



PO Box 3831  
Robina Town Centre  
Qld 4230  
0435769254  
Info@theabf.com.au

1 May 2017

Inquiry Secretariat  
PO Box 6021  
Parliament House  
Canberra ACT 2600

Dear Committee Chair

The Australian Brotherhood of Fathers was established to raise awareness of the issues fathers experience after separation and to lobby government for a fairer family law system and social policy for families after separation.

My own experiences had me question the role of family law, child support and domestic violence laws played in supporting my family when my relationship ended.

After establishing an online forum I quickly realised I was far from alone in my concerns, finding many thousands of fathers and their families struggling with similar, if not identical parenting issues that made maintaining access to children after separation extremely challenging.

It also became apparent that male suicide was closely connected to these issues. After researching the subject, men particular in age groups with children were at considerable higher risk of suicide at the end of a relationship where access was restricted.

These findings along with my own lived experiences had me start a national volunteer program called Direct Action. As part of the program volunteers attend the family courts to offer moral support and advice to parents and their families. The program, which started in late 2013 is ongoing and the following submission includes a representation of experiences of those parents who we have engaged with at the courts.

Yours sincerely,

Leith Erikson

Australian Brotherhood of Fathers

# **Acknowledging Family Violence Against Fathers in the Family Court**

**A national case of systemic denial of family  
violence against fathers and their families.**



**Contents**

Introduction	4
Time line to tragedy	5
Use of protection orders to restrict access	6
	7
Fathers who experience family violence	8
Trudy's Story	8
Peter's Story	9
Jenny's Story	10
Malcolm's Story	11
Fathers who end their lives because of family violence	12
Andrea's Story	13
Sam's Story	14
Margaret's Story	15
Chris's Story	16
	17
Conclusion	18
Recommendations	19
	20

**Introduction**

As a country our national narrative around family and domestic violence is that only women can be victims and only men are perpetrators. The Prime Minister Malcolm Turnbull made his position of the subject clear when he stated, a lack of respect and equality were the primary reasons women are victims of domestic violence in our country. With the help of the media this lie has been told to the Australian people who have been affectively blind folded on the issue of family and domestic violence perpetrated by women and mothers against men and fathers. With this simple omission that men can not be victims of domestic violence the Prime Minister gave government departments and domestic violence service providers permission to develop services and support for female victims while completely ignoring men and fathers in crisis.

The following submission is both a report on the general failure of the Federal Family Law system to adequately protect fathers and their families in crisis, but also a scathing indictment of the role state and territory laws play in allowing domestic violence to be used by female perpetrators to hide their acts of violence in plain site. For many the story of how fathers are betrayed starts long before any appearance in the family court. Families regularly detail their first contact with police in their lives other than for road traffic matters is when responding to an allegation of abuse or violence when their relationship has ended and they are seeking access through mediation and family law.

The following submission is based on first person accounts through the direct action volunteer program and the many calls and emails we have received over the years from fathers and their families as they search for help and answers as to why violence against men and fathers is being ignored.

### **Time line to tragedy.**

What become obvious to volunteers after a very short period of time talking to parents and family members at the family courts, was the extreme level of emotional pain parents were dealing with as they navigate 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 time line 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 nonresident 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.



**Use of protection orders to restrict child access.**

A common complaint made by fathers at the family courts is the use of protection orders to restrict access to children. Many fathers shared experiences that detailed prior to commencing family law proceedings they had reached out to the mother of their children to formalise parenting arrangements. The response from the mother was to make an allegation of domestic violence. It has been suggested that legal advice given to mothers involved them needing to make an allegation of violence or abuse as a tactic/tool to restrict access and slow down any pending family law proceedings.

In a 2013 article in the Sydney Morning Herald titled "False abuse claims are the new court weapon" retiring family court judge Justice Collier outlined that allegations of child sexual abuse are increasing tool used to stop fathers from seeing the children.

This view was repeated by retiring Queensland Magistrate Ron Kilner, who in a 2015 Gold Coast Bulletin article said, "Domestic violence laws have been exploited and used as a weapon to obtain favourable rulings in the family court or permanent residency.

Increasingly what was intended as a mechanism to keep the peace between parties who could not live in harmony together has become a weapon in the hands of an aggrieved. Protection orders are used to achieve control over the respondent, advantage at a family court or for nonresidents to obtain residential status without waiting the required time."

Similar concerns are regularly raised by police prosecutors who have contacted the ABF concerned that fathers are consenting without admission to orders with no clear understanding of how consent will impact their ability to access children when they enter the family law system.

A Queensland police whistle blower has come forward and made the following statement.

"The domestic violence resource centres and the Queensland DV magistrates courts have implemented a system where private applications can be made and Queensland police are directed to withhold serving the application on the respondent until after the first hearing.

The private application that has been made purely on the information provided by the aggrieved which is untested and often unsupported by affidavits or evidence goes before the magistrate. It is common practice at this point for a temporary order to be issued to be served on the respondent with the application. At this time the respondent is also given a notice of adjournment to appear before the court had a second hearing anywhere between two weeks in a month from the first date.

The respondent has no right of appeal or ability to have the temporary order removed before the second hearing. In fact they are judged as having committed domestic violence and are assumed guilty without having the right to appear at the first hearing in order to refute or present their version of events.

At the second hearing and subsequent hearings it appears that it is common for an order to be made "just in case" if there is uncertainty regarding the actual events. It has been provided on several occasions by the aggrieved that the private application has instigated on the recommendations of the family law practitioner. It has been further stated that the untested temporary order was to be utilised in a listed family law court appearance that had been deliberately scheduled for the time that the temporary order is in place.

Given the respondent has no right of reply to the private application at the first hearing this appears to be used as a tool to discredit the respondent in proceedings regarding custody visitation and financial matters.

Since implementation, it cannot be recalled locally where the withholding of a private application till after the first hearing has been utilised against a female. It would appear there could be a perception of gender biased towards males in this matter."

Based on these statements it is obvious that the domestic violence and family law system is being abused by mothers who used violence allegations to improve their parenting and financial positions.

**Fathers who experience family violence.**

The ABF in our daily volunteer work are inundated with stories from fathers who are desperate for help to deal with incidents of family and domestic violence. In many cases fathers do not understand that they are themselves are victims of domestic violence or where to seek help.

Many fathers have told us that when they contact police they are laughed at and told to "toughen up" or "control your misses mate."

**Trudy's Story**

My 34 y/o son separated from his wife a few days after Christmas 2014. They have two children who at the time were 3 years old and 15 months old. Prior to the separation my son was the stay at home parent and had been right from the start. This was an agreement made between him and his wife prior to him moving in with her and the birth of the first child.

She took out an intervention order against him two days after the separation and included both children on it, effectively making it impossible for him to return home or see the children. This matter was resolved between them in January 2015 and they then attempted to reconcile. During this time my son was still living with me as his wife refused to have him back at the house to live. In February he had the children more than 14 days (because it suited his wife so she could work and not pay childcare). In March he had the children more than 21 days, for the same reason. The children were able to stay over sometimes but their mother was very careful to make sure over nights did not exceed the stipulated time as per Centrelink guidelines use calculate family tax benefit. She openly stated that if the children stayed with their father more than so many nights per fortnight then father eligible to get some of family tax benefit.

My son thought things were going well and was reasonably satisfied with the arrangements with the children etc. Mid April ex wife's mother comes from NZ and it's all off again, for no apparent reason. Straight away started playing games with access to the children. Not telling my son where they are going to childcare, pulled oldest child out of kindergarten without any consultation. When my son asked her about this (by email) she refused to tell him and the next day went and took out another intervention order against him for something she alleges happened two months prior to her applying for the order. Of course included the children on it to prevent my son seeing the children. He is now only able to see the children when it suits their mother. If he suggested times/ dates her excuse is always that she "has plans that she made months ago, so no". Children were not allowed to come and see their grandfather for his birthday. My son is absolutely devastated and is confused about fathers rights as he feels he has none. This situation has had a detrimental effect on his mental health and he often considers giving up as he sees no positive outcome in the matter. The mother is telling the oldest child all sorts of horrible things about their father and grandparents and locks the child in her room if she says she misses her father.

After seeing the effects of this situation first hand I now understand why so many men give up and either walk away completely or worse, take their own life. We have already spent \$10,000.00 and have not even been to family court yet.



**Peter's Story**

In February 2014 after months of not getting along, I ended my relationship with my girlfriend of 18 months. She did not take it well and wanted us to be together. With all that had taken place I did not see a future with her so I chose to walk away. Ever other day she would message me and ask me to go back to her, that she would change and that she would work on our relationship, but I did not think she could as we had already broken up 3 times prior to that and she always made the same promises.

In December 2014 I was contacted by the Department of Child Support informing me that my ex had filed seeking Child Support Payments. I was shocked as I did not know I was a father, further more she had informed me and my family that she had her tubes tied and could not have babies. Never the less I asked my ex if I could see the baby and she agreed, I spent a few hours with her and my Goddaughter who I took along just in case as well as to have a witness.

I started seeing Noah every other day and weekends and he would smile so much when we were together. I thought that things would be ok and that I would be allowed to continue with my visits, but this is when things changed. I paid to have a DNA test undertaken and Noah was in fact deemed to be my child. My ex asked me to sign the Birth Cert papers which I did with not hesitation (why would I not I thought). She started asking me to go back to her and be a family, sending pictures of my son while telling me how much they both loved me and wanted me back.

I could not go back to her and I told her that, but I also said that no matter what I wanted full access to Noah and for me to have his rights to see me and my family. She told me that I would never see him again and to not contact her or she would call the police. She is now accusing me of harassment when I ask her about Noah. I am never disrespectful to her as she is the mother of my son. She states that I had my chance and I blew it and that Noah has no father.

I make too much to get legal aid and not enough to pay for a lawyer. I have been quoted from 7K to 60K to take this to court and I can not afford that at all. If the Law states that both parents have equal rights and that we have a responsibility to the child and the child has the right to have both parents and immediate families in his life, then why do we even need to pay? She has refused mediation and I was granted the certificate, I don't know how to fill in the forms at court and have been trying to get a lawyer to do some pro bono work with no success.

They all tell me the Law is on her side... WHY

**Jenny's Story**

I am writing this on behalf of my partner, he has a 10 year old son, the mother is very unstable she moves house twice a year, for no reason, his son has been to 9 schools in 5 years- he is behind in his education, he doesn't have any friends due to the constant moving. We have a very stable home, when her marriage was failing we said we would take care of him until she got back on feet, and we did for two days then she picked him up from school and took him to live in a homeless shelter for one month It was very traumatic for the boy and could have been avoided. He went to see a lawyer, we had to spend our house deposit - \$10,000 - we had a very fair consent order written up, it was a 50/50 ( my partner works in the mining industry and works week on week off but he is home 2weeks each month) In the contract we asked that he stay in the same school for two years.

If she initiated mediation legal aid would cover it, Otherwise we were looking at another \$10,000 for mediation. She agreed to do mediation- she avoided her lawyer and she avoided our lawyer, she didn't respond to letters either. It was an extremely stressful time. Eventually she agreed to go through her legal aid then at the last minute she said she couldn't sign the papers or do mediation because she was very sick, (possible cancer) so we said we would postpone for 6 months, she promised him everything, promised she wouldn't move again promised his son would stay stable.

I didn't believe her for a second, but my partner desperately wanted to and for 3 months everything was great we had 50/50 we took the first half of the school holidays and when it was her turn she got in her car and drove to NSW. All he got was an email saying "I'm sorry I had to do this, I told him to choose and he chose me and his little brothers" We have no signed consent order. No agreement. We don't know where he is and have had no contact for one month. We have left messages for him and no response.

My partner is devastated, he doesn't know what to do, he feels like everything is hopeless. I don't know if he can handle going through this again. We don't want to take him away from his mother and brothers - he needs both families. But how can we standby and do nothing at all. We can't move to NSW, she is too unpredictable in her movements and that's not the kind of life I want for my 11 year daughter. My partner decided to work 30 days straight this month he's working 14 hours a day, he is so stressed about money. I am so worried - he doesn't like to talk about it, he can't handle me being stressed. Talking about it frustrates him. Really don't know what to do.



### Malcolm's Story

Malcolm and his wife Maree had been married for three years and were parents to a young son who at the time of separation was two years old. Since being married, Malcolm's relationship with his wife had slowly deteriorated after Malcolm told her that he was unable to add her name to his family's trust or put her name on his family's assets. Maree spoke often of her disappointment that she was unable to access the family assets and sell them so she could live in a nicer house and buy a new car. Malcolm said to his wife that he was unable to add her to the trust because his family did not want this to happen. Maree decided that they should divorce and would often argue about the details of the separation and what she wanted when she left.

One evening while the family was eating dinner Maree became very angry that Malcolm did not want to discuss their upcoming separation. Malcolm said, " can we please leave it and discuss it tomorrow." Maree flew into a rage and started punching and pulling at Malcolm's hair. Malcolm was shocked by her behaviour and picked up his son and went into a bedroom and locked the door. Malcolm was upset and unsure of what he should do but believing he and his son were safe would wait for Maree to calm down.

Maree started to use a kitchen knife to try to open the lock on the bedroom door. While this was happening she continued to scream and yell for him to come out of the room. Malcolm continued to wait for Maree to calm down until she started trying to cut her way through the door. When the first knife blade came through Malcolm called his father who was overseas at the time as he was unsure of what to do. Malcolm's father told him to use his phone to film her cutting her way through the bedroom door and to call the police from the home phone. By the time the police arrived Maree had cut a hole big enough to get her upper body through the door but because she had damaged the lock could not get it open. Police had to call the fire brigade to force the door open.

Maree was arrested by police on the spot and charged with assault and domestic violence. Police put a temporary protection order in place and Maree was released from jail the following morning. The same day Maree was released she went to a local GP and reported the injuries to her hands and the cut to her forehead which she received while hacking her way through the door with two kitchen knives, as injuries she had received during an domestic violence assault at the hands of Malcolm. The doctor helped Maree apply for a civil protection order which was granted immediately. Police served Malcolm with a notice to appear and when he attended court where he told the magistrate that he did not consent to the order because he and his son had been victims of her attack and there was a protection order in place, the magistrate set a date for hearing.

Two weeks later Maree's protection order went to hearing and Malcolm was found guilty of domestic violence. When Malcom appeared seeking to extend his protection order it was dismissed as he was deemed no longer to be needing protection.

When Malcolm's protection order was removed Maree decided that their son should live with her and applied to the family court for orders. When Malcolm told her that she was a liar and he was concerned for the safety of his son. Maree notified police who breached him. The matter continues in the family court.

**Fathers who end their lives because of family violence.**

As a precursor to the ABF court support program we produced the suicide awareness campaign 21 fathers. This campaign originated after discussions with family advocates who mentioned statistics relating to the rates of fathers suicide being between three and five each day because of child access issues. Our initial response was one of disbelief which was followed quickly by a sense of urgency to act in some way to improve the support available for fathers dealing with family access issues who were in the courts. The statistics and research available clearly highlighted the correlation between relationship breakdown, financial factors and depression as significant contributing factors in suicidal events.

In a 2012 publication on the Australian Psychological Society website, Susan Beaton MAPS, a Suicide Prevention Consultant from the University of Worcester UK writes:

"Suicide risk has been shown to be high among separated males, especially younger males aged 15-24 years (Cantor et al., 1995; Wyder, Ward & De Leo, 2009). Kolves, Ide and De Leo (2011) studied the suicidal behaviour of men who had experienced the breakdown of a marriage or de facto relationship and showed that both trait shame (pervasive, long-term feelings) and state shame (feelings related to an event) predicted suicidal behaviour. Harwood, Hawton, Hope and Jacoby (2000) observed an increase in suicide risk due to poorer social support among elderly widowed or divorced males.

Close to 80 per cent of all suicides in Australia are men (1,816 of 2,361 in 2010) and it is the cause of death with the highest gender disparity (333 male deaths for every 100 female deaths according to the Australian Bureau of Statistics, 2012). Suicide is the number one killer of men under 44 years, with the highest death rate for males in 2010 observed in the 35 to 49 years age group (approximately 27.5 per 100,000). The next closest age group is 75 to 84 year old men (25.8 per 100,000). Although suicide of men in the 15 to 24 years age group occurs at a lower rate (13.4 per 100,000) it accounts for close to one quarter of all male deaths in this age bracket. Suicide ranks second to coronary heart disease in its contribution to potential years of life lost by Australian males (Australian Institute of Health and Welfare, 2010). "

In the four years of conducting our awareness campaign and court support program the male suicide rate has increased from 35 each week in 2012 to 44 each week in 2016. Over that period the ABF has been contacted by hundreds of families whose sons, brothers, cousins, uncles and fathers had ended their lives. These families have suggested that restrictions of access to children through false allegations of violence and a belief that the family court system had ignored the rights of the children to maintain a relationship with their fathers was a contributing and significant factor in the suicide of their loved ones.



### **Andrea's Story**

This is the story of my brother Jason. I have a police report dated 2006 clearly stating that he was hit around the head constantly, he knew she was trying to get him to hit her to justify a DV claim. She blocked his exit from the house and taunting him with terrible words, slapping him on the face. He pushed her to the side so he could leave the house and he called the police. The police asked him to leave and when he asked why he needed to leave given she was the one being violent.

He was absolutely ropable when he called me about it later that week. The police said as there were 5 kids she needed to stay (as if he wasn't capable of being able to care for them) both of them were charged and they were later dropped. He never went back and decided she was too mentally unstable to try again, she was always setting him up and he didn't trust what was going on. He paid 100% of mortgage and all bills right up until 2014, while he lived in a caravan park. Mediation appointments were made and she didn't show up to 5 over period of 2 years. He could see the kids when she needed a babysitter, but always came home yelling and screaming at him. He got the mortgage down to 40k and the house was signed over to her in late 2014. It was then he found out that she had been claiming single mothers for entire length of the marriage ( this is why she kicked him out every 6 months or so, refused to have her name on house purchase in 1995 when they married) when he left 2006 permanently she added "rental assistance" to her Centrelink claim.

He tried to start a new life for himself, was building a house for his kids to visit and have somewhere to stay. He commenced the family law process formally again in 2015, many lies told, kids coached to say things, courts more than aware of instability of Mum but had to listen to it and consider it anyway. He was given 2 hours every Sunday night 5-7pm, she changed arrangements every single week including asking for 8-10am as they had "family" things on always at same time of his legal visits. He respectfully accommodated every single request. My brother took his life on the 20.4.2016.

His kids and our family are absolutely devastated. I can still see his kids screaming Sorry Sorry Sorry over his dead body in morgue.

**Sam's Story**

Sam and I lived together, he had part custody of his daughter, it was clear to everyone she was being abused by her maternal grandmother. (She seemed to live with her and not her mother). He backed off seeking access to his daughter when he lost majority custody after six years fighting through court. He even lived in his car for ages to work and pay court fees. He chose to not see his daughter to pursue child protection and get them to investigate without counter claims of abuse being thrown back at him by the mother.

Sam was deeply concerned that his daughter was on ADD medication but when we had her, we weren't given the drugs, so she went through withdrawals every week that could lead to serious health problems. Every day he didn't see her it broke him more. Child protection did nothing. We were finally at a point where we had decided to try to increase access through the court and see his daughter again, it was looking up, he needed her and I'm sure she needed him. Then on our two year anniversary he hung himself in our home while I was sleeping while looking at a photo of his girl.

I found him there. It was incredibly awful. I still can't quite get my head around it, it's been three weeks now, and I'm so angry. At the court system, at him. He was my five year old daughter's step dad and best friend. My soul mate. I had no idea he was so sick and so tired. I was asked to complete an affidavit for the police for the coronial inquest. I made sure to mention the child abuse, naming the grandmother. They say they'll investigate, so I guess that's something. But my little family is broken now, my daughter is a mess, I'm shattered. And I know I'll never see his little girl again, the mother has made that clear.

If he'd just held on a while we could've been ok, but he must've just been exhausted. His mental health had deteriorated, he felt powerless about his child. Now he will never see her again and that's just horrible. I'll keep fighting in his place. Even though I'm angry he did this. He was great with kids. There was no need for the mother of his child to have acted the way she did. I co parent my daughter with my ex, just don't know how anyone can use kids as pawns in these stupid games.



### **Margaret's Story**

My Partner Patrick and his then wife were married for a total of 16 years before they separated in 2013. Patrick worked in a FIFO role in Northern Queensland for approx 8 years before their marriage ended all of a sudden. Patrick and Lauren had three children together, 2 sons and a daughter. They shared many fond and wonderful memories, I know this because of all the stories that Patrick would tell me when he proudly showed me photographs and home videos of their adventures together. I also have had access to emails that were exchanged between him and Lauren for a number of years before their separation. He would send her flowers and gifts and never forget an anniversary, she would reply via email about her love for him and how proud she was of their children. 5 years later there is a much different story.

When Patrick returned home from work to an empty house. All their furniture they had purchased as husband and wife, every memory they had shared, his wife and children were gone. One night whilst sitting at home alone Patrick had a knock on the door, it was the police. They were there to serve Patrick with DVO papers that Lauren had filed against him. The DVO had stated that Patrick had abused her for years, she had made many false allegations against Patrick which were later dismissed in court. Lauren included the children on the DVO stating that the children were terrified of their father and they wanted nothing to do with him. Patrick was paying \$600 a week maintenance to Lauren for the 3 children, it was a substantial amount but he wanted to provide for his children despite the fact the Lauren would not allow Patrick to have any contact.

Patrick left his job in Nth Qld and was unemployed for a while. He attempted to seek legal aid to help him go to family court to gain access to his children but he was denied legal aid. Patrick or I didn't have the significant amount of money to be able to fight his ex wife in court for custody of the children. Four years passed and there was still no contact allowed. His mother was even refused to have any contact with the children nor was she allowed to know where they lived or which schools they attended. Patrick had hope that his boys would one day be old enough to search for him and find him on their own merit. His baby girl would not have known him at all, I remember he told me 'I've lost hope, it's like I never even had a daughter, I could walk up to her in the street and she wouldn't know who I am'. Lauren had made so many false accusations against Patrick that were all proven to be false.

Her family, friends and online acquaintances bullied Patrick until he slowly become more and more depressed. He eventually started to believe that what Lauren was saying was true, that he was no good, he was not a good Dad to their children. He was a 41 year old man who was broken. He was so broken that on May 30, 2016 he took a rope, drove out to a nearby National Park and ended his own life. So now, because of Lauren's lies and actions, because of the courts not backing him up, because legal aid would not help him, there are 4 children, a mother, a brother, and a partner who are all left with empty hearts. I was 8 months pregnant with our first child together when Patrick ended his life. Why and how is it possible for men to be alienated from their children's lives under false accusation of the mothers?

### Chris's Story

Chris and Sarah had been married for eight years the first four years of their marriage had been living overseas and the decision that was made to move back to Australia buy a house and set up a small business. In 2012 with two small children they settled in Queensland, life is good and for the next two years they both worked hard raising the children and running their business. Then Sarah decided that she no longer wanted to be married and disappeared without notice with her new boyfriend for four months. Chris and his children were beside themselves with worry having no idea where their wife as mother had gone, until she made contact advising Chris that the relationship was over and she wasn't coming back.

Four months later Sarah did come back as the relationship with the new boyfriend didn't pan out. Chris and the children were glad to see her and took her back in, life continued on until Chris was forced to call the police because his wife had violently assaulted him and his children. The police arrived and Sarah was arrested and processed for a serious assault on Chris. Chris advised police that he did not want to see his partner charged as he was concerned because she was on a Visa that any issues from the assault may see her deported from the country. Two days after the attack Sarah notified police that she was a victim of domestic violence. When the police questioned Chris Chris advise them that two days previously he had been the victim of a serious assault and police were called and that the bruises on his wife's hands were from her punching him in the face. Police dropped the application for a domestic violence order and no further action was taken against Chris.

Two weeks after the assault Sarah advised Chris that she was leaving and taking the children. Chris understanding that the relationship was coming to an end advised her that he was happy to pay for her accommodation locally so the children could stay connected to both parents. Sarah left and took the children and told police again that she was a victim of domestic violence. Because Sarah claimed she was a victim she was offered access to a women's shelter with her children where she stayed for the following three months. The protection order that was served on Chris was based on a text message that Chris sent Sarah telling her that she was being selfish by not providing access to their children.

Sarah applied for family court orders in 2012 and after 12 months was with awarded full custody of the children and Chris was to be given supervised access for two hours every fortnight at a contact centre. Supervised access went on for the following 12 months without variation apart from Sarah not turning up on occasion with the children for access visits. Christmas 2013 Chris requested that he could drop Christmas presents to his children on Christmas day Sarah advised him that they were much too busy and in response Chris told her that she was not thinking of the best interests of their children. This resulted in a breach of the domestic violence order when Chris was fined \$250 put on a six month good behaviour bond with no conviction recorded.

Chris during this time struggled with the restrictions of access to his children, this affected his ability to work and run his business. Early 2013 Chris's business closed and in late 2014 Chris and Sonia completed their property settlement where the house was sold leaving Chris living in his car. Chris had lost his marriage was no longer able to see his children and was living in his car. It was then Chris took his life in the front seat of his car.



## Conclusion

After 4 years of volunteer work at the family courts it is evident that the family law system in its current format is failing children and their families. The court is slow to respond to its own procedures, expensive for those forced to deal with the system and at times openly restricts a parents access simply to follow a legal procedure or a Judges personal belief on what is best for children in the circumstances.

Broken families are left exposed and abused financially by a legal industry who are generally focused on a families ability to pay for representation rather than how to expedite parental agreement and the production of parenting orders. We regularly hear from parents that have spent huge sums of money in legal fees as they seek to maintain their parental rights. The other industry that seems to take full financial advantage of families in crisis are psychologists who are employed as family report writers. The reality for many is the family law system has been highjacked by businesses which openly gouge parents knowing they are desperate to care for their children and are willing to pay almost any amount of money to stay in their children's lives.

Amendments to domestic violence legislation at a state level which include the expanded definitions of what constitutes domestic violence ambiguous and broad, along with the ease in which allegations can be made has had a significant impact both the frequency and sheer volume of allegations being made. A simple act of texting a parent for access to children is now deemed serious domestic violence which see's parents branded perpetrators of domestic violence as they seek to arrange visitation.

Many fathers tell us that they are extremely distressed after being accused of being abusive or violent toward their children or ex partners. The majority of fathers we speak to have no criminal record or history of violence in their relationships. These allegations often arise prior to mediation or the filing of documents in the family court. Lawyers and barristers are advising fathers that they have no choice but to consent to protection orders because the Domestic Violence Act is so broad that even someone in a normal relationship would be hard pressed not to be found to have committed some form of domestic violence.

Recognising male victims of family and domestic violence while improving the delivery of services and the support through the court process will benefit all parents dealing with violence. It is time to openly acknowledge that fathers are victims and require immediate support. As a society we must move past the idea that domestic violence is a gender issue when it is obvious to any one who works in the system that it is not.

After 4 years of volunteer work we have no doubt that the emotional distress of relationship breakdowns, the restrictions of access to children and associated financial pressure of being involved in the family law system has a significant impact on the mental health of fathers. We also recognise that the sustained emotional trauma experienced through the system including the use of unfounded allegations of domestic violence has a significant and long lasting impact on the emotional well being of fathers. This impact does contribute to the national emergency that is male suicide. We believe the Australian family law system is responsible for the deaths of many hundreds of fathers each year.

### **Recommendations**

If we are serious about supporting families in crisis while keeping children safe we must do more to maintain their connection to their parents and extended families post separation. We must also acknowledge that any parent who is proactively engaged in the family law process and seeking to maintain a relationship with their children are in crisis and experiencing family violence.

Any family that is forced to enter the family court for parenting orders has already been failed by the system and we must make their care and support our priority. We believe greater focus must be applied to intervention and prevention programs where family relationship and parenting disputes can be managed through counselling and mediation well before the need to attend the courts for parenting orders.

Recommendations for consideration.

1. Recognise and acknowledge fathers are victims of domestic violence and provide in court access to support services including material specifically designed for heterosexual men
2. Establish an in court advocacy and support service for all parents dealing the emotional trauma of attending the family court
3. Expand on pre-court counselling and mediation to encourage parents to meet parenting plan milestones that provide regular supervised / unsupervised access prior to filing in the courts
4. Protection orders need to provide mandatory protection for both parents in the form of cross orders
5. We must actively seek to reduce the time children are separated from parents where there is no proven incidents of family violence
6. Where supervised access is part of a parenting order the court must confirm that these services are available immediately or provide other supervision options
7. If supervised access is a condition of parenting orders both parents are to share the cost of these visits and the contact supervisor must provide a report on each visit
8. Provide pre court education programs for self representing parents that connect parents to their local community support services

9. Reduce the delays in hearing contravention orders and allow local courts and police to act to enforce parenting orders at a state level
10. Amend the rules of service of court documents removing the ability for documents to be served at the court prior to an appearance
11. Amend the family law act to remove a parents ability to make no fact allegations of violence or abuse in their affidavits
12. Apply penalties of perjury to parents who knowingly make false statements in an attempt to pervert the course of justice
13. Rename male behavioural change programs to "Parent Behavioural Change Programs"
14. Where the reference is made to victims of family violence as "Women and children" replace with "Parents and children"
15. Educate legal professionals on the use of the Doors program in particular Door 1 Parent Self-Report Form and include a report of this with the initiating application
16. Amend section 121 of the Family Law Act and allow public reporting on matters that do not relate to sexual abuse of children.

Page left intentionally blank



**DOMESTIC  
VIOLENCE  
VICTORIA**

Australian Law Reform Commission

Review of the Family Law System:  
Issues Paper

Submission

May 2018

## Executive Summary

**Family violence and family law intersect frequently.** This renders it vital that a modern family law system be family violence and trauma-informed, striving at every angle to protect women and children, and not collude with the perpetration of further family violence and its effects. To this end, the current family law system has not kept pace with the contemporary rights and needs of women and children, nor present-day knowledge and understanding about the nature and dynamics of family violence. The current review of the family law system provides a welcome opportunity to enhance and adapt the family law system to be responsive to family violence in a way that keeps women and children targeted by perpetrators of family violence safe, while also ensuring fair and just outcomes for all parties.

A contemporary family law system should **seek to enshrine not only the rights of children, but also gender equality and the rights of women in its objectives and principles.** Therefore, DV Vic proposes that the objectives and principles of the family law system should broadly reflect a rights-based approach, including encouraging gender equality and promoting and protecting the rights of women and girls.

DV Vic strongly encourages **the central principle of the right to safety for children as paramount** - the objectives and principles of the *Act* should prioritise the safety and well-being of children congruent with the *Convention on the Rights of the Child*.

DV Vic members note that **the adversarial model used in the current family law system is one of the most significant barriers to access and engagement for survivors of family violence.** The adversarial model replicates the power imbalance of family violence and colludes in the coercion and control of women experiencing family violence. It is a space that advantages perpetrators of family violence and disempowers survivors. Correspondingly, the culture of the family law system is experienced as hostile towards survivors of family violence.

DV Vic feels that **a specialist and holistic psychosocial case management mechanism** based on pre-existing models would provide the most significant enhancement to accessibility and engagement within the family law system for survivors of family violence.

Evidence has shown that legally-assisted and supported family dispute resolution has improved outcomes for survivors of family violence including children, with many describing the process as safe and empowering. Based on emerging evidence such as this, **DV Vic believes that further exploration and expansion of inquisitorial models of family law is warranted.**

DV Vic believes that the combination of a suitably resourced inquisitorial model, funded legal representation where required, and a holistic case management service providing specialised non-legal family violence support would enable substantial improvements in the family law experience for all parties.

Importantly, an inquisitorial model would remove the opportunity for survivors of family violence to be directly cross-examined by self-represented and violent former partners, or to have to directly cross-examine him herself. DV Vic **urges the government to progress the draft *Family Law Amendment (Family Violence and Cross-examination of Parties) Bill 2017* banning direct cross-examination in family violence cases, introducing the legislation into the Parliament for its urgent passage.**

DV Vic refers to and endorses the recommendations of the WLSV report on achieving economic equality in the family law system. Additionally, we firmly believe that **the assets limit for funded legal representation should be increased** to enable a wider range of survivors of family violence to be legally represented in the family law system.



Overwhelmingly, DV Vic supports the eradication of the 'equal shared parental responsibility' and 'equal shared time' principles and associated practices. This principle, and decisions informed by it, is leveraged by perpetrators of family violence to continue to control and dominate their former partner's life, and is a significant deterrent for women experiencing family violence to leave the relationship.

If the family law system is to be family violence and trauma informed, it will recognise in its principles, processes and decisions that **children cannot have a meaningful relationship with both parents, if the child's father is using violence against the child's mother.**

To assist with strengthening principles related to family violence and parenting and property matters, DV Vic **supports calls for a review of the definition of family violence** in the *Family Law Act 1975 (Cth)* and believes this is an opportunity to develop a consistent, national definition embedded in legislation.

In addition to what has already been outlined, **DV Vic calls for greater information sharing and collaboration between legal and non-legal supports for women and children who are experiencing family violence and going through family law proceedings.** Non-legal support services based within and outside the family court can provide valuable assistance in family law cases, particularly where family violence is occurring.

The Royal Commission into Family Violence in Victoria found that the fragmentation between state courts and federal family law courts was 'a source of considerable concern.' In light of this, the Royal Commission made a series of recommendations related to reducing the fragmentation in jurisdictions through integrated and coordinated legal responses to family violence. In particular, DV Vic supports models of information sharing and management of proceedings that lend themselves to **a specialist 'one court' model for reducing fragmentation in responding to family violence within the justice system.** This specialist family violence court model would be supported by the case management service proposed in earlier sections, which would assist parties to proceedings to understand and navigate the different and intersecting jurisdictions pertaining to their matters.

Nonetheless, DV Vic **cautions against further embedding a reliance on criminal justice outcomes for the determination of fact of family violence in family law proceedings** through a 'one court' model. Criminal justice in family violence is flawed and an unreliable indicator of whether family violence has occurred and/or is currently occurring, so should not be seen as the arbiter of truth in regard to family violence in civil matters, including in the family court.

In line with the above, **DV Vic also supports improved integration between child protection, children's court proceedings and family law proceedings.**

Achieving the principle of child safety as the paramount concern requires the family law system to **better recognise that harm caused by perpetrating family violence against an adult is also harm perpetrated against the child.** In gathering evidence of the harm to children of family violence, the family law system **must take into account not only physical harm and risk to children from family violence, but also the psychological, emotional, cognitive, social and developmental impact that arises from witnessing, directly experiencing, and/or being used as a tactic to perpetrate family violence.**

DV Vic members advocate for pathways for children to express their views directly to judicial officers in child-friendly spaces, as well as for inquisitorial models that are more inclusive of children and shield them from having to participate in adversarial style proceedings.

A commitment to inclusivity of children and to child rights speak to **a commitment to cultural rights for Aboriginal and Torres Strait islander children.** Research has shown that Aboriginal children identify



Queensland

# **Domestic and Family Violence Protection Act 2012**

**Current as at 30 May 2017**

# **Domestic and Family Violence Protection Act 2012**

**An Act to provide for protection of a person against violence committed or threatened by someone else if a relevant relationship exists between the persons**

## **Preamble**

In enacting this Act, the Parliament of Queensland recognises the following—

- 1 Australia is a party to the following instruments—
  - Universal Declaration of Human Rights
  - United Nations Declaration on the Elimination of Violence Against Women
  - United Nations Convention on the Rights of the Child
  - United Nations Principles for Older Persons
- 2 Living free from violence is a human right and fundamental social value.
- 3 Domestic violence is a violation of human rights that is not acceptable in any community or culture and traditional or cultural practices can not be relied upon to minimise or excuse domestic violence.
- 4 Domestic violence is often an overt or subtle expression of a power imbalance, resulting in one person living in fear of another, and usually involves an ongoing pattern of abuse over a period of time.
- 5 Domestic violence can have serious impacts on people who experience it, including physical, emotional and psychological harm, and can result in death.



[s 1]

---

- 6 Perpetrators of domestic violence are solely responsible for their use of violence and its impacts on other people.
- 7 Domestic violence is most often perpetrated by men against women with whom they are in an intimate partner relationship and their children; however, anyone can be a victim or perpetrator of domestic violence.
- 8 Domestic violence is a leading cause of homelessness for women and children.
- 9 Children who are exposed to domestic violence can experience serious physical, psychological and emotional harm.
- 10 Behaviour that constitutes domestic violence can also constitute a criminal offence.

## **Part 1 Preliminary**

### **Division 1 Introduction**

#### **1 Short title**

This Act may be cited as the *Domestic and Family Violence Protection Act 2012*.

#### **2 Commencement**

This Act commences on 17 September 2012.

### **Division 2 Main objects**

#### **3 Main objects**

- (1) The main objects of this Act are—



*Examples of being exposed to domestic violence—*

- overhearing threats of physical abuse
- overhearing repeated derogatory taunts, including racial taunts
- experiencing financial stress arising from economic abuse
- seeing or hearing an assault
- comforting or providing assistance to a person who has been physically abused
- observing bruising or other injuries of a person who has been physically abused
- cleaning up a site after property has been damaged
- being present at a domestic violence incident that is attended by police officers

## 11 Meaning of *emotional or psychological abuse*

***Emotional or psychological abuse*** means behaviour by a person towards another person that torments, intimidates, harasses or is offensive to the other person.

*Examples—*

- following a person when the person is out in public, including by vehicle or on foot
- remaining outside a person's residence or place of work
- repeatedly contacting a person by telephone, SMS message, email or social networking site without the person's consent
- repeated derogatory taunts, including racial taunts
- threatening to disclose a person's sexual orientation to the person's friends or family without the person's consent
- threatening to withhold a person's medication
- preventing a person from making or keeping connections with the person's family, friends or culture, including cultural or spiritual ceremonies or practices, or preventing the person from expressing the person's cultural identity

## 12 Meaning of *economic abuse*

***Economic abuse*** means behaviour by a person (the *first person*) that is coercive, deceptive or unreasonably controls

Issues of family violence and child abuse have a prominent place in the *Family Law Act 1975* (Cth) and, in particular, in Part VII which concerns children.

In 2011, the definition of family violence in the Family Law Act was expanded to incorporate notions of coercion and control (which are not always accompanied by physical violence or threats). At the same time, the definition of child abuse was amended to include serious psychological harm arising from the child being subjected to or exposed to family violence. The Family Law Act contains a range of provisions designed to protect parties and children from family violence.

**Section 4(1) of the Family Law Act states as follows:**

Abuse, in relation to a child, means:

- a. an assault, including a sexual assault, of the child; or
- b. a person (the **first person**) involving the child in a sexual activity with the first person or another person in which the child is used, directly or indirectly, as a sexual object by the first person or the other person, and where there is an unequal power in the relationship between the child and the first person; or
- c. causing the child to suffer serious psychological harm, including (but not limited to) when that harm is caused by the child being subjected to, or exposed to, family violence; or
- d. serious neglect of the child.

A family violence order is an order (including an interim order) made under a prescribed law of a state or territory to protect a person from family violence.

Family violence means violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the **family member**), or causes the family member to be fearful; and

A child is exposed to family violence if the child sees or hears family violence or otherwise experiences the effects of family violence (Section 4AB).

The courts have adopted this description of the elements of violence:

Examples of behaviour that may constitute family violence include (but are not limited to):

- an assault; or
- a sexual assault or other sexually abusive behaviour; or
- stalking; or
- repeated derogatory taunts; or
- intentionally damaging or destroying property; or
- intentionally causing death or injury to an animal; or
- unreasonably denying the family member the financial autonomy that he or she would otherwise have had; or
- unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or his or her child, at a time when the family member is entirely or predominantly dependent on the person for financial support; or
- preventing the family member from making or keeping connections with his or her family, friends or culture; or
- unlawfully depriving the family member, or any member of the family member's family, or his or her liberty.