpoenas

We refer to the RANZCP October 2016 Position statement number 89.

<https://www.ranzcp.org/confidentiality>

We have discussed how the Family Court System can cause mental health problems or exasperate existing ones. The family Court System also makes it difficult for participants to seek effective treatment at the time that they most need it. This is a serious concern that undauntedly contributes to both the harm and the suicide rate of those involved.

Effective treatment is impeded simply because those that seek treatment can have their clinical records subpoenaed and used against in court. Some Australia Family Law Firms go so far as to advise their clients to not engage with medical or mental health practitioners at all.

When compared to other common law countries, Australian law offers less protection for patients against access to their clinical records and the protection that does exist varies greatly across the federal, state and territory jurisdictions. As a result, patient records in both the private and public sectors may be subject to subpoena in Family Court matters (and both criminal trials and civil litigation). This has become a common event in court proceedings, even when the disclosure of these records appears to serve little evidentiary purpose and is likely to have severe effects on former, current and potential patients.

The Royal Australian and New Zealand College of Psychiatrists itself urges Australian governments to undertake law reform that recognises the importance of confidentiality in mental health care, confining breaches to rare cases where an overriding medical or legal purpose is served, such as ensuring patient safety. Overseas models can serve as a guide to law reform – in particular, the stronger protections available under New Zealand law.

Ethics

Effective diagnosis and treatment often requires a patient to disclose intensely personal matters to their doctor. Patients must be able to trust that these matters will not be disclosed to third parties. The Good Medical Practice Guidelines in Australia and New Zealand restate the ethical duty to 'treat information about patients as confidential'

(Medical Board of Australia, 2016; Medical Council of New Zealand, 2013)

Confidentiality takes on an even larger role in the psychiatric context. At its core, psychiatry involves developing a trusting relationship, listening carefully to people's most personal thoughts and feelings, understanding their mental state and working with them to identify and implement appropriate treatments, including therapy. Therefore, patients need to feel comfortable discussing relationships, emotions, memories and impulses of the most sensitive kind with their psychiatrist; to do so, they must feel confident that they are in control of what is disclosed and who it is disclosed to.

Quite often, this includes sensitive information about third parties such as family members who may be unaware that it has been communicated to the psychiatrist. The information often contains feelings towards family members, descriptions of interactions (including details of intimate relations or of sexual assaults) and highly subjective opinions and judgements about the personalities of family members. These notes are susceptible to misinterpretation when used outside of the therapeutic context.

There is already a system of adequate protection: A breach of confidentiality may be justified on rare occasions in order to promote the best interests and safety of the patient or other people. Psychiatrists may have a duty to inform the intended victim(s) and/or relevant authorities.

Impact of forcible disclosure on patients

When their clinical records are disclosed against their will, patients frequently feel ashamed, helpless and stigmatised. Successful therapy may become impossible in such circumstances; the relationship of trust with the psychiatrist may be permanently damaged, and in some cases, patients may be re-traumatised by the forcible disclosure. Actual or threatened disclosure can be particularly harmful for psychiatric patients, as they have an acute need for supportive, reliable, and trusting relationships.

When facing the prospect of legal proceedings, these impacts can be compounded by the rigours of the trial itself and the frequent impossibility of receiving effective ongoing therapy – a state of affairs that judicial authorities have recognised.

In a Canadian case considering the use of subpoenas to gain access to the clinical records of sexual assault victims, the following was acknowledged:

'At a time she would normally find support in the therapeutic relationship, as during the trial, she finds herself without support. In the result, the patient's treatment may cease, her distrustfulness be exacerbated, and her personal and work relations be adversely affected... She is doubly victimised, initially by the sexual assault and later by the price she must pay to claim redress...' (M. (A) v. Ryan, 1997).

Unwanted disclosure of patient records may not only impair therapy, it can also raise questions about the fairness of court proceedings that use clinical records as evidence:

Similar issues arise in many legal contexts such as family law, where the clinical records of ex-spouses are regularly sought in custody disputes. Documented instances exist where a parent has used this information to try to damage the relationship between the other parent and their children (SMH, 2014; Women's Legal Service NSW, 2016).

Again, judges have recognised that this is a potential danger arising from the compelled disclosure of clinical records:

'Made public and taken out of context, the disclosure of notes from therapy sessions could have devastating personal consequences for the patient and his or her family, and the threat of such

disclosure could be wielded to unfairly influence settlement negotiations or the course of litigation. Especially in the context of matrimonial litigation, the value of the therapist–patient relationship and of the patient’s privacy is intertwined with one of the most important concerns of the courts – the safety and wellbeing of children and families’ (Kinsella, 1997).

The very possibility of disclosure may lead patients to restrict what they say to psychiatrists – thereby increasing the possibility of misdiagnosis – or to avoid seeking treatment altogether (Levy et al., 2014). Many empirical studies have confirmed that prospective patients are more likely to censor themselves if they cannot be assured of confidentiality (Paruch, 2009).

Current status of clinical records under Australian law

The cost of issuing a subpoena to gain access to clinical records is negligible (Levy et al., 2014). The process of objecting to a subpoena, however, is frequently difficult, costly and uncertain, for a variety of reasons. As a result, conflict can occur between the needs of psychiatric patients and the legal system.

Australian common law does not recognise the need to protect clinical records from disclosure in court (ALRC, 2005; Fritze, 2005). The protection that does exist is contained in statute – primarily, the federal, state and territory Evidence Acts (the Acts). In this regard, the Acts remain far from uniform and Commonwealth law contains no protections at all (although state and territory evidence laws apply to Federal Court proceedings).

The underlying policy rationale is that confidentiality is necessary to encourage victims to both seek counselling and report the crime (ALRC, 2005). However, it is also acknowledged that the purpose of counselling is therapeutic, not investigative; consequently, the notes taken will often be unfit for the purpose of settling facts in issue during court proceedings and may instead be used to cast unwarranted doubts upon the credibility and character of victims (NSW Parliamentary Debates, 1997). The RANZCP shares this view and believes that it would be inconsistent to deny this protection to all other psychiatric patients.

Although the discretion may be sought by patients or granted on the judge’s own initiative, it is often the psychiatrist who assumes the burden of arguing for its use. The existence of the discretion makes it possible to resist unwanted access to clinical records, but – in the RANZCP’s view – it falls far short of what is needed to enable psychiatrists to meet their ethical duties. This is for a number of reasons, including the following:

- The Acts require patients and/or psychiatrists to prove – on the balance of probabilities – that disclosure might cause harm to the patient. Where psychiatric patients are concerned, we believe harm should instead be presumed on the basis of the known harmful impact of forcible disclosure on patients.
- The Acts also require patients and/or psychiatrists to prove that the nature and extent of this harm outweighs the desirability of the evidence being given. We believe that the party issuing the subpoena should bear the burden of arguing that the forensic value of the records outweighs the harm caused by their disclosure. Currently, the issuing party only needs to establish the relevance of the records sought.
- Harm is narrowly defined in the New South Wales and Tasmania Acts: actual physical bodily harm, financial loss, stress or shock, damage to reputation or psychological harm (such as

shame, humiliation and fear). This definition does not fully encompass the damage that can be done to the therapeutic relationship. As noted, patients sometimes feel betrayed by a psychiatrist who has been forced to disclose clinical records; it may be impossible to restore that trust and consequently impossible for the patient to receive effective treatment.

- The Acts list 10 factors that judges regard in turn when deciding whether to grant the privilege. The sequence emphasises matters related to the trial and sets a low priority on the needs of the patient in question and the practice of psychiatry more broadly. The likelihood of harm, and the nature and extent of harm that would be caused to the protected confider is the fifth factor listed. The public interest in preserving the confidentiality of protected confidences is the ninth factor listed; this is the point at which the deterrent effect on potential patients becomes a legal issue.

In regard to clinical records, Australian judicial authorities have held that '[the] professionally mandated ethical value of confidentiality, with no legislative or common law recognition [is not] likely to be regarded as significant in litigious processes' (Harricks, 2014). While judges have used their discretion to prevent disclosure in individual cases, it has been held that as a general rule the public interest in excluding records '[does not] at this point in time extend to or include protection of a clinician–patient or counsellor–client relationship. That may be regrettable on many levels. But it is the current state of the law' (Duffy, 2015).

When judges deem it necessary to admit clinical records into evidence, they are still able to modify courtroom procedures to reduce the harm caused to patients. By hearing the clinical evidence in a closed court that excludes the public, judges can administer justice in a way that helps avoid needless pain and suffering. Australian judges have recognised that the open-justice principle can be curtailed to protect victims of crime (John Fairfax, 1991). Therefore, a strong argument exists to extend that protection to others who may be gravely harmed by the invasion of privacy in court proceedings such as patients whose confidential and sensitive medical records are the subject of subpoenas. The International Covenant of Civil and Political Rights recognises that closed courts may be appropriate 'when the interest of the private lives of the parties so requires' (Article 14). Although Australia has ratified this fundamental human rights treaty, Australian courts rarely apply this provision (Davis, 2001).

Practical challenges involved in objecting to a subpoena

In the view of the RANZCP, patient confidentiality is poorly served by current laws and judicial practice, and the practical challenges faced when defending patient confidentiality are considerable. To object to a subpoena, a psychiatrist must, at short notice, copy and examine what may be a substantial body of material accumulated over several years. The psychiatrist may then have to cancel appointments to attend court and face cross-examination on the grounds for objection. Cancelled appointments can have major impacts on patients. Frequently, patients need urgent assessment and medication and cannot be transferred to other practitioners at short notice.

The RANZCP considers that it is unreasonable to expect psychiatrists to undertake this process every time patient records are subpoenaed. Despite their ethical commitments, the pressure to comply with subpoenas is immense, leading to a position some psychiatrists have described as 'learned helplessness' (Levy et al., 2014).

Case study accepted by the committee as confidential

Case study accepted by the committee as confidential

Children

The family law system does not deal adequately with child protection issues. It is not equipped to identify or address serious risks to children's safety, and it does not have capacity to determine the truth about allegations of violence and abuse, even where evidence of such behaviour is available. The system is poor at discerning risk to children and poor at determining the truth where there are competing claims about such risks. The system also vicariously hurts children by harming their parents and making poor and incorrect decisions.

Family Law Council, 2002. Family law and child protection, Final report, Commonwealth Government, p 15.

Harm prevention is particularly critical for children. Processes and services that de-escalate conflict and address oppositional behaviour between parents are vital to harm prevention and supporting healthy child development in the context of parental separation. This is the most fundamental failure of the current court-centric system. It expects that children's best interests can be protected by a winning parent and loser parent emerging, emotionally scarred and financially bruised (if not broken) from the prolonged turmoil of affidavits and cross-examination. The situation for many children, enmeshed in their parents' disputes, is dire and long-lasting. In too many instances, its repercussions will echo throughout their lives, bleeding into their relationships with their own partners and children. Most family Court matters also drain and deplete the financial legacy of the children. It is imperative for governments to break this cycle. An advanced society should not fail to protect its children because of blind insistence, in the face of all evidence, on a model that institutionalises and rewards parental conflict by offering only win/lose outcomes.

When the children of our society cannot have a meaningful relationship with both their mother and their father it is indication of a society which in major respects is dysfunctional and failing its children.

LFAA 2010 National Conference titled "we have witnessed a Second Stolen Generation of our Children", "Systems Failing Fathers and Children"; "A Fatherless Society in Waiting" also attracted 13 Ministers and Senators many of whom were guest speakers, which included both the Attorney General Robert Mc Clelland, and Shadow Attorney General George Brandis.

Over the last 10 years the Family Law system has continued this trend with many countless thousands of children not been awarded their natural rights as Australian Children. Much of this has occurred through the amendment to the 2010 Family Violence Bill that accepts a person is guilty on accusation alone.

In 1997, ALRC Report 84 reported that children believed that the family law system was 'dominated by legal strategizing by competing parties to maximise their chances of winning the case...The interests of the child often get lost between the warring parties.' Reforms to fix this have been forcefully resisted by those in favour of the status quo (but not by parents or by practitioners with expertise in conflict, violence or mental health).

<https://www.alrc.gov.au/inquiry-categories/children-legal-process/>

The 2018 ALRC recommendations would propose amendments that would further erode the rights of children, especially in relation to meaningful access to their Fathers.

Australians know that the current system – designed to make winners and losers of parents – is

not only not working, but is actively harming children and their parents. From the binary win/loss outcomes that litigation is designed to produce flow all manner of serious and sometimes irreparable harm to children and their families:

- entrenching and deepening conflict between parents
- incentivising litigation tactics such as burning off and making unfounded allegations
- incentivising other misuse of court processes and other legal systems, and
- incentivising aggressive behaviours intended by one parent to incapacitate the other parent from co-parenting effectively.

Parental conflict predicts poor wellbeing outcomes for children. Mitcham-Smith and Henry (2007) observed that the win/loss nature of litigation in the family law courts can:

- entangle children in perpetual turmoil, as parents navigate through complex, expensive, emotionally, intimidating and too-often prolonged processes
- diminish the role of parents as legitimate protectors of their children
- complicate the child's role identity
- teach ineffective conflict-resolution skills, and
- embed shame and self-blame by children if ongoing parental conflict relates to parenting matters, including contact arrangements and child support.

<https://psycnet.apa.org/record/2007-14600-008>

The Australian Psychological Society notes that the factors predicting child wellbeing are the same for children in separated families and those in stable families. The presence of inter-parent conflict and family violence reduces child wellbeing, while responsive, warm, consistent and authoritative parenting is associated with improved outcomes for children (Sanson & McIntosh, 2018).

<https://www.psychology.org.au/for-members/publications/inpsych/2018/December-Issue-6/Children%E2%80%99s-wellbeing-after-parental-separation>

Savard observed that high conflict divorce 'roughly doubles the rate of emotional and behavioural problems in children', with children enmeshed in chronic high conflict families, experiencing 'chronic stress, insecurity and agitation; shame, self-blame and guilt', as well as fears for their own safety.

Savard, 'Through the eyes of a child: impact and measures to protect children in high-conflict family law litigation' (2010).

The effects of separation and divorce on children have been studied extensively since divorce rates began rising in the last century. Parental separation can have a significant impact and present multiple risks:

- Loss of contact with parent and developmental benefit
- Stress of adjusting to changed living arrangements
- Lack of psychological resources
- Parents' mental health and parenting ability
- Economic decline

Exposure to high levels of conflict between parents and caregivers has consistently been identified as the most significant predictor of poor outcomes for children. Such children are likely to have:

- Adjustment problems
- Relationship problems
- Exhibit psychological maladjustment
- Lower academic achievement
- Social difficulty
- Poor self esteem
- Higher levels of anxiety and depression

Children of divorced families, compared to never divorced families are:

- more likely to experience greater economic, social, and health difficulties,
- more likely to use alcohol, cigarettes, and drugs;
- more likely to rely on peer groups who use substances
- twice as likely, even when compared with otherwise bereaved children, to give birth to a child as a teenager
McLanahan, 1999 <https://psycnet.apa.org/record/1999-02129-006>
- 2.5 times more likely to receive psychological treatment (Johnston, 1997);
[https://books.google.com.au/books?id=RXEsBgAAQBAJ&pg=PA25&lpq=PA25&dq=psychological+treatment+\(Johnston,+1997&source=bl&ots=H2AZ0T2hd5&sig=ACfU3U1ojFGI2FddYt0IZ9MNjTwKfLwVAg&hl=en&sa=X&ved=2ahUKEwjX1oCI-aDpAhXmzgzGHADfDE0Q6AEwA3oECAAsQAQ](https://books.google.com.au/books?id=RXEsBgAAQBAJ&pg=PA25&lpq=PA25&dq=psychological+treatment+(Johnston,+1997&source=bl&ots=H2AZ0T2hd5&sig=ACfU3U1ojFGI2FddYt0IZ9MNjTwKfLwVAg&hl=en&sa=X&ved=2ahUKEwjX1oCI-aDpAhXmzgzGHADfDE0Q6AEwA3oECAAsQAQ)
- more than twice as likely to drop out of school early (Buchanan & Heiges, 2001) except when fathers are actively involved;
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2930824/>
- more likely to have earlier marriages, which in turn correlates with increased propensity to divorce;
- more likely to demonstrate poorer socioeconomic attainment (McLanahan & Sandefur, 1994)
<https://www.hup.harvard.edu/catalog.php?isbn=9780674364080>
- More likely to be especially disturbed (especially boys) if the divorce processes are accompanied by parental violence (Margolin, Oliver, & Medina, 2001).
<https://psycnet.apa.org/record/2001-01346-001>

The 2012 AIFS survey of recently separated parents found that only 44% of parents agreed that the family law system meets the needs of children and just under half of all parents agreed that the system protects the safety of children. Just over two-fifths of all parents agreed the system effectively helps parents find the best outcome for their children.

From ALRC DP 86, paragraph 1.43, citing South Australia Commissioner for Children and Young People, What Children and Young People Think Should Happen When Families Separate (Office of the Commissioner for Children and Young People, 2018) 15.

Children's physical, mental, emotional and cultural safety must be paramount in all their experiences with the family law system. In addition to experiencing feelings of loss, guilt, fear and anger as a result of their parents separating, family law proceedings may have consequences for children's mental health.

The Children's Views

At present in the family Court System, the court may receive information about the children's views:

- Through the ICL
- Through a report prepared by a family consultant or expert report writer

- The Judicial officer meeting directly with the child

As reported by the Australian Institute of Family Studies (AIFS) in 2015, it is not uncommon for the court to not receive any independent views of the child.

Kaspiew, R et al, 2015, "Court Outcomes Project: Evaluation of the 2012 family violence Amendments' (AIFS 26-9)

The Impendent Children's Lawyer is regularly criticised for not adequately representing the views of the child. Many children reported negative or counterproductive experiences with the ICL's representing them (as did many parents in the matters), including the need for more interaction, and to have court outcomes and how their views are expressed to the court's decision making process explained to them.

The degree to which a child is able to share their views about family law proceedings, and in particular arrangements in relation to how and when they spend time with their parents, can impact their wellbeing. Currently, while the Court can consider a child's views in relation to parenting arrangements, their views (and especially the views of younger children) may not be adequately sought by family law professionals or given due weight by the Court. While children have the right to have an active and informed role in decisions affecting their lives, research suggests that Australian Judges do not currently have the skills and training to undertake direct interactions with children and young people.

In 2013, the ACT Children and Young People Commissioner published Talking with children & young people about participation in family court proceedings, an unfunded project undertaken by the Commissioner at the request of the Honourable Chief Justice Bryant of the Family Court.

<https://catalogue.nla.gov.au/Record/6486206>

The report found that Children expressed clear views about a range of issues including how they would like to participate in family Court proceedings, the sorts of things they would like to have a say about, the kind of person they would like to have represent their views to the court, and how this person should communicate with them.

In many cases, children want to express their views in relation to parenting and care arrangements. Some children have expressed that 'the court processes needed to better focus on the children and young people [involved] as they are the ones experiencing the impact of the court's decisions'. There is also evidence which indicates that being inclusive of children's views in the course of parenting proceedings results in better outcomes for children, including children feel less distressed about their parents' conflict.

Children have also identified that they find it helpful to speak to an understanding, independent professional about the impact that their parents' separation and subsequent proceedings have had on them, but expressed that they were not necessarily aware of mental health and support services available to them.

This often results in children not being informed of decisions or processes that affect them because they are deemed 'too young to understand'. The information provided to children about court processes is not child focussed or reliably available. Children often never meet their court appointed independent children's legal practitioners (ICL) and receive little to no consistent information about court processes. There is no requirement for the independent children's legal practitioners to have any specific training on children's developmental, psychological and emotional needs, child welfare or

the impact of domestic and family violence on children, which means children are often left unsupported and unheard. ICL's are failing their clients.

Case study accepted by the committee as confidential

Fatherless homes

We agree with the Royal Australian and New Zealand College of Psychiatrists (RANZCP) Family Court Proceedings general principles:

- There is no clear evidence to suggest that, on the basis of gender alone, one parent or the other is the more appropriate custodian. (exception only where there may be breastfeeding):
H & D [2003] FMCAfam 290 (18 July 2003) and SDW & JCJ [2005] FMCAfam 210 (6 May 2005).
- Procedures that diminish the adversarial process and shorten litigation will generally promote the welfare of the child. In the case of young children, it is desirable that the development of an attachment relationship to a parent figure should not be jeopardised by delays or reversed decisions.
- Any wishes expressed by the child in relation to custody, guardianship, access or other relevant matters, should be conveyed to the Court, with appropriate qualifications regarding the child's ability to make a responsible and considered assessment either of the relevant factors or of the significance of the decision.
- It is recognised that the biological parents are most often the persons with the strongest commitment to and relationship with the child.
- The welfare of the child is generally best served when provision is made for consistent care by an adult or adults with whom the child has a safe and secure attachment.

Michael E. Lamb is a professor and former Head of the then Department of Social and Developmental Psychology at the University of Cambridge, and he has done extensive research on shared parenting after divorce. He has stated that hundreds of papers show a higher risk of maladjustment in children when parents have separated and that maintaining a relationship with both parents minimizes the risk and the bad effects of parental separation.

His work in family relationships has focused on the role of fathers and the importance of their relationships with children.

Lamb ME. Does shared parenting by separated parents affect the adjustment of young children?. *Journal of Child Custody*. 2018 Jan 2;15(1):16-25.

Braver SL, Lamb ME. Shared parenting after parental separation: The views of 12 experts. *Journal of Divorce & Remarriage*. 2018 Jul 4;59(5):372-87.

Braver S, Lamb ME, Holstein N. Factors associated with successful shared parenting following family dissolution. *Journal of Child Custody*. 2018 Jan 2;15(1):1-3.

Philip Greenspun, Shared parenting literature review from Michael Lamb: is the main point of social science research to bolster personal prejudice?, 22 June 2017.

Courts have historically awarded winner status to the mother, who is also typically the plaintiff in a divorce or custody lawsuit, with young children spending 100 percent of their overnights with the mother and enjoying occasional visits with the father (though that tenuous relationship often withers away to nothing). In the old days it was enough to say "the kids go with the mother because she is the mother," but in a nominally gender-neutral legal system it became necessary to find more elaborate theories for why the outcomes should continue to park children exclusively with the Mother.

<https://philip.greenspun.com/blog/2017/06/22/shared-parenting-literature-review-from-michael-lamb-is-the-main-point-of-social-science-research-to-bolster-personal-prejudice/>

In the US, cash motivated Mothers tend to sue when the youngest child is 2 years old. This is the point at which a second adult in the household is less useful because (a) the child can be parked with day care, (b) the child can be parked with an iPad or TV, or (c) the child can be parked with a babysitter in the evening. In the “preserve and extend the status quo states” the winner parent from the first round of litigation is generally guaranteed to retain winner parent status until the child ages out of the child support system, age 18-23. Preventing the child from spending overnights with the loser parent is an important first step in severing the relationship with the loser parent, which is helpful for keeping the cash flowing and also with getting court permission to relocate.

One of the undeniable facts about divorce is that children often adapt better to their parents' separation if they are allowed to have a continuing contact with both parents. Indeed, a recurring theme in the field of child psychoanalysis is that children of divorced parents often desire to develop a meaningful relationship with both of their parents, including their non-residential parents. According to a significant academic paper endorsed by 110 leading international experts, it is not correct to assume that sharing overnight care is necessarily problematic for the little child.

Richard A. Warshak, 'Social Science and Parenting Plans for Young Children: A Consensus Report' (2014) 20 (1) Psychology, Public Policy and Law (American Psychological Association) 46-67

By Richard A. Warshak, this peer-reviewed academic article analyses existing research and it finds that little children commonly develop attachment relationships with more than one caregiver. It also finds that, in normal circumstances, children are likely to do considerably better if they have overnight contact with both parents. Thus the article concludes, beyond reasonable doubt, that 'sufficient evidence does not exist to support postponing the introduction of regular and frequent involvement, including overnights, of both parents with their babies and toddlers. The theoretical and practical considerations favouring overnights for most young children are more compelling than concerns that overnights might jeopardize children's development'.

As mentioned, 110 leading researchers and practitioners have read, provided comments, and offered revisions to Dr Warshak's article and they endorse his article's conclusions. This includes Dr Don Edgar, former foundation director of the Australian Institute of Family Studies; Judy Cashmore AO, Professor in Socio-Legal Studies at Sydney University; and Barry Nurcombe, Emeritus Professor of Child & Adolescent Psychiatry, University of Queensland. According to Nurcombe, 'the experts who signed the report are amongst the best in the world in their fields'. As he also explains, 'the paper highlights the fact that current policies relating to overnight contact with [...] young children have been excessively affected by misplaced concern to the mother'.

Fatherlessness is a growing problem in Australia and the Western world. Whether caused by divorce and broken families, or by deliberate single parenting, more and more children grow up without fathers.

Bryan Rodgers of the Australian National University has recently re-examined the Australian research. Says Rodgers: "Australian studies with adequate samples have shown parental divorce to be a risk factor for a wide range of social and psychological problems in adolescence and adulthood, including

poor academic achievement, low self-esteem, psychological distress, delinquency and recidivism, substance use and abuse, sexual precocity, adult criminal offending, depression, and suicidal behaviour." He concludes: "There is no scientific justification for disregarding the public health significance of marital dissolution in Australia, especially with respect to mental health."

Bryan Rodgers, "Social and Psychological Wellbeing of Children from Divorced Families: Australian Research Findings," *Australian Psychologist*, vol. 31, no. 3, November 1995, pp. 174-182

"The weight of the evidence is that fathers can make unique, direct contributions to their children's well-being. These findings held true after controlling for a range of factors, including mothers' involvement, children's characteristics, children's early behavioural problems, family income, socio-economic status over time, stepfather involvement and family structure." It goes on to list the many specific ways in which fathers positively contribute to the wellbeing of children.

Lees, Daniel, *Going Further with Fathers*. Auckland: Maxim Institute, 2007, p. 3.

Fatherlessness

- Fatherlessness lowers educational performance
- Fatherlessness increases crime
- Fatherlessness increases drug abuse
- Fatherlessness increases sexual problems
- Fatherlessness increases physical & mental health problems
- Fatherlessness increases physical and sexual child abuse

<https://www.fatherhood.org.au/resources/FACTS-ON-FATHERLESSNESS.pdf>

The above is just a small sampling of a very large body of research findings on the issue. The social science research on the need for children to be raised by both a biological mother and father is vast and growing.

Wade Horn, the head of the National Fatherhood Initiative in the USA offers this concluding word: "The news is not good when large numbers of children are growing up disconnected from their fathers. It's not that every child who grows up in a fatherless household is going to have these kinds of difficulties. But it is true that there's an increased risk of these negative outcomes when kids grow up without fathers."

Wade Horn, in Katherine Anderson, Don Browning and Brian Boyer, eds, *Marriage: Just a Piece of Paper?* Grand Rapids: FpencveEerdmans, 2002, p. 295.

With the rise of fatherlessness Australia and the Western world has also experienced a marked rise in social problems. And the brunt of these problems has been borne by children. We owe it to our children to do better. We urgently need to address the twin problems of fatherlessness and family breakdown. Public policy must begin to address these crucial areas.

Quantifying the Harm

The Cost to Australian society

- In Australia it has been estimated that marriage breakdown costs \$2.5 billion annually. Each separation is estimated to cost society some \$12,000.

Kevin Andrews, "The family, marriage and divorce," *The Australian Family* 13(4), December 1992.

- Dr Bruce Robinson, University of Western Australia, and author of *Fathering from the Fast Lane*, has estimated the cost of fatherlessness in Australia to be over 13 billion dollars per year.

Robinson, Bruce, private research paper by the author of *Fathering in the Fast Lane*, Sydney: Finch Publishing, 2001.

- Also, Australian industry is reported to lose production of more than \$1 billion a year due to problems of family breakdown.

47 Milburn, Caroline, "Industry told family splits cost \$1b a year," *The Age*, 2 August 1990.

- In the UK the costs of family breakdown is astronomical: "The 2012 total cost of family breakdown to the UK was £44 billion (£43.94 billion), up from £42 billion last year. The annual cost per taxpayer is now £1,470."

"The 2012 Cost of Family Breakdown Index – £44 billion and counting," Relationships Foundation, February 5, 2012. <<http://www.relationshipsfoundation.org/web/News/News.aspx?News=135>>

- A newer UK study said this: "Family breakdown is costing taxpayers almost £50 billion a year and the bill is rising fast, a new analysis said yesterday. The costs generated by family breakdown - including subsidised housing, crime, health and social care and disrupted education - have gone up by nearly a quarter in just four years."

Steve Doughty, "Family break-ups 'cost taxpayers £50bn a year'," *MailOnline*, March 18, 2013.

21 Fathers

The annual Australian road toll is about 1100 fatalities per year; serious injury rates are about 38,000. The cost to the community per fatality is \$7.8 million (2016), totalling in 2016, \$10.2 billion. Serious injuries in that year cost \$13 billion. Including property cost, in 2016 road crashes cost Australia about \$33 billion.

In response the federal and state governments spend single figure billions each per year to attempt to reduce the figure.

21 Fathers take their lives each week as a result of the family law system, totalling about 1100 per year. (This figure is for fathers alone. We can probably add many more mothers and many more children). For each suicide there are about 30 attempted suicides, totalling about 33,000 per year.

The Family Court system kills and seriously injures about as many men as the road toll harms Australians every year. Fatality and injury costs of the road toll are, in 2016, \$7.8 billion and \$10.2

billion. There is no reason to not presume that the costs to society for the loss and injury to the same number of fathers, might not be similar: or ~\$18 billion a year.

Know one yet knows the exact figure. No one yet knows the exact cost. No one seems to want to know. No funding is assigned to quantify the cost and to address the harm, even though it may be commensurate with one of our highest profile community issues: the national road toll.

This figure is for fathers alone. We can probably add many more mothers and many more children.

https://www.aaa.asn.au/wp-content/uploads/2018/03/AAA-ECON_Cost-of-road-trauma-summary-report_Sep-2017.pdf

Quantifying the harm

One of the best analysis of the cost of an adversarial Family Law System to society comes from the US, in the *Real World Divorce 2017: Custody, Child Support, and Alimony in the 50 States* by Alexa Dankowski (Author), Suzanne Goode (Author), Philip Greenspun (Author), Chaconne Martin-Berkowicz (Author), Tina Tonnu (Author).

<https://www.amazon.com/Real-World-Divorce-2017-Custody-ebook/dp/B01MR4PV1P>

In the Chapter *Litigation, Alimony, and Child Support in the U.S. Economy*, the economic impact of US society is quantified. The impact is divided into four categories:

1. Spending on litigation and process
2. Change in citizens' behaviour while married
3. Change in citizens' behaviour during and after divorce or separation
 - a) Post-Divorce Behavioural Changes from the Spousal Support System (Alimony)
 - b) Post-Separation Behavioural Changes from the Child Support System
4. Effect on children of divorce and separation
 - a) Profitability of Child Support
 - b) Why are fathers ordered to pay child support less likely to be in the labour force?
 - c) Defendants going on disability or retiring
 - d) Why are fathers ordered to pay child support less likely to be in the labour force?
 - e) Payees working less hard and getting smaller raises
 - f) Payors earning less from wages
 - g) Behavioural Changes by Non-Parties
 - h) Costs Related to harmed Children
 - i) Reduction in Prosperity due to Misallocation of Resources

The study concludes that the adversarial Family Law System in the US costs that nation 3% of it's annual GDP. There are some, but not many differences in the systems between the US and Australia. For instance, thankfully in Australia we do not have a debtors prison (incarceration) for non-payment of child support in Australia, which is a unique cost to the US. The 3% calculation does not include the cost to the mental health (emotional harm, mental illness, and suicide) of the parents (and children) experiencing the system., or the cost of the deaths resulting from the system.

Nevertheless, while an equivalent study has not yet been done in Australia there is no reason to presume that most of the same arguments are not applicable to the Australian Family Law System. Our GDP is \$1,89 trillion per annum ("*1345.0 – Key Economic Indicators, 2019*". *Australian Bureau of Statistics*. Retrieved 4 January 2020.); 3% of which is a cost of possibly \$5.67 billion to our GDP each year.

As we have recommended, the Inquiry should endorse the same analysis and research in relation to the Australian Family law System.

Case study accepted by the committee as confidential

g. any issues arising for grandparent carers in family law matters and family law court proceedings;

Grandparents (and extended families)

When a family separates and there is a parenting dispute, the children may lose their relationship with not only the non-custodial parent, but also siblings (if the family is split), half and step siblings, grandparents and the extended family on the non-custodial side (Uncles, Aunties, Cousins etc). The loss includes a loss of half of their family identity.

Some grandparents have had the experience of having their grandchildren snatched away by the parents and, unless there is a court order in place, it can be hard to demonstrate that the children are at risk.

The Term's of reference only refer to Grandparents, who are a strongly impacted group. It is of note the many family law stakeholders dismiss this issue, and simply state that there are mechanisms already in place to support the right of a child to know their grandparents. If there were adequate protections then this issue would not be raised over and over again. Clearly, this demographic is yet another that is negatively impacted by the family Court system. Clearly this is another demographic that is ignored by the system It is not only the disconnect from their grandchildren when a relationship breaks down, but they also suffer the vicarious grief of their own children going through the Family Court system.

The Prime Minister Scott Morrison stated "Importantly for older Australians who find themselves taking on the parental role for grandchildren, the Committee will have a particular focus on issues affecting grandparent carers in family law matters and family court proceedings."

<https://www.attorneygeneral.gov.au/media/media-releases/joint-parliamentary-inquiry-family-law-and-child-support-17-september-2019>

A child has a right to know their ancestors. Not all children are fortunate to have the opportunity to know living grandparents, and where they can they should have the right. Many cultures around the world strongly value the beneficial nature of extended inter-generational families and the supporting role they can provide in a child's life and development. This opportunity should never be lost due to a breakdown of the primary parental relationship. To this end grandparents need additional rights than what they currently have within the Australian system.

Current mechanisms

Grandparents are currently able to bring proceedings in relation to their grandchildren by virtue of section 65(C)(ba) of the Family Law Act. It is also specifically part of the objects of the Part of the Family Law Act dealing with children and the principles underlying it that children have the right to spend regular time with and communication on a regular basis with their parents AND other people significant to their care, welfare and development such as grandparents.

The reality is that many grandparents lack either the financial means or the resilience or robustness of character as aged members of our community to negotiate the Family Law system. If grandparents wish to access family law courts seeking legal recognition and protection of their caring role, they will often have difficulty obtaining legal aid for advice and representation. Grandparent carers generally range in age from their forties to their seventies, and sometimes beyond. Many are already at an age

at which they develop health problems experienced by many older people. Some conditions, like arthritis, are exacerbated by the physical work involved in caring for children. Grandparents often experience poor mental health. Many grandparents are of a generation that may be less likely to be computer literate or competent, so access issues are also of great importance especially in terms of resources and materials.

The children's reciprocal rights to know them are also frequently not championed by the ICL, along with the other deficiencies of that role we have outlined elsewhere in this submission.

The role of the Grandparent

A large number of families that we work with, who are accessing the Family Law System, are not a 'traditional' nuclear family. Families are formed through a wide variety of pathways, including adoption, surrogacy, assisted fertility technologies, sole parents and re-partnering. Often children may be cared for by a grandparent or other family member, and live part-time with one or both parents, step parents and siblings or relatives. This may be through informal arrangements, orders by consent or Court Orders.

At 30 June 2016, there were 46,448 children who were in and out of home care. Of these, 49% were in a relative's care, including the care of grandparents.

<https://aifs.gov.au/publications/working-together-care%20kids>

Research shows that grandparents are increasingly playing a primary care role in the lives of grandchildren: a phenomenon increasingly visible to Family Courts.

<https://aifs.gov.au/sites/default/files/fpl17.pdf>

It is important for children to maintain extended family relationships, particularly with grandparents, as in times of family crisis it is often the grandparents who can support their adult children, and meet the safety and development needs of their grandchildren. Strong community and extended family connections are, important protective factors for children and parents when their immediate family is in crisis or is fracturing. The Family Law System needs to recognise a family in the broadest sense, when considering the best interests of the child.

Government should offer grandparent carers practical support including:

- readily accessible information and advice about grandparents' rights, responsibilities and entitlements during the time they are raising their grandchildren. This could be delivered through an information pack with basic information including a list of contacts, regularly updated, and available at schools, medical practices, pharmacies, human services/Centrelink outlets, community websites etc
- support to liaise with relevant child protection authorities
- legal aid in seeking appropriate orders, and
- a grandparent carer card that allows them to demonstrate their parenting role to authorities.

Grandparents deserve respect from statutory authorities. They want and deserve the recognition that they are volunteer parents and that they are entitled to having a significant say in how they raise the children.

Governments should also offer to grandparent carers acknowledgement of their caring contribution. Support for grandparent carers is an investment which could save significant social and financial cost in the long-term. Grandparents offer their grandchildren security and the chance for healthy development and directly save the cost of out-of-home care.

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

Legal practitioners

Some family law practitioners are committed to using less adversarial approaches in supporting clients to reach early and less costly agreements. Many are not. Intransigence and hard bargaining can be driven by clients, perhaps with high-conflict personalities, but it is often the lawyers who interpret this as their role. Commercial imperatives also play a factor when greater profits can be made with this approach. In our experience, Lawyers can have a significant influence on their client's unwillingness to negotiate or settle, despite such approaches being grossly contrary to the best interests of children. Many separating parents are not properly advised of the options available to them, including mediation, and are not properly advised of the likely negative outcomes of protracted conflict. Why else would couples dissipate such large percentages of common assets and the future financial legacy of their children if they were not given misleading advice in relation to best ways to proceed and the likely outcomes?

The courts have, on numerous occasions, expressed views about the conduct of legal practitioners contributing to increased conflict and, in our view, courts should be encouraged to take this role and to seek that parties and their representatives rethink their combative stance and focus again on the best interests of the child and building relationships.

Professional practice which is ethical and aligned with the legislation; e.g. in the best of children, is seemingly incompatible with the current adversarial nature of family law, which is the primary reason that we advocate for the end of the adversarial process and the removal of legal representation.

One of the fundamental gaps in the current family law system is the lack of independent research and evaluation of family court populations and family law outcomes, as well as assessments on how the processes have been managed by legal professionals. Further research is necessary to understand what impact the family law system and processes have on children and families who are involved in the system.

Additionally, greater regulation of ethical practice requirements for all professionals within the family law system is required to enhance the transparency and accountability of professionals within this sector. At present the options for escalating complaints are limited:

- State legal practice bodies (often cannot intervene while a matter is still before the court: meaning that substantial, often irreversible harm can be done before conduct is ever reviewed)
- Applications to the court

Although professional supervision is not an established practice for legal professionals, this is an evidenced based practice that has been used for years in industries that help families. This practice ensures that professionals receive a regular and formal opportunity to focus on areas relating to their roles, including but not exclusive of: self-care; practice skills and knowledge; decision making in

practice; self-evaluation; professional support and debriefing; risk management; case coordination and complex cases; monitoring and quality control of work responsibilities, practice and performance. It may assist legal professionals and judicial officers working in the family law system to be introduced to professional supervision as a formal professional requirement.

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Overarching obligations for all system professionals

It is a recommendation by this Submission to introduce mandatory ongoing training and assessment for professionals working within the area of Family Law, including Legal practitioners and Family Dispute Resolution Practitioners and other professionals working within this area. This training would include topics such as increasing awareness of repeated exposure to ongoing conflict, chronic stress, gender neutral domestic violence, parental alienation, and vicarious trauma. Considering the effects that result in ongoing chronic stress, particularly within the legal profession, these areas of training should be mandatory. A minimum of quarterly professional psychological risk assessments are recommended to be undertaken to help identify current risk factors versus a balance of available

ABF supports the proposal to develop a workforce capability plan. We recommend that state and territory governments be involved in development of the proposed plan, given the many and close connections between Commonwealth, state and territory functions in this area. We consider the following to be core competencies of all professionals in the system, including judicial officers:

- Non-gendered family violence
- Parental alienation
- Understanding of a broad range of risks, including suicide risk
- Trauma-informed practice
- Understanding of the impact on children of conflict and family violence
- Vicarious trauma
- An understanding of child abuse, including child sexual abuse and neglect
- Cultural competence in relation to Aboriginal and Torres Strait Islander people, LGBTIQ+ families, and culturally and linguistically diverse communities
- Disability awareness
- Intersectional disadvantage and discrimination
- Elder abuse and intergenerational conflict
- Substance abuse and mental health issues (including as these affect children and young people, and how they affect older people)
- Problem gambling
- Child-inclusive and child-focused practice, and child development

Family Law Systems/Services: creation of oversight Commission

In Report 135, even the ALRC noted the volume and range of public and confidential submissions, and personal accounts, that expressed damning lack of confidence in the family law system, including (perhaps especially) the courts. ABF recommends establishing a new independent statutory body (A Family Law Commission), not solely staffed by industry stakeholders, that operates effectively and deserves public confidence to:

- undertake ongoing and systemic monitoring, and
- conduct inquiries by reference from Government or on own motion

The Commission could:

- monitor performance of legislation, policies and programs,
- manage accreditation of professionals and agencies. In discharging this function, the Commission could:

- develop and administer Accreditation Rules and an Accreditation Register establish standards and other obligations that accredited persons must meet to remain accredited
- establish and administer processes to suspend or cancel accreditation, and
- establish and administer a process for receiving, investigating and resolving complaints against practitioners accredited under the Accreditation Rules, including to impose and enforce sanctions
- establish a national death review mechanism
- inform and educate professionals about their legislative duties and functions
- establish a Children and Young People's Advisory Board, to inform the Commission through systemic advocacy about the experiences of children and young people
- develop a cultural safety framework to guide the development, implementation and monitoring of reforms.
- raise public awareness about the roles and responsibilities of professionals and service providers within the family law system
- make recommendations to Government about research and law reform proposals to improve the system.
- The Family Commission should be tasked, as a matter of urgency, to assist government with identifying priorities for a reform plan and performance indicators
- The Commission should be empowered to undertake own motion inquiries on systemic issues affecting a class of users of, or providers in, the system
- Conduct regular collation of data based on administrative sources to assess patterns in family court filings and patterns in services usage of the family law services that are funded by the Australian Government...to enable transparent and regular reporting of court, Commission and service use that would be available to stakeholders across the system
- Legislation to establish the Family Commission should set parameters and thresholds required to trigger an own motion inquiry, including:
 - the number of complaints received about a particular issue
 - if there are systemic implications related to a particular issue
 - if there is likely to be a public interest in a particular issue, and the number of people who may be affected by a particular issue.

Service providers could share de-identified data on service usage and outcomes with a central linkage agency such as AIFS. This is already done, to some extent, with the Department of Social Services and the Attorney-General's Department. There is potential to expand this. The Family Commission should, in consultation with Commonwealth, State and Territory governments, identify research priorities that will help inform whether the family wellbeing system is meeting both its legislative requirements and its public health goals.

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i. any improvements to the interaction between the family law system and the child support system;

Child support is a contentious and contested issue, both personally and politically, aggravated by the emotions involved in the transfer of money to an ex-partner post-separation. Child support has been 'one of the most complained about federal statutory regimes in Australia, particularly by non-custodial parents', and has been subject to ongoing criticism and reform since its enactment.

https://www.academia.edu/download/41447753/Shared_postseparation_parenting_in_200920160122-18756-1fl6nbq.pdf

The Child Support system has been subject to repeated scrutiny, without successful resolution of the primary issues and failings:

- House of Representatives Standing Committee of Family and Community Affairs (HRSCFA) 2003a
- Ministerial Taskforce on Child Support (MTSC) in 2005
- These previous reviews resulted in significant changes to the Australian Child Support Scheme, implemented between 2006 and 2008
- 27 March 2014, the House of Representatives Standing Committee on Social Policy and Legal Affairs inquiry into Australia's Child Support Program

The Child Support System continues to fail some of our nations most vulnerable families. The system was originally set up to ensure separating families would have access to family income to support the financial needs of children, to maintain a lifestyle they were accustomed to prior to family separation. What it really did was impose a draconian social penalty on paying parents, mostly fathers, who are forced into years of financial servitude to receiving parents, mostly mothers, who often ignore parenting orders and restrict access to their children to maximise the financial returns that they receive.

Child support is more spousal support that rewards custodial parents for acts of family violence against the noncustodial parent with policy providing financial rewards for the abuse.

Many payers are left emotionally and financially broken after years of struggling with payments that are often assessed at amounts higher than their taxable income while being provided with no contact with the very children they are expected to support. The child support system and its tax payer funded staff contribute to the deaths of many thousands of Australian fathers, leaving our society to deal with traumatised dysfunctional children who become traumatised dysfunctional adults.

The Australian Family Association, 'Submission to the Parliamentary Inquiry into the Child Support Program' submissions reveal an alarming level of suicides by post-separation fathers who are alienated from their children. After analysing the suicide rate amongst non-residential fathers, that submission reported that 'the death rate amongst child support payer fathers is double the rate of Australian males who do not have administrative child support assessments'

The Australian Family Association, 'Submission to the Parliamentary Inquiry into the Child Support Program', 31 January 2015, p 6.

The facts of the recent significant case, *Harradine v Commonwealth*, reveal the extent to which someone involved in family law issues and child support, can potentially suffer significant injustice and harm. In that case, South Australian District Court Judge Stretton ruled that the Child Support Agency's "reckless disregard" of its own obligations had caused a psychiatric injury to a school teacher. (This harm was on the back of the teacher having been falsely accused of rape by his ex-wife, a claim latter proven to be fabricated, arrested, imprisoned and suspended from work as a teacher).

His wife took their child to Coober Pedy without notice and he obtained a Family Court Order in his favour that the child was to be returned to Adelaide, which he said cost him \$25,000. The child was delivered into his custody. The man had full support of the child and no obligation to make any child support payments to his estranged spouse. The wife then contacted the Child Support Agency and requested that they secure payments from him. Without contacting or notifying the man or checking to confirm whether any money was owing, the Agency garnished his wages from the Education Department.

The man claimed that the actions of the Child Support Agency in notifying his employer that child support monies were owing when that was in fact not the case, and causing money to be deducted from his pay without notice, caused him to suffer distress, embarrassment, confusion, anxiety, insomnia and gastro-oesophageal reflux. He sued the Commonwealth of Australia for negligence, intentional infliction of personal injury and defamation.

HARRADINE v THE COMMONWEALTH OF AUSTRALIA (CHILD SUPPORT AGENCY) [2018] SADC 144 (20 December 2018)

Child Support and Fatherlessness

There is a link between the child support scheme and attempts by some custodial parents to completely eradicate the relationship between the child and the other parent. According to Daily Telegraph journalist Corrine Barraclough, 'countless parents are paying child support through the government yet alienated from their children. Given that child support is calculated on the number of nights children spend with each parent, a moral hazard is created that can tempt a primary carer to withhold access for the basest of reasons, money'.

Corrine Barraclough, 'Dad to the Bone', The Daily Telegraph, July 26, 2019.

Contrary to popular belief, child-support payments have nothing to do with irresponsible fathers abandoning their children, or "deadbeat fathers". The Child Support Agency was established in 1988 and legislation passed in 1989 imposed a mandatory formula for all parents who separated. This support scheme was motivated by concerns about growing welfare expenditure.

According to Professor Parkinson, the child-support scheme provides 'perverse incentives ... for primary caregivers to resist children spending more time with the other parent to avoid a reduction in the child support obligation.' As far as possible, such 'perverse incentives need to be avoided, and legislative policies in these areas should be in harmony rather than conflict', Parkinson says.

Patrick Parkinson, *Family Law and the Indissolubility of Parenthood* (Cambridge University Press, 2011), p 223.

As noted by U.S. sociology professor Stephen Baskerville “No-fault divorce allowed a mother to divorce her husband for any reason or no reason and to take the children with her. Child support took the process a step further by allowing the divorcing mother to use the now-fatherless children to claim her husband’s income – also regardless of any fault on her part (or lack of fault on his) in abrogating the marriage agreement.

Stephen Baskerville, ‘Divorced from Reality’, Touchstone Magazine, January/February 2009.

Society is overdue in recognising that maliciously separating an innocent parent from his or her children so as to obtain undue financial advantage constitutes an extremely serious form of child abuse and neglect. Perpetrators of false allegations for the purposes of obtaining undue financial gain should not go unpunished, as is so often the situation now. Once it is possible to testify beyond reasonable doubt that no abuse has actually occurred, such false accusations should be approached as a serious form of child abuse and give rise to the loss of custody to the parent who has made such false accusations.

<https://mensrights.com.au/hot-topics/child-support-payments-and-parental-alienation/>

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Child Support and Court Orders

A significant issue with the Scheme since its implementation in the late ‘80s is the apparent inequity of being able to enforce child support or child maintenance orders but not parenting orders (yet another example of the maintenance orders but not parenting orders (yet another example of the intricate economy of love and money). The Family Law Council wrote a report on Child Contact Orders: Enforcement and Penalties in 1998, and it is not clear that much ground has been made since Council’s report.

The Primary carer is a contributing factor for the financial settlement which is driving bad behaviours in parental alienation denying access to non custodial parent to secure a larger percentage of the financial pool impacting co-parenting responsibilities and ultimately the mental health of the children. Generally the primary carer is deemed to be at a long term disadvantage financially in their future earning capacity compared with the partner with an established career. The financial settlement should be at a point in time, at the time of separation as no one knows of the future financial prosperity of either party. For example, the primary carer could enter into a relationship with another partner on similar income as ex, come into an inheritance, study for a career etc The non custodial parent with career could be made redundant or get an illness. That’s why financial settlement shouldn’t be made on future possibilities but should be made at the time of separation and be equally split. We see a lot of fathers lose significant wealth (up to 75%) as well as the loss of access to the children which is contributing to the rise in male mental illness and suicide in Australia.

The Primary carer should only be funded by ongoing child support and not be a contributing factor of the financial settlement.

The primary carer should be financially supported via child support/maintenance, keeping it separate from the family financial settlement. The benefit would be a reduction in parental alienation used to

gain primary care for a bigger share in the financial settlement resulting in less conflict, anxiety and mental illness for the whole family.

Inequities in the system

Capacity to earn

Determinations that a parent's capacity to earn is higher than his or her actual income are amongst the most contentious of all Child Support Agency decisions, and often cause much harm to the payer. Either parent could be caught by this provision, but in practice non-resident parents, mainly fathers, are affected.

In principle these provisions allow for an assessment of child support based upon capacity rather than actual, in the rare cases that the payer may not be seeking to be fully earning a possible income by choice.

In reality many payers are earning below their previous salaries for many legitimate reasons such as job loss, redundancy, increased care responsibilities, study and/or poor health. The Family Law System itself erodes capacity through earn in causing harm to parents detailed in this submission. Nevertheless the CSA can make a capacity to earn assessment that might be several fold higher than the actual earning capability of a parent. The period that this applies, possibly up until review by the AAT, can be financially crippling for a parent on a reduced wage or living off savings.

Repartnering

Child support is based on personal income, not household. When a parent repartners, their individual financial circumstances might change dramatically independent of their own personal income. For example, a Mother with primary care might repartner and enter into a household with much greater wealth. She may then choose to stop working and have additional children. Despite the improved financial circumstances of the Mother and the children, the payer in this circumstance would be required to pay more.

Court Orders vs actual care

In some cases, the actual care arrangements may differ from those determined in the parents' court order, parenting plan or written agreement. This may happen for a range of reasons, including where parents agree to a different arrangement, where one parent fails to provide their court-ordered level of care, or where one parent denies the other parent access to their court-ordered level of care.

In certain circumstances where care is disputed, a person's care percentage for child support may be determined according to an existing care arrangement (e.g. court order) for an interim period, rather than being based on the actual care of the child. These provisions were strengthened from 23 May 2018 through the Family Assistance and Child Support Legislation Amendment (Protecting Children) Act 2018 (Cth). The Act implemented three priority recommendations, including one relating to care disputes, from the House of Representatives Standing Committee on Social Policy and Legal Affairs report, *From conflict to cooperation: Inquiry into the Child Support Program*.

The interim care provisions in child support legislation aim to deter parents from contravening court orders and care agreements by withholding care of a child and to encourage participation in family dispute resolution. These provisions will not apply if there are special circumstances in relation to the

child, such as where there is evidence of family and domestic violence. This acts as yet another financial incentive for domestic violence claims.

It is also the experience of many parents that the CSA does not consistently apply these new provisions, if at all. The CSA is often seen to be taking the word of the primary care giver, more often than not the Mother, in determining actual care over court orders.

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j. the potential usage of pre-nuptial agreements and their enforceability to minimise future property disputes; and

The scope of this inquiry is limited to 'pre-nuptial style agreements'. There are other financial agreements which can be entered into pursuant to the Family Law Act for parties during a marriage/de facto relationship and after a marriage/de facto relationship.

Financial Agreements (particularly pre-nuptial style agreements) have been the subject of significant judicial scrutiny in recent years and several iterations of the legislation governing them with the result that they are complex and difficult documents to draw correctly and effectively. Currently to be enforceable both parties to any financial agreement must obtain legal advice and their legal practitioners must sign a certificate to the effect that such advice was given. Naturally, this will involve a cost to parties. Typically such agreements are more suited to parties where:

- there is a large disparity in financial positions as between the parties at the commencement of the relationship;
- either or both parties have had previous relationships (i.e. have had 2nd or 3rd marriages) and/or with children from such relationships; or
- there is high net wealth.

Pre-nuptial style agreements are less utilised by parties:

- in the early stages of their life;
- in first time relationships with no children;
- of relatively similar financial circumstances; or
- with meagre or no assets.

Further, given the nature of a pre-nuptial style financial agreement is to contract out of one's entitlement to orders for the division of property as set out in the Act, poorly drafted agreements which fail to give proper consideration to changes in circumstances, particularly regarding the birth of children, are likely to be challenged.

A corollary of the general usage of these agreements is that their enforceability may be the subject of later dispute in the Court, should a party seek to set it aside, particularly where there has been a significant change in circumstances regarding children or where one party alleges a miscarriage of justice for various reasons currently enshrined in s90K of the Family Law Act. An increase in the usage of prenuptial style agreements will inevitably lead to an increase in applications to have such agreements set aside, which would be contrary to the intended purpose of attempts to reduce litigation.

As a result, the effectiveness of such agreements to minimise future property disputes is undermined.

Legal Prenuptial agreements which address all current and agreed future circumstances should be required and made enforceable. Agreements must include financial details and anticipated family size, role of both, agreements about living arrangements etc. Agreements must relate to reality and intentions. Only factual variations and unexpected events should be open to adjustment. Allegations

should be ignored. Pre-nuptials along with a presumed 50/50 split in the property settlement will go a very long way towards reducing the number and cost of property matters before the court.

ABF believe that a Template should be developed to assist persons entering a relationship in their endeavours to make out a contract in the form of a prenuptial agreement and a presumption of shared care and responsibility.

k. any related matters

Self Representation

With the cost of the engaging a lawyer in the Family Court System, the difficulties and complaints in relation to the performance and conduct of lawyers in the industry, it has to be accepted that self-representation is both an imperative for some and a valid option for others.

The Family Court's Annual report for 2018-2019 shows an increase in matters involving one or both parties not having representation at some point in their proceedings, from 21 per cent in 2017–18 to 29 per cent in 2018–19. There has also been an increase in trials where both parties are unrepresented from 8 per cent in 2017–18 to 22 per cent in 2018–19. Unless legal costs are dramatically curtailed, it is likely that these percentages will continue to increase.

Self-represented litigants in the family law courts issues around the quality of evidence are exacerbated when one or more participants is self-representing. Compounding these difficulties is the increasing probability that the capacity of individuals before the court is compromised by poor mental health or substance misuse. These co-occurring needs create complexity which it is difficult to expect judges to effectively manage.

Self representation more suits individuals who are capable of learning the law, the processes and procedures of the system, and who are confident and articulate. Some chose by necessity and in some those cases there will be far more challenges to the system. Nevertheless all must be supported.

The ABF survey has found that 100% of respondents with legal representation had contact, with only 48.5% of those without representation having contact; indicating that lacking finances to engage a lawyer significantly impacts parental access and children's best interests

ABF Survey of 1000 fathers Appendix E

The hurdles faced by self-representing litigants would readily be addressed by a counsel assisting approach (including cross-examination of or by vulnerable individuals). This approach would better support ongoing co-parenting than locking parents into win/lose dynamics, as compellingly observed by numerous submitters to this Committee, the ALRC inquiry and the numerous previous inquiries. Courts are not the inevitable, or even preferable, forum in which to resolve issues presenting in high conflict families.

With an increasing proportion of self-represented litigants, the justification for retaining a system relying on expert trained advocates retained by each 'side', overseen by a neutral adjudicator, are considerably weakened.

The family law court system needs to include a less formal entry process including easier to complete forms. Family law system users are at a significant disadvantage if they do not have completed paperwork. The only way this issue is going to be addressed meaningfully at the front-end of the family law system is if the system is completely overhauled and the forms are substantially altered.

Forms could be amended to be more “tick-a-box” of the types of orders sought, acknowledging that there is no need to require users to be bound by the requirement to generate the wording of many of the basic parenting and property settlement orders. There could always be an open ended section of the form to add tailor made orders sought to suit particular circumstances.

Affidavits could be more easily prepared if the requirements to communicate facts were more of an answer to specific questions than a free-form story telling form that is usually replete with irrelevant details. The Notice of Risk is a better example of a form (whilst still being too repetitive) that at least guides users to answer specific questions and give examples of what they say are the facts to support their answers.

The family law trial process needs to include a more informal process for appropriate matters whereby self-representation is the norm and a more level playing field is created. The trial process is currently an impossible obstacle for self represented family court users.

Less Adversarial Trials

In principle, the Less Adversarial Trial proposal is a step in the right direction. The reality is different. As outlined above, under the Family Law Act 1975 (Cth), which commenced in January 1976, the Family Court adopted a system for hearing children's cases modelled on the manner in which civil disputes were adjudicated upon in other superior courts—an adversarial system. The court has claimed this it has long been a matter of concern to the Court and stakeholders in the family law system that the structure of adversarial procedure may get in the way of decision-making that is in the best interests of children.

In 2003, the then Chief Justice of the Family Court, the Honourable Alistair Nicholson AO RFD QC, sought to examine the system adopted in Continental Europe, which is referred to sometimes as the inquisitorial system for adjudicating disputes. In 2003, the Family Court undertook a detailed study of less adversarial approaches in Continental Europe. The inquisitorial nature of children's proceedings, particularly in France and Germany, provided a stark contrast to proceedings in the Family Court despite the Court's efforts to reduce the adversarial nature of our processes. The Court developed a new less adversarial model, which was trialled as the Children's Cases Pilot (CCP) in the Sydney and Parramatta registries. In 2006, after the success of the pilot and extensive evaluation, the less adversarial trial (LAT) was adopted into legislation and implemented across the Family Court.

In the new model, in contrast to the adversarial system, the judge has far greater control and responsibility for what is happening and for determining what is required to resolve issues in the best interests of the child. The judge is no longer simply required to accept what he or she is given by the parents and what they contend to be the issues. The overriding control of the judge includes control of the evidence that is provided to the Court and what questions, if any, are asked of any witness. The judge actively participates in the trial process by identifying issues, deciding what material is required to resolve issues and generally directing the proceedings, rather than simply acting as an umpire.

Although in name this process continues in the Family Court, much of the expertise in how to manage cases in a less adversarial way has been lost to the Family Court due to judicial retirements. Few if any judges now practice it in the way the process was originally designed. Participants have reported that the system can actually exasperate some of the existing issues: Judge who do not have an adequate understand of a complex matter before the court either place too much reliance on expert testimony or, with the best intentions call evidence and witnesses that are not key to the issues at hand. Parents have reported even less ability to be heard and to have the real issues examined.

The emphasis is meant to be on bringing the two parties towards direct and cooperative communication: for the best interests of the children. This is not regularly seen to be happening. Family law practitioners are meant to be de-emphasised, but still participate. This means the vulnerabilities and weaknesses of the LAT are also exploited for unconscionable gain.

We continue to recommend, completely non-adversarial processes, with no legal practitioner participation. If the Less Adversarial trial has confirmed anything it is that this is the essential direction for the court, but not in part, all of the way. It has also confirmed that the court itself acknowledges this imperative.

<http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/publications/court-events/less-adversarial-trials>

Operation of Section 121 Family Law Act 1975

ABF recognises the importance of protecting the privacy and safety of families and especially children. However, we are concerned that s121 operates to prevent public scrutiny of and debate about family law decision making, deficiencies of the family law system, and to silence survivors of family violence.

By way of example, we are aware of instances in which a clinical practitioners, judges, solicitors and barristers have been found to have acted improperly in the context of a family law matter, yet these individuals cannot, because of the current operation of s 121, be named publicly. The public also has the right to know how the court process is being used to limit the human rights of Australians. The public also has a legitimate interest in knowing the identity of persons including professionals who have been found to have engaged in misconduct, unprofessional conduct, or similar. The purpose of s 121 is not to shield professionals; it is to protect the privacy of those whose most intimate relationships have become the subject of scrutiny by the courts.

ABF recommends reform to:

- Clarify the intent, effect and scope of s 121 as proposed by the ALRC in its final report and legislate to require access by the media and public to reports of judgments
- Include in the Act an avoidance of doubt provision referring to researchers, as well as 'government agencies, family law services, or other service providers,' and
- Apply the provisions to parties who disseminate identifying information about family law proceedings on social media or other internet-based media.

Men's Help/Support Telephone Lines

One of the Men's referral services, Mensline Australia, recently received a large proportion of the \$1.1 billion package to boost mental health services, domestic violence support, and emergency food relief during the coronavirus pandemic.

This is reportedly a "Men's support line for victims of Domestic Violence".

It is already acknowledged that Men comprise one third of the victims of domestic violence. We have argued in this submission that the number is probably higher. Recent anecdotal evidence (from Police Officers) have indicated that there has been a recent significant increase in the number of Male victims of Domestic Violence at the hands of their Female partners. A Senior Police Officer explained that in many cases, because of the current legislation regarding Domestic Violence, the male victim is referred to MENSLINE for assistance.

Domestic Violence Awareness Australia, have verified the experience of male victims calling Mensline:

- 1.) A man experiences abuse from his female partner. He is scared to stand up for himself. He was raised to never attack his female partner and he knows that the DV system is already biased. He walks on egg shells.
- 2.) He contacts "Mensline", as he thinks this is a service to assist male victims.

3.) Mensline suggests that maybe he is the perpetrator and that she is the victim. They tell him to hold the line as they are referring him to another agency (they have no where else to send a man claiming to be a victim).

They also try to ascertain his partners details to inform her of the claims he has made in a profound breach of privacy.

4.) The Man stay's on the line to be greeted by a woman stating, "Welcome to No to Violence. Are you willing to address your abusive and violent ways?"

Step 5.) Man hangs up, realizing he is not being taken seriously and that the rumours he has heard about men being victims and their lack of services, is true.

He realizes he is on his own.

How is this information then portrayed in the Media?

"Men's perpetrator referral service, No to Violence, has seen an increase of 94% of men calling for help to address their violent and controlling ways. Half of them hang up immediately, some however, are willing to address their behaviour."

The truth is that some of those men may be perpetrators, needing help. But what is happening to the other half of those men hanging up realizing that the only help on offer, is the type of help they do not need.

Why is their referred call being used a statistic of a male seeking help to address their violent behaviour?

Using a possible increase in male victimhood, as anecdotal evidence of an increase in male perpetration. The way the system is designed is that no matter how many male victims reach out for help for abuse they're facing, the call will be used as data to show an increase in male perpetration.

https://www.facebook.com/domesticviolenceawarenessaustralia/posts/2707407556153717?_tn_=-K-R

Case study accepted by the committee as confidential

13 The Experience of Fathers....

As it stands in Australia at this moment in history:

- A mother can file unilaterally for divorce. She may have engaged in infidelities, but this has no impact on the divorce.
- The definition of domestic violence varies slightly from jurisdiction to jurisdiction, but at every change additional conduct is included. It now includes conduct, that while is immoral and unacceptable, is far from criminal, includes conduct that is not uncommonly committed by men or women in an acrimonious relationship breakdown.

Nevertheless The public perception of domestic violence is a man hitting a woman. A Google image search will confirm this.

- A claim of domestic violence against a man, whether true or false, will be assessed on a subjective level and readily accepted by all. Such a claim can be used to:
 - Grant an AVO/DVO/FVO, which can immediately:
 - Exclude a father from the life of their children; possibly for years
 - Exclude the father from his home, which he may solely own, and to which he may never be able to return
 - Exclude the father from his possessions, which might be difficult and dangerous for him to recover
 - Restrict his movement and ability to communicate
 - Under pain of criminal charges: which under police policy are readily applied (even if unlikely to succeed in court), which will cost thousands to tens of thousands and to defend against (many-fold more than the likely fine), which may result a criminal conviction (which may destroy the father's career), and may result in incarceration
 - As the defendant the father is not legible for legal aid to defend, the Mother has crown and police resources provided for free
 - Be used against the Father in the Family Court matter in relation to both the property and parenting matters, in both interim and final hearings, whether consented to without admission or decided by a court
 - Permanently damage father's reputation
- In return for the domestic violence claim, whether true or false the mother can:
 - Obtain access to the enormous and well funded domestic violence charity industry which provides services almost exclusively for women
 - Seize the house and take the children
 - Or obtain emergency accommodation, services and support
 - Obtain a significant advantage in the family court matter in relation to the property and parenting matters
 - Hold the children for ransom for a favourable outcome in the property matter
 - Obtain legal aid representation

- Take extra domestic violence leave from her workplace (where available)
- Accelerate a migration claim
- Will be statistically recorded as a victim of domestic violence
- Destroy every part of the father's life
- Despite being at least 1/3 of the victims, If a father is a victim of domestic violence:
 - If the abuse (even if physical) is seen in public by other, the conditioned response is to either find it laughable or presume that he deserved it
 - If portrayed by the media (such as a spawned female vandalising a man's car) it will be seen as amusing
 - If he calls the police for help, it is he that is most likely to be taken from the property or arrested (police policy states this)
 - He will not be statistically recorded as being a victim of domestic violence
 - He will not be believed, will be ridiculed and not assisted
 - If treated or processed, most likely to be presumed to be the offender
 - If he calls a "helpline" he will be referred to an offender service and his abuser may be contacted to see if she is the victim
 - Be directed towards gender based anger management/behavioural change course which presumes he is the offender
 - Find that there are practically no services support or funding for male victims
 - Find himself on the end of reciprocated domestic violence allegations, even if baseless
 - Will face a hostile Family Court (where the judicial bench books have a gendered narrative of domestic violence that presume the male is the offender)
 - Is at high risk of mental illness and self-harm
- If charged and convicted of any crime, a father will receive a considerably greater sentence than a woman
- If charged with a crime, a Mother can claim to be a victim (or domestic violence) and be less likely to be found guilty, and if so receive a much lesser sentence
- If a Mother is a victim of violence, the incident will appear in the media and be referred as domestic violence. There may be public outrage, vigils and memorials
- If a Father is a victim of domestic violence it will not be referred to as domestic violence and the incident may not even appear in the media
- If a Mother is a victim of male instigated violence, her actions relevant to the crime are never permitted to be examined (it will be regarded as victim-blaming)
- If a Father is a victim of female instigated violence, his conduct will be intimately examined to determine if the female was acting in "self-defence" or was a "victim of domestic violence"
- If a Mother suffers from mental illness (even if it is an existing condition), in the Family court the Mother will claim it is caused by the actions of the Father and this will be used against him

- If a father suffers from mental illness, even if originating from domestic violence and abuse committed against him by his female partner, the illness may be used against him in the family Court:
 - He may be advised by his Family Lawyer not to seek treatment
 - His medical records, and anything he might have said in confidence in that treatment, can be subpoenaed and used against him in the Family Court
 - If he ever told his partner that he was suicidal, this itself will be deemed as domestic violence and will be used against him in the Family court
 - He may not trust or utilise medical treatment and increase his risk of serious mental illness
 - If the mental illness is known, and he does not seek treatment this will be used against him in the Family Court

- A Father will never be presumed to be a primary caregiver: even if he was within the relationship

- A Father may be judged on his appearance (tattoos, muscle bound etc), associations (boxing, martial-arts), and his experiences/career (military service etc) and this may used against him in the Family Court

- If a Mother takes a child, the Police will not intervene claiming it is a civil matter. The Father will be advised to file with the Family Court (at great expense)

- If a Father takes a child, the Police will issue an “Amber Alert”, list it with the media and will physically intervene to return the child to the Mother. Charges may be laid

- Domestic Violence is proclaimed as solely a gendered issue of control, with the prevailing international research shows that it is not

- Parental Alienation (defined as abuse in international research), most often claimed against Mother who statistically are the primary care givers, rejected on the basis that it is a gendered concept

- If matter goes through court to trial: Mothers 4 times more likely to get sole parental responsibility, Fathers 15 times more likely to get no contact orders than mothers

Case study accepted by the committee as confidential

14 The Experience of Mothers....

Mary wants to separate from her husband John, as she has started an affair with Steve.

Mary can't afford to live on her own so she obtains legal advice. Her lawyer tells her that if she makes an allegation of domestic violence against John she can have him removed from the house and she can then claim Centrelink benefits, make an application for child support and claim victims of crime payment while remaining in the family home.

Mary calls police and reports that she is a victim of abuse and violence

Police attend and find Mary upset, John angry and their children crying. Mary tells police John has been yelling at her and demanding she leaves their home. John confirms that after Mary told him about the affair he began yelling at her and told her to leave. Mary is deemed a vulnerable person and protected under the domestic violence act because of her gender and John being a Caucasian male is not. Police arrest John and take him to the police station where he is processed and issued with a temporary protection order which stops him from returning to his home.

Conditions of the order tell John he must be of good behaviour toward Mary and only go to their home with her permission. John sends Mary a text message after leaving the police station requesting if he can collect his work clothes and his work car and Mary agrees. When John arrives at their home Mary calls police and tells them that John is being threatening and she is scared. Police attend the family home and arrest John for breaching the temporary protection order. John is held in custody (a harrowing experience for a law-abiding person) and appears before a Magistrate the following morning.

John speaks to a duty lawyer who tells him that he should consent without admissions to the protection order and that he should make an early plea of guilty to the breach as it is his word against hers and the police wouldn't have arrested him without evidence. John, having never been in trouble with police or appeared in court, agrees and a 5 year protection order is made with conditions that stop him from going to the family home and stop him from contacting Mary unless it's about their children.

When John contacts Mary to arrange access to their children Mary agrees but demands that he collect the children from the family home. John attends the family home as arranged and Mary calls the police and tells them that he is at the home, is being aggressive and she is in fear. Police attend the family home and arrest John. John is charged with his second criminal breach of a domestic violence order and held in custody to appear in court.

When John appears before the magistrate he explains that he was invited to collect the children from the family home at Mary's request and that while there was a protection order in place and he wasn't to go to the home he had verbal permission from Mary. Police tell the court that John did not have permission from Mary who is a protected witness and John pleads guilty to the breach.

Police tell the court that John has a previous domestic violence breach and is a risk to his children and Mary as he understood the order and breached it regardless. John is sentenced to 3 months jail for the 2nd breach.

John is released after 3 months jail and makes an application to the Family Court to see his children and split the marital assets through a property settlement. Mary tells John through her lawyer that she is happy to offer shared care of the children if John agrees to an 80/20 property split. John signs off on the property settlement and Mary refuses to allow access to the children and goes back on her promise for share care of their children. John makes an application for parenting orders and Mary refuses to respond. John attends the courts for the first mention and is told that it needs to be adjourned because Mary has not yet had legal advice.

When Mary finally responds to the application it is with legal aid representation. Legal aid informed the court that John has a domestic violence order and has served jail time for breaches to the DV order. Mary has agreed to allow time with the children but insists that it must be supervised at a contact centre. The Family court makes orders for supervised access and appoints an Independent Children's Lawyer.

It has now been 9 months since John has seen their children and Mary has refused to take the kids to the contact centre in breach of the interim family court orders. The ICL has sided with Mary and tells the court that John poses a risk to his children because of the violence and time in prison. The court orders more supervised time with his children at a contact centre but again over the next 3 months Mary refuses to take the children.

John reappears after a family report where John is demonised because of domestic violence which is evident because of the protection orders and jail term. John is given supervised access to his children for the next two years and is yet to see his children after being in the system for two years.

A quote from a female advocate for change:

"As a woman I know I have much more than equal rights. I know that the system is set up to help me abuse, lie, punish and even murder with no consequences.

As a woman, married to a wonderful trusting man, I can betray that trust and easily replace him with another

As a woman I know , now that he has been replaced I can claim our home that my wonderful trusting husband has worked hard for so I can continue my new life and share that home with the new other.

As a woman I know that I can erase my husband out of his children's lives, because I don't want him in mine

As a woman I know I can abuse my husband, but then lie and claim to be abused by him to gain a dvo to put obstacles and hindering any prospect of my husband continuing having a loving caring relationship with his own children

As a women I know that he wants to fight for his rights, it will cost him lots of money that he hasn't got since I got most of it in the settlement, but still I have not got to worry I get all legal representation for free. "

Case study accepted by the committee as confidential

15 References: Inquiry Submission

Referenced submissions:

- Sub01 - Non-Custodial Parents Party (Equal Parenting)
- Sub06 - Professor Augusto Zimmermann (1)
- Sub07 - Voice4Kids
- Sub18 - Dr Andrew Lancaster
- Sub20 - Mr Richard Barsden
- Sub89 - WA Australian Family Association
- Sub91 - Australian Human Rights Commission (1)
- Sub93 - Professor Patrick Parkinson AM
- Sub110 - Shared Parenting Council of Australia
- Sub111 - Geoff Wilson et al
- Sub112 - Lone Fathers Association of Australia (1)
- Sub119 - Relationships Australia, Victoria
- Sub120 - Victorian Legal Aid
- Sub228 - Professor Lawrence Moloney
- Sub231 – RANZCP
- Sub383 - One in Three Campaign
- Sub586 - Men's Resources Tasmania Inc.
- Sub591 - Australians Against The Family Law Courts
- Sub596 – ADRAC
- Sub597 - Family Law Reform Coalition
- Sub603 - Men's Rights Agency
- Sub605 - Parental Alienation Australia Ltd trading as Eeny Meeny Miney Mo Foundation
- Sub606 - Relationships Australia
- Sub607 - For Kids Sake
- sub744 (1) Caxton Legal Centre
- Sub04 - Divorce Justice (1)
- Sub05 - The Divorce Tango Pty Ltd
- Sub19 - Mr Jim Skeats
- Sub224 - Relationship Matters
- Sub226 - LGBTIQ Families Victoria

16 Appendices

Appendix A

Up to One in Three victims of sexual assault and at least One in Three victims of family violence and abuse is male (perhaps as many as one in two).

The Australian Bureau of Statistics 4906.0 - Personal Safety, Australia, 2016 (2017)²⁹ is the largest and most recent survey of violence in Australia. It found that:

- Over 1 in 3 persons who experienced violence from an intimate partner were male (35.3%)
- Almost 1 in 3 persons who experienced violence from a cohabiting partner were male (32.7%)
- Almost 2 in 5 persons who experienced violence from a current partner were male (39.9%)
- Over 1 in 3 persons who experienced violence from a boyfriend/girlfriend or date were male (34.3%)
- Almost 1 in 5 persons who experienced violence from a previous partner were male (18.8%)
- Almost half the persons who experienced violence from a known person were male (45.5%)
- Almost half the persons who experienced emotional abuse by a partner were male (45.8%) (47.7% of persons who experienced it by a current partner and 43.4% by a previous partner)
- Almost half of these males experienced anxiety or fear due to the emotional abuse (41.4% of males who experienced current partner abuse and 43.1% of males who experienced previous partner abuse)
- 13.8% of men that experienced emotional abuse by a current partner had their partner deprive them of basic needs such as food, shelter, sleep, or assistive aids, compared to 6.4% of women.
- 8.9% of men that experienced emotional abuse by a current partner had their partner threaten to take their children away from them, compared to 4.6% of women.

<https://www.abs.gov.au/ausstats/abs@.nsf/mf/4906.0>

<http://www.oneinthree.com.au/infographic>

Appendix B

Zimmerman WA

The West Australian parliament is introducing new laws regarding domestic violence which pose an insidious threat to fundamental rights of citizens. The proposed laws could see an accused lose access to their children or be forced from their home without any evidence of violence occurring. The family violence bill, aimed at preventing harm, updates the definition of domestic violence to “promote a contemporary understanding of the nature and seriousness of family violence” and extends the relaxation of evidence rules already available for interim orders to final decisions. This erodes the very idea of natural justice and the right to remain innocent until proven guilty. Under these proposed laws respondents can be forced out of their homes, lose access to their children and other rights, without the requirement for evidence to be provided. In its final report on the subject, the Law Reform Commission of Western Australia explicitly rejected such moves, noting they were likely to exacerbate the existing problem of overuse and abuse of violence restraining orders, which are known to be used for tactical purposes in family law litigation. In August 2013, the West Australian Law Reform Commission received final terms of reference from the Attorney-General to consider: (a) the benefits of separate family and domestic violence legislation; (b) the utility and consequences of legislation for family and domestic violence restraining orders separate to their current location in the Restraining Orders Act 1997; and (c) the provisions which should be included in such legislation were it to be developed (whether in separate legislation or otherwise).

This essay appeared in a recent edition of **Quadrant**.
Subscribers were able to read it straight away.

In December 2013, the Commission published its Discussion Paper presenting fifty-three specific proposals for reform and raising twenty-nine questions for discussion. The Paper was followed by consultation with more than 150 individuals expressing their concerns about family and domestic violence. The Commission ultimately received forty-three written submissions, and we conducted additional consultations to resolve matters arising from the submissions. The West Australian Attorney-General has been described by the local media as having stated that a new Family Violence Restraining Order (FVRO) is designed to reduce the onus on the victim to provide evidence of intimidating or controlling behaviour. Further, the media says that the West Australian Police Minister has declared: We’re sending a message to the courts that we would prefer them to err on the side of the victim and err on the side of granting one of the violence restraining orders in these scenarios because they do protect women. Of course it is extremely important to protect women who are at risk of violence and it is commendable that strenuous efforts are finally being made to ensure victims are given every possible legal support to ensure their safety. But many in the legal profession and elsewhere take issue with the notion that laws should be tilted to favour victims without any consideration for traditional legal protections to ensure fair treatment for the alleged perpetrators. And yet, those problematic statements by the Police Minister provide the rationale for the following amendment proposal:
Section 44A amended:
(2A) Except as otherwise provided in this Act, at a final order hearing for an FVRO, the court may refuse to admit, or may limit the use of, evidence if—

the court is satisfied it is just and equitable to do so; or the probative value of the evidence is substantially outweighed by the danger that the evidence may be unfairly prejudicial to a party or misleading or confusing.

In our Final Report, titled “Enhancing Family and Domestic Violence Laws”, the Law Reform Commission rejected such an approach. It recommended that legislation should provide a fair and just legal response to family and domestic violence. Above all, it expressly stated:

... as Legal Aid confirmed, this does “not mean that fairness and the protection of individual rights are not important considerations”. In this context, it is vital to acknowledge that not every person who applies for a violence restraining order is a victim of family and domestic violence and not every respondent is a perpetrator ...

Although it is true that most applications for violence restraining orders are properly made, sometimes they are unmeritorious or otherwise used for tactical purposes in family law litigation. And yet, many lawyers consider that violence restraining orders, in particular those applied for after proceedings have been instituted in a family law dispute, may actually exacerbate conflict and decrease the prospects of the parties reaching agreement, with a consequent impact upon legal costs.

Because an interim violence restraining order can be made on the uncorroborated evidence of the applicant, the potential for abuse is very real. One example repeatedly mentioned to the Commission during its consultations is where the person protected by a violence restraining order is the perpetrator and the person bound is the victim. Further, it is important to acknowledge, from the respondent’s perspective, the potential consequences of a violence restraining order: exclusion from the family home; prohibition of contact with children; inability to work; and general restrictions on day-to-day activities. Additionally, a respondent is liable to serious consequences under the criminal law for failure to comply with the order (including an interim order).

For these reasons, the justice system must ensure that the legal rights of all parties are respected and, in particular, that respondents to violence restraining order applications have a right to be heard within a reasonable time. Additionally, the importance of ensuring that the legal system responds to family and domestic violence in a fair and just manner supports the provision of better and more reliable information to decision-makers at the outset, thus enabling more accurate and effective decisions to be made.

In order to justify the need for legislative reform, Police Minister Liza Harvey reportedly stated: “Family violence starts usually with the partner controlling every aspect of a woman’s life, the banking, who they speak to, where they go.” This is reflected in the following amendment, which creates the concept of financial abuse as a form of domestic violence that allows for the application of restraining order:

5A. Term used: family violence

(g) unreasonably denying the family member the financial autonomy that the member would otherwise have had

Our Commission spent numerous hours discussing the concept of “banking or financial control” as a form of domestic violence. The Commission finally decided to reject any such idea, since there might exist a proper reason why someone may be prevented from accessing the family’s financial or banking resources. Instead, in our report the Commission reminds the West Australian government that “the inclusion of emotional and psychological abuse within the definition of family and domestic violence is contentious”.

Although the Police Minister’s statement reflects her own view about “economic abuse”—as a form of violence that possibly justifies an AVO application—the Commission’s Final Report rejects such a proposal by explicitly referring to Sydney law professor Patrick Parkinson’s statement that adding any

such a concept “has very little potential to be helpful and much potential for the opposite”. Above all, our Final Report expresses the view that “it is preferable not to expressly refer to concepts such as economic (and emotional) abuse in this new proposed category of the definition”.

Ms Harvey’s comments provide the rationale for the following proposed amendment:

5A. Term used: family violence

A Reference in this Act to family violence is a reference to—

...

any other behaviour by the person that coerces or controls the family member or causes the member to be fearful

(2) Examples of behaviour that may constitute family violence include (but are not limited to) the following—

...

(d) repeated derogatory remarks against the family member

These actions are deemed to be a form of emotional or psychological abuse. However, our Commission decided that “psychological abuse should not be expressly included within the definition of family and domestic violence”.

Likewise, the Commission does not support any mandatory sentencing to breaches of VROs. The Commission received a considerable number of submissions of which only one submission advocated mandatory sentencing.

As our Final Report clearly indicates, the government’s proposal is radical and it violates the Law Reform Commission’s recommendations. Above all, our Final Report reminds the government that: the vast majority of submissions received in reply to this question did not support any changes to the current provision that would modify the presumptive sentence of imprisonment to a mandatory sentence of imprisonment. The Chief Justice of [the Supreme Court of] Western Australia indicated that he strongly opposed any reform to the current provision that would “reduce or eliminate the limited discretion currently conferred on courts” and highlighted the importance of discretion to enable the individual circumstances of the offending to be taken into account. The joint submission from the Women’s Council for Domestic and Family Violence Services and the Domestic Violence Legal Workers Network highlighted that full mandatory sentencing may in fact penalise victims of family and domestic violence because there are instances where victims may be inappropriately subject to violence restraining orders or police orders and they may be charged with breaching an order as a result of retaliation or defensive conduct.

For these reasons, we concluded in our Final Report:

The Commission maintains its original view that the current limited discretion should be retained and is in agreement with the majority of submissions that full mandatory sentencing is inappropriate.

The Police Minister posted in her website that reforming domestic violence restraining orders is needed because the number of reported incidents of family violence in Western Australia has “risen dramatically in recent years”. Apparently there were 44,947 incidents (including mere allegations) of domestic violence reported to police in 2012, which is two and a half times the number reported in 2004.

First of all, not every claim of domestic violence can be substantiated. Second, there is a real concern in the community that unethical lawyers instruct their clients to find any reason to apply for such violence restraining orders. Such orders are relatively easily accessible and they can occasionally be sought for purely collateral reasons. The problem lies in how these orders are issued and the grounds for which they are made.

Ms Harvey said: “To be able to intervene at that point, before that control, coercion and intimidation escalates to violence is a step in the right direction and a huge step for these women who are trapped in those relationship.” The word before is important. She is asking for the state to intervene even before domestic violence takes place. This is a totalitarian concept, more likely to exist in countries like the former Soviet Union. It has no place in a democratic society under the rule of law.

And yet, the statement appears to provide the rationale for the following amendment proposal:

Part 1B—Family Violence Restraining Order

10A. Objects

The objects of this Part are as follows

to maximise the safety of persons who have experienced, or are at risk of, family violence

...

10D. When FVROs may be made

...

a person seeking to be protected, or a person who has applied for the order on behalf of that person, has reasonable grounds to apprehend that the respondent will commit family violence against the person seeking to be protected.

The Attorney-General, Michael Mischin, said, “We will be moving away from the need for establishing evidence of an act of abuse, as is currently the case, towards one of behaviour to intimidate, coerce and control a member of the family.” Here the Attorney-General is openly stating his intention to undermine one of the foundations of the rule of law—that one is innocent until proven guilty. These orders will be issued without the presentation of any evidence of legal wrongdoing.

Contrary to his remarks, the Law Reform Commission was very clear in its recommendation that “the justice system must ensure that the legal rights of all parties are respected and, in particular, that respondents to violence restraining order applications have a right to be heard within a reasonable time”.

The following amendment proposal states:

10A. Objects

The objects of this Part are as follows ...

(e) to make perpetrators of family violence accountable to the court for contraventions of court-imposed restrictions designed to prevent them from committing further family violence.

The provision leads to the misleading assumption that everyone who is served a restraining order has necessarily committed an act of domestic violence. However, restraining orders are usually granted with no evidence.

Section 62A of the Restraining Orders Act creates an obligation to investigate family and domestic violence in specified circumstances. If so, the police officer should investigate whether family and domestic violence is being or has been committed or whether family and domestic violence is likely to be committed. However, I was told of numerous instances where individuals attend a police station simply claiming “family violence” by their domestic partner and have been instructed by police to apply for a domestic violence restraining order.

The current definition of “an act of family violence” currently includes conduct that may not constitute a criminal offence—behaviour that “intimidates”, “controls” or “adversely affects” a person’s “wellbeing”—and conduct that may not even put a person’s safety at risk. Perhaps this is why the number of recorded claims of family and domestic violence incidents, classified as Domestic Violence Incidents (DVIs), has risen significantly over the past years in Western Australia. In 2004 there were 16,607 DVIs, and 44,947 incidents in 2012. The broad definition is found in Section 6 of the Restraining Orders Act, which was inserted in 2004—precisely when the number of alleged incidents increased!

The fact that “verbal abuse” can be a ground for successfully obtaining a family restraining order is a dangerous development, as this excerpt from an e-mail sent to me by a victim clearly indicates:

I think the one area you missed in your article is the wonders of the ADVO [apprehended domestic violence order] where a woman can simply decide she doesn’t want the guy anymore (in my case she wasn’t getting to the gym enough, the GFC had affected my salary and she didn’t fancy renovating),

duck down the local police station and (per the quote from my ex's father) "the truth doesn't matter all she has to do is say she's scared". In my case she had seen a lawyer and within an hour ducked down to local police where a 23 year old constable simply took her word for everything ("verbal abuse") raised an interim order and went on holiday for 6 weeks. She even managed to lose the paperwork on her return! During this time (with no evidence, having not spoken to me or witnesses) I was hospitalised, treated like a criminal and locked out of my house and (to a large extent) kids' lives. This gave her in effect the house (which she refuses to pay the loan on) and a "default" interim custody arrangement.

"Emotional abuse" and "financial abuse" are extraordinarily subjective standards that can be very difficult to combat. Arguably, even a raised voice or an extemporaneous gesture may be regarded as "emotionally abusive" and, therefore, constitute sufficient grounds for a claim that "domestic violence" has occurred. This may also encompass such things as "refusing to let you have money", "giving you negative looks", or "ignoring your opinion".

Since the understanding of "domestic violence" has become so radically subjective, it basically means whatever the "victim" claims it to be. This is why family violence orders are so popular and have become a major weapon in the war between divorced or separated couples.

Indeed, a comprehensive study about post-separation conflict reveals that the participants who had sought and obtained violence orders referred to "abusive behaviour" as something that was suggested by their lawyers and social assistants; this is true despite the fact that the applicants themselves did not in fact entertain this perception during the course of the relationship. (See the article by Patrick Parkinson, Judy Cashmore and Judith Single, "The Views of Family Lawyers on Apprehended Violence Orders after Parental Separation" (2010) 24 Australian Journal of Family Law 313.) One participant commented:

The lady at the court showed me this flow chart of domestic violence and it actually made me realise that that's what I've dealt with since I've been with him, but it's been verbal and emotional rather than physical.

The Police State Family Violence Coordination Unit explained to the Law Reform Commission that the definition of a family and domestic relationship has been amended to ensure that the police policy reflects national and state policies that focus on preventing violence against women and children (regarded as highest risk category for family and domestic violence).

Released in 2011, the National Plan to Reduce Violence against Women and Their Children explains that a key component of family and domestic violence is an "ongoing pattern of behaviour aimed at controlling a partner through fear". This has led to broad definitions of family and domestic violence to be adopted by state and federal governments. There has been a remarkable shift in terminology. "Domestic violence" is now used in a broader sense to cover all sorts of behaviour.

The Western Australia Police internal policy requires police to formally record all allegations of family and domestic violence. Accordingly, the policy indicates that any alleged incident of family and domestic violence will be recorded (and whether or not the parties involved actually fit within the police definition of a family and domestic relationship or the legislative definition of a family and domestic relationship).

To make it worse, the police have a deeply problematic pro-arrest policy for family and domestic violence. In other words, arrest is expressed to be the "preferred option". The Western Australia Police informed the Commission that the accused are usually arrested for breaching a violence restraining order or a police order. This is extremely serious, since the Chief Justice stated to the Law Reform Commission that such a presumption of arrest "will almost inevitably produce injustice and hardship in some cases".

People have been arbitrarily removed from their homes through "ex parte" restraining orders. These orders, separating parents from their children for years and even life, are issued without the presentation of any evidence of legal wrongdoing.

A parent receiving such an order must immediately vacate their home and make no further contact with their children. If that parent does try to contact their children, then the alleged victim may contact the police and under the pro-arrest policy the parent is summarily arrested.

Finally, under section 62B the Restraining Orders Act sets out the powers of police to search and enter premises in certain circumstances involving family and domestic violence. I am deeply concerned about the broad nature of the power of the police to enter and remain in premises because, under the current provision, police may enter a person's premises following a false report of family and domestic violence.

Given the further relaxation of rules of evidence that the amendment proposes, and the potentially dramatic consequences for a person who is served a family restraining order, I am deeply concerned that nothing in the proposed amendments is mentioned about possible penalties for filing a false complaint. I would expect even the possibility of criminal charges for those who file such false accusations.

These are some of my concerns. I believe the proposed changes cannot be supported by the Law Reform Commission's Final Report.

I feel that I have the moral duty to make the information available before these decisions are implemented. Professor Patrick Parkinson has written an interesting academic article that provides full evidence that some family lawyers have instructed their clients to seek such family violence orders even when they are clearly unjustified.

Since restraining orders are granted ex parte and no rules of evidence are properly applied, thousands of innocent people have been caught in police proceedings and evicted from their homes by orders that seriously violate the most fundamental elements of due process, including advance notice of the proposed action, the right of facing the accuser and the opportunity to refute the allegation.

Above all, I believe these legislative changes pose an insidious threat to the fundamental rights of every citizen in Western Australia. They grossly violate the recommendations of the West Australian Law Reform Commission. These reforms also undermine the most elementary principles of the rule of law. They will inevitably lead to the further undermining of basic rights to natural justice, property rights and parental rights in Western Australia.

Appendix C

ABF Survey results

Since the inception of the crisis hotline, we have been recording statistics through the administration of a survey as part of the initial screening process.

The initial findings of our research data bases are alarming.

- The dataset derives from the crisis hotline which has been in operation for 2 years (100 new interactions each week, with 300 follow ups each week)
- The research conducted focused on a sample of 1000 Fathers, who used the service.

Callers answered survey questions on topics such as Family Court matters, child access, domestic violence experiences and accusations, and mental health issues (including being screened for mental health risks). The, as yet unreleased data set, indicates:

- d. 50.5% of those surveyed going through the Family Court system did not have contact with their children (as a subset of 82.4% that had restrictions of access of some kind)
- e. Those without contact had higher mental health issues (including an alarming 20.3 with suicidal ideation: which is far higher than those levels in the general population)
- f. 72.3 of those surveyed reported having to respond to false allegations of domestic violence
- g. 100% of respondents with legal representation has contact, with only 48.5% of those without representation having contact; indicating that lacking finances to engage a lawyer significantly impacts parental access and children's best interests
- h. 23.5% have mental health plans in place
- i. 53.6% of males had been physically assaulted by the previous female partner, up to 83.8% being subjected to other forms of abuse and domestic violence
- j. 70.4% of such domestic violence reported to police, resulted in no police action (of those that did report to police, their levels of suicidal ideation was higher)
- k. 90% of men that reported being victims of domestic violence to police received false allegations of domestic violence in return
- l. There were no meaningful differences between men who reported being victims and their gaining access to children



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