



No To Violence
Men's Referral Service

Submission: A better family law system to support and protect people affected by family violence

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Authorised by:

Jacqui Watt, CEO

Address: PO Box 3022,
Burnley North,
VIC, 3121

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Introduction

No To Violence Incorporating the Men's Referral Service (NTV/MRS) welcomes the opportunity to provide this submission to the Inquiry, and to participating in ongoing contributions to reform of the family law system to better address the needs of people affected by family violence.

Responding effectively to perpetrators of family violence is crucial to ensuring the safety of adults and children subjected to family violence, and to contributing to their recovery and ongoing wellbeing.

The announcement by Attorney-General Brandis on 9th May of changes to the *Family Law Act 1975* to prevent direct cross-examination of victims of family violence by self-represented litigants who have perpetrated abuse towards them is a positive step towards this end. Further reform of the family law system has been appropriately referred to the Australian Law Reform Commission, which will provide a strong basis to review and update the family law system to address the needs of families, particularly families affected by family violence and children at risk of abuse.

NTV/MRS presents the submission below in support of many of the initiatives underway, and makes recommendations that will provide a robust basis for Australia's family law system to respond effectively to family violence.

About No To Violence Incorporating the Men's Referral Service

No To Violence incorporating the Men's Referral Service (NTV/MRS) is the Victorian and NSW peak body for organisations and individuals working with men to end their violence and abuse against family members. NTV/MRS oversees the Victorian standards of practice for men's behaviour change programs delivered by more than 100 members, delivers the Graduate Certificate in Male Family Violence which is the core qualification for facilitators of Men's Behaviour Change Programs, and undertakes practice and policy development work to ensure men who use violence are held accountable for their abuse.

The Men's Referral Service has had over 170,000 conversations with men about their use of violence over the last 23 years. NTV/MRS currently engages with more than 10,000 perpetrators per year in Victoria, New South Wales, Tasmania and across Australia. NTV/MRS provides the follow up to all weekend police incidents in Victoria – more than 17,000 per year – and provides follow up to all 40,000 men assessed to be victims in family and domestic violence incidents in NSW. In total, NTV/MRS provides support for more than 70,000 men affected by family violence each year.

NTV/MRS has recently partnered with Victoria Legal Aid to provide information and offer support to men identified in the Family Court as perpetrating family violence, as part of the Family Advice and Support Service (FASS) Program.

About this submission

This submission was prepared with input from NTV/MRS members in NSW, Victoria and across Australia, and from NTV/MRS clinical staff.

NTV/MRS endorses the comments and recommendations from Women's Legal Services Australia regarding terms of reference 2, regarding orders made by consent, and 4, regarding financial recovery.

Family violence and the family law system

Family violence can affect anyone, regardless of sex, age, race, sexuality, disability, gender identity, socio-economic status or lifestyle. However, violent and abusive behaviour is most frequently used by men, as a way to exercise power and control over women, children and often other men.¹

Understanding the manifestation of family violence in the family law system requires an understanding of the gendered factors underpinning family violence, and understanding that family violence most frequently develops over a significant period of time. Family violence involves a range of coercive and controlling behaviour in a range of contexts.

Men who NTV/MRS and our member organisations work with report self-awareness about the effects of their violent and controlling behaviour on their partners, children and other family members. Many men report using a range of threatening, controlling, harmful and abusive behaviour in order to achieve control and dominance in their relationships.

To this end, the family law system is a source of continued serious victimisation for women and children experiencing family violence. Perpetrators frequently manipulate family law and child contact systems to cause enormous difficulties for and impacts on women and children. Family law processes can be used by the perpetrator to accentuate tactics of financial abuse (driving her further into debt through elongating family law contests), sabotage the children's relationship with their mother (through manipulation tactics during unsupervised child access), monitor the mother's movements and social connections, to name but a few tactics.

One father had constant battles with his ex-wife for keeping the children with her when they were ill, and even sending the police to her house to demand the child be sent to him. His harassment continued for over 2 years. I have since learnt that he refuses to have contact with his daughters as he has a new relationship. - NTV/MRS member

Principles for holding perpetrators of family violence accountable

NTV/MRS supports the development of a *web of accountability* around men who use violence, involving the multiple statutory and social service systems that have bearing on family violence.

The Victorian Expert Advisory Committee on Perpetrator Interventions has prepared key principles for intervention with perpetrators of family violence. These are applicable across a range of settings and approaches, including statutory and voluntary services.

1. Victims', including children's, safety and freedom underpins all interventions with perpetrators of family violence.
2. Interventions with perpetrators are informed by victims and the needs of family members.
3. Perpetrators take responsibility for their actions and are offered support to choose to end their violent behaviour and coercive control.
4. Inter-agency risk assessment and risk management processes are consistent, robust and strong, and any risk associated with intervention is minimised.
5. Perpetrators are kept in view through integrated interventions that build upon each other over time, are mutually reinforcing, and identify and respond to dynamic risk.

¹ ANROWS (2015) *Violence against women in Australia: Additional analysis of the Australian Bureau of Statistics' Personal Safety Survey, 2012*, Sydney, available at: <http://anrows.org.au/publications/horizons-0/PSS>

6. Responses are tailored to meet the individual risk levels and patterns of coercive control by perpetrators, and address their diverse circumstances and backgrounds which may require a unique response.
7. Perpetrators face a range of timely system responses for using family violence.
8. A systems-wide approach collectively creates opportunities for perpetrator accountability, both as a partner and a parent. Actions across the systems work together, share information where relevant, and demonstrate understanding of the dynamics of family violence.

The family law system requires considerable change to support and implement these principles.

About Men's Behaviour Change Programs

Men's Behaviour Change Programs (MBCPs) have been operating in Australia since the 1980s, led by practitioners with experience working with women and children subjected to domestic and family violence. The field has evolved considerably since that time. NTV/MRS (then known as V-Net) developed world-first practice standards for MBCPs in the 1990s, which have informed the development of standards in other jurisdictions. NTV/MRS later collaborated with Swinburne University to develop a tertiary qualification to ensure practitioners have sufficient skill to work safely with men who use domestic and family violence.

MBCPs are predominantly group-based programs varying in duration from 12 to 26 weeks (with some programs referring men into ongoing support groups to contribute to them maintaining the changes in their behaviour after completing a program). MBCPs vary in the methodology employed to engage men and hold them accountable, however most programs use a combination of psycho-education and cognitive behavioural therapy techniques.

Alongside group and individual interventions for and with men, programs are required to maintain ongoing contact with the partners, ex partners and sometimes children and other family members of participants. This contact provides support and advice, is to monitor levels of risk and addresses any escalation in risk promptly. As many women's domestic and family violence services do not work with families for this duration, partner and family contact has an important contribution to the ongoing safety and risk management process for women and children affected by domestic and family violence.

Response of the family law system to perpetrators of family violence

In the UK, approximately one-third of referrals to domestic violence perpetrator programs are made through the family court, with judges ordering perpetrators to participate in a perpetrator intervention program prior to decisions in child access or parenting arrangements. These are managed through the Children and Family Court Advisory and Support Service (CAFCASS).² This is a major untapped source of referrals for family violence perpetrators, at a time where women are at high risk of being forced, through the family law system, to provide higher levels of perpetrator access to their children than what might be in the child's best interest in terms of their safety, stability and development.

MBCP providers can be an important resource to the Family Court and Federal Circuit Court judges in their decision-making concerning child access and parenting orders, as well as attempting to address the risk that perpetrators pose to their families during this time,

² See: <https://www.cafcass.gov.uk/grown-ups/domestic-violence-perpetrator-programme-%28dvpp%29.aspx>

Integration with relevant policy and legal reform processes

There has been a range of recent policy and law reform processes which will be relevant to ensuring consistency and alignment of systems and jurisdictions.

Family Law Council recommendations

The 2015-16 Family Law Council inquiry into the responsiveness of the family law system to families with complex needs (the FLC report) recommended a range of measures to improve the family law system's response to children and families with complex needs, including family violence. The recommendations of the FLC final report should be considered comprehensively.

National Outcome Standards for Perpetrator Interventions

The National Outcome Standards for Perpetrator Interventions (NOSPI) outline a number of core outcome areas which interventions aimed at perpetrators of family violence must ensure they comply. Family law system agencies are included among the core group of services to whom the NOSPI apply. The NOSPI were supported by COAG as a key action under the National Plan to Reduce Violence Against Women and their Children.

Judicial Council on Cultural Diversity recommendations

In 2016 the Judicial Council on Cultural Diversity undertook consultation and made a range of recommendations for Australian courts to improve access to justice for Aboriginal and Torres Strait Islander women and women from migrant and refugee backgrounds.³ Implementation of these recommendations should be integrated with the process for reform to the family law system.

Recommendations

1. That the Australian Government establishes an independent Family Safety Service, as recommended by the Family Law Council, within the family law system to assess risk, manage safety, make referrals to accredited parenting and perpetrator intervention programs, and inform the court regarding men's capacity to parent safely.
2. That the Australian Government introduces legislative protections to stop a victim of family violence being directly cross-examined by their abuser in all family law proceedings.
3. That the Australian Government funds and develops a family violence professional development program for judicial officers and court staff from the family courts and state and territory courts in which judicial officers preside over matters involving family violence.
4. That the Australian Government funds and coordinates the development of a national, comprehensive family violence training program for family law legal professionals (including ICLs and FDRPs) and work with state and territory law institutes and bar associations to roll out the training.
5. That all family violence training rolled out in the family law system includes specific content on recognising dynamics of family violence, understanding system abuse and avoiding collusion with perpetrators.
6. That any national approach to administration and enforcement of intervention orders is based on best practice.

³ Judicial Council on Cultural Diversity (2016) *The Path to Justice: Aboriginal and Torres Strait Islander Women's Experience of the Courts*, Canberra, available at: http://jccd.org.au/wp-content/uploads/2016/04/JCCD_Consultation_Report_-_Aboriginal_and_Torres_Strait_Islander_Women.pdf
Judicial Council on Cultural Diversity (2016) *The Path to Justice: Migrant and Refugee Women's Experience of the Courts*, Canberra, available at: http://jccd.org.au/wp-content/uploads/2016/04/JCCD_Consultation_Report_-_Migrant_and_Refugee_Women.pdf

Ensuring the safety of people at risk of family violence

1. *how the family law system can more quickly and effectively ensure the safety of people who are or may be affected by family violence, including by:*
 - a. *facilitating the early identification of and response to family violence; and*
 - b. *considering the legal and non-legal support services required to support the early identification of and response to family violence;*

Current identification and responses to family violence are inadequate

At present the family law system does not have systematic processes to identify and respond to family violence. Responses are dependent on the pathways and professionals that families encounter during their experience through the system. This is insufficient to address the volume of families affected by family violence who use the family law system.⁴

NTV/MRS recommends the establishment of a more comprehensive service based on the Children and Family Court Advisory and Support Service (CAFCASS) in the UK to address family violence within the family law system. Such a service would provide early identification and response to family violence, provide independent and evidence-based assessment information to the court, and would ensure more consistent, safe and quality outcomes.

Members of NTV/MRS report that many men seek to use Family Dispute Resolution and family consultation services to increase their control and coercion of their ex-partner and children.

One woman who has no car, has a child with disability, also had an intervention order against her ex-partner. The perpetrator used child access time to further intimidate the woman. His family was present during these incidents. He was not engaged with the child in the process. The child was upset. The man insisted that he be able to take the child to his family home for visitation with grandparents who previously had supported his use of violence.

The man had fight at the mediation centre so he was requested to leave. He told the woman that he didn't want to work on the child's best interest, only his own, as his family wanted to see the child or he would be disinherited. – NTV/MRS member

Insufficient knowledge and understanding of safe practice in working with family violence dynamics, a lack of appropriate risk assessment tools or resources, and insufficient monitoring or quality assurance of practice with regard to family violence contribute to these adverse outcomes.

This submission addresses these matters, particularly the need for capacity building among family law system professions, below in this submission.

Assessment of perpetrator's capacity to parent safely needs to be completed by specialists

The assessment of men's safe parenting capacity in the context of a history of family and domestic violence perpetration is complex. There is no single assessment tool or template that can be used by non-family violence specialists to determine whether a father is making progress in addressing and reducing his use of family and domestic violence; and whether he is engaging in reparative, restorative

⁴ Kaspiew, R., Carson, R., Dunstan, J., Qu, L., Horsfall, B., De Maio, J. et al. (2015) *Evaluation of the 2012 family violence amendments: Synthesis report* (Evaluation of the 2012 Family Violence Amendments), Melbourne: Australian Institute of Family Studies.

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and responsible parenting mindful of the effects that his violence has had and is having on his partner, his children and the mother-child bond. Many family and domestic violence perpetrators engage in a range of behaviours and tactics to undermine their partner's or former partner's confidence and ability to parent, and the relationship she has with her children.

MBCPs, working with men over a period of time and collaborating with child protection authorities and family services providers, are in the best position to provide accurate and informed advice in family court situations about the risk that family and domestic violence perpetrators pose to their children, and whether he is making the changes required to provide safe, reparative and restorative parenting.

An effective model: UK Child and Family Court Advisory and Support Service

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

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

These referrals are facilitated through the Children and Family Court Advisory and Support Service (CAFCASS). CAFCASS makes the referral direct to the DVPP, and during the man's participation and at its conclusion, the DVPP reports back to CAFCASS concerning the updated/current risk that the father poses to his children, and assessments of his capacity to be a safe parent.⁵

CAFCASS is independent of the courts, social services, health agencies and other similar authorities. CAFCASS uses the assessment by the DVPP together with any other relevant information to then make recommendations to the Family Court around consent order and parenting arrangements based on representing the best interests of the child.

DVPPs in the UK therefore perform an important role in assisting CAFCASS to make assessments of the pattern and profile of the man's safe parenting capacity, and whether he is making the changes required to become a safer parent through taking responsibility for his use of family and domestic violence, and putting in the work required to change his attitudes and behaviour. Importantly, DVPPs in the UK, to varying extents, work closely with child protection authorities, when these authorities are involved, to provide joint assessments on the man's safe parenting capacity, and his progress towards becoming a safer parent.

This is in recognition that men's perpetration of family and domestic violence, even when targeted mostly towards the mother, is a child protection issue given the major impacts on children's safety, stability and development.

The need for a Family Safety Service

Family Advice and Support Service (FASS) Program

The introduction of the FASS is a positive measure to address the legal and non-legal support needs of people subjected to family violence, and to perpetrators of family violence. The program is intended

⁵ See https://www.cafcass.gov.uk/media/199244/dvpp_factsheet_april_2014.pdf

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to provide legal and non-legal support to families, including risk and needs assessment, and referral into specialist family violence services.

Collaboration between relevant services is an important step towards a comprehensive approach to ensuring the safety and effectiveness of the family law system for adults and children who have been subjected to family violence.

The Family Law Council's recommendations have been implemented in part through the establishment of the FASS Program. Part 3 of recommendation 1, to "creat[e] a dedicated family safety service within the family law system" should be pursued by the Commonwealth Government in order for a comprehensive approach to identifying, monitoring, and addressing risk of family violence in the family law system.

Although the FASS Program is in a very early stage of establishment (at the time of writing, it has been approximately 2 weeks since the program commenced), some initial issues have been identified including:

- Referral to and engagement with FASS is voluntary, so some men have not engaged
- Self-represented litigants who choose not to access duty lawyer services as part of FASS (or other duty lawyers available) may not have the opportunity to access specialist family violence support on another occasion
- Men with private legal representation are not likely to be referred by their legal representative into FASS support
- Not all judges are aware of, or make referrals to, FASS.

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

Establishing a Family Safety Service in the family law system

Increasing the scope and capacity of support services, including FASS, as well as reform to family consultant services, would be the first step towards the model recommended by the Family Law Council.

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

Recommendation 1.

That the Australian Government establishes an independent Family Safety Service, as recommended by the Family Law Council, within the family law system to assess risk, manage safety, make referrals

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to accredited parenting and perpetrator intervention programs, and inform the court regarding men's capacity to parent safely.

NTV/MRS supports recommendations 1-5 from Women's Legal Services Australia's submission to this inquiry regarding strengthening of existing family law system services' capacity to identify and respond to family violence.

Recommendation 1

That the Australian Government, working with state and territory governments through the Council of Australian Governments (COAG), develop a national risk assessment framework for use by the family law court registry. We recommend that the Australian Government consider adopting an established state and territory risk assessment framework, i.e. the Victorian Common Risk Assessment Framework (CRAF) or the NSW Domestic Violence Assessment Tool, and that any national risk assessment framework should be:

- Consistent nationally
- Multi-method, multi-informant, while placing particular emphasis on the victim's own assessment of risk
- Culturally sensitive
- Supported by appropriate training

Recommendation 2

That the Australian Government, working with state and territory governments through the COAG, develop a risk assessment framework for use by family lawyers and family dispute resolution (**FDR**) practitioners that is consistent with, and/or an adapted version of, the risk framework used by the family court registry.

Recommendation 3

That the Australian Government adequately fund training of all family law professionals on this national risk assessment framework, and this includes court registry staff, family violence services, lawyers, FDR practitioners, family report writers, and judicial officers. (See also Recommendations 17 – 21 regarding training below.)

Recommendation 4

That the Australian Government amend the *Family Law Act* (and other legislation as required) to require that upon filing of any family law application, the following risk assessment process is undertaken as soon as practicable:

- That in all cases involving dependent children, a family consultant with specified family violence training who is embedded within the court registry undertake a risk assessment with respect to child safety and provide recommendations in relation to interim care arrangements for children.
- Where family violence is alleged or identified, that a referral of any adult affected family member be made to an embedded family violence support worker within the court registry.
- Where the affected family member is Aboriginal and/or Torres Strait Islander, a referral should be made to a specialised and culturally safe legal service such as a Family Violence Prevention Legal Service (**FVPLS**) or Aboriginal and Torres Strait Islander Women's Legal Service.
- That following receipt of such a referral, the family violence support worker undertake a risk assessment in relation to the adult affected family member(s), assisting her in preparing a safety plan, and making further referrals as necessary.

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Recommendation 5

The Australian Government incorporates specialist family violence services into the family law system, and adequately funds these services, by:

- funding family violence services that provide embedded services in state and territory courts to continue to support clients with family violence issues when they move to the family law system to seek parenting or other orders; and/or
- embedding workers from specialist family violence services in the family courts and Family Relationship Centres.

Self-represented litigants

- 3. the effectiveness of arrangements which are in place in the family courts, and the family law system more broadly, to support families before the courts where one or more party is self represented, and where there are allegations or findings of family violence;*

The current family law system does not effectively support families before the courts where there is family violence and one or more party is self-represented. NTV/MRS members highlighted self-representation as a part of the system which coercive and controlling perpetrators use to avoid being held accountable for their use of violence.

In particular, the current system does not protect victims of family violence from being directly cross-examined by their abuser and NTV/MRS members suggested that men use their right to self-representation to intimidate their victims in court.

NTV/MRS supports changes to the family law system that reduce the likelihood or enabling of systems abuse by perpetrators of family violence in the Family Court. This includes our support of the proposed amendments to the *Family Law Act* which will prohibit alleged family violence perpetrators from directly cross-examining their victims in court, announced recently by the Attorney-General for Australia the Honourable George Brandis QC⁶.

Recommendation 2.

That the Australian Government introduces legislative protections to stop a victim of family violence being directly cross-examined by their abuser in all family law proceedings.

⁶ <https://www.attorneygeneral.gov.au/Mediareleases/Pages/2017/SecondQuarter/Transforming-the-Family-Law-System.aspx>

Strengthening capacity of family law professionals

5. *how the capacity of all family law professionals—including judges, lawyers, registrars, family dispute resolution practitioners and family report writers—can be strengthened in relation to matters concerning family violence; and*

Fundamental family violence training required for all family law professionals

At our National Working with Men to Tackle Family Violence conference in February 2017, Victorian Magistrate Anne Goldsbrough highlighted the need for all family and human services professionals to be able to identify and respond to family violence behaviour. She stated that she ‘frequently read court reports from psychiatrists, psychologists, and medical practitioners’ which demonstrated a severe lack of understanding of the dynamics of family violence⁷.

A number of recent inquiries and reports have noted the importance of training and professional development in building the capacity of legal professionals to understand risk and respond to family violence. We support these findings and related recommendations, which include:

The Victorian Royal Commission into Family Violence, which recommended⁸:

Recommendation 215

The Judicial College of Victoria include material on the dynamics and complexities of family violence in other general programs offered to all judicial officers and Victorian Civil and Administrative Tribunal members, in addition to the specific family violence programs and resources provided to date [within 12 months].

Recommendation 216

The Victorian Government provide funding to continue the development of comprehensive family violence learning and development training covering family violence, family law and child protection for court staff and judicial officers [within 12 months].

The Family Law Council’s final report on *Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems*, which recommended that⁹:

Recommendation 11: Family violence competency

The ability of professionals working in the family law system to understand family violence dynamics be strengthened by training programs and, more specifically:

- 1) The Australian Government develop, in partnership with other stakeholders, a learning package for professionals working in the family law system that provides both minimum competencies and in-depth and technical content designed for a range of roles, including family dispute resolution practitioners, family report writers and family lawyers (including Independent Children’s Lawyers).
- 2) There should be a specific family violence and child sexual abuse module in the National Family Law Specialist accreditation scheme at the examination phase, professional development phase and re-accreditation phase as a compulsory requirement of being accredited.
- 3) That Legal Aid Commissions across Australia should consider requiring their in-house lawyers as well all legal practitioners on their family law practitioner panels to demonstrate a sound

⁷ <http://www.heraldsun.com.au/news/victoria/magistrate-says-psychs-have-little-idea-about-family-violence/news-story/a9e95354714533804b3f5d67f84e643f>

⁸ RCFV Report, Volume VI, Chapter 40, p. 211.

⁹ FLC Final Report, pp. 14-15.

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awareness of family violence, trauma informed practice and an ability to work with victims of family violence.

Recommendation 12: Joint professional development

1) To ensure there is consistent and national training, the National Judicial College of Australia develop a continuing joint professional development program for judicial officers from the family courts and state and territory courts in which judicial officers preside over matters involving family violence to strengthen understanding of family law and family violence and the impact of trauma.

2) The Australian Government engage with relevant professional bodies within the child protection, family law and family violence systems with a view to encouraging collaboration in designing and delivering joint training opportunities aimed at strengthening cross-professional understanding.

Women's Legal Service Australia's submission to this inquiry, which recommended¹⁰:

Recommendation 18

That the Australian Government funds, and together with the Judicial College of Australia develops, a continuing joint professional development program for judicial officers from the family courts and state and territory courts in which judicial officers preside over matters involving family violence. That this training package includes content on family violence (including recognising dynamics of family violence and unconscious bias), cultural competency, working with victims of trauma, family law (for state and territory judges) and child protection. We recommend the Australian Government consider the training programs prepared by the Victorian Government in response to 2016 RCFV Report recommendations 215 and 216 in this regard.

Recommendation 19

That the Australian Government funds and develops a professional development program for all court staff from the family courts and state and territory courts in which judicial officers preside over matters involving family violence, on family violence, cultural competency and working with victims of trauma.

Recommendation 20

That the Australian Government fund and coordinate the development of a national, comprehensive family violence training program for family law legal professionals (including ICLs and FDR practitioners) and work with state and territory law institutes and bar associations to roll out the training.

Recommendation 21

The training modules for family law professionals referred to in Recommendations 18 to 20 above, include training on:

- The intersection of family law, child protection and family violence.
- Cultural competency in relation to working with Aboriginal and Torres Strait Islander clients, including training that builds an understanding of the multiple and diverse factors

¹⁰ WLSA Submission, pp. 36-37.

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contributing to the high levels of family violence in Aboriginal communities, and an understanding of Aboriginal and Torres Strait Islander family structures and child rearing practices.

- Cultural competency in relation to working with clients of a culturally or linguistically diverse background (including working with interpreters).
- Working with vulnerable clients.
- Trauma-informed practice.

Training should include working safely with men who use family violence

Understanding and responding to men's family violence, including the assessment of men's safe parenting practice in this context, is complex. In recognition of the specialised nature of perpetrator intervention work, and the broadening scope of perpetrator interventions beyond the traditional men's behaviour change program model, NTV/MRS is currently scoping a registration and accreditation framework for practitioners.

While this framework would apply specifically to specialist men's family violence practitioners, it is imperative that professionals who come into contact with male perpetrators through the integrated family violence, child protection and family law systems also have the appropriate skills to work with them safely.

Men who use family violence often present well in formal professional settings, including court and mediation processes. NTV/MRS members noted that male perpetrators use a veneer of respectability, evidence of their 'upstanding character' and community connections to invite legal professionals to collude with them and to discredit or blame their victims.

Members also highlighted the tendency for men who have used family violence to use the family law system to perpetrate further abuse. For example, through deliberately engaging in drawn out legal processes that financially devastate their victim, subpoenaing counselling records to call a victim's mental health and/or parenting capacity into question, or using the family dispute resolution process to sidestep an intervention order.

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

Training for key roles should include risk assessment and response

Family consultants are responsible for making expert recommendations regarding outcomes for children in family court proceedings and their recommendations carry significant weight. Despite this, there are no minimum practice standards and there is no formal process for training, accreditation or responding to complaints about family consultants. NTV/MRS supports the WLSA's recommendations of an accreditation scheme and oversight mechanism for practitioners, outlined in their submission to this inquiry¹¹:

¹¹ ¹¹ WLSA Submission 2017, p.41.

Recommendation 22

The Australian Government, through the Attorney General's Department and in consultation with family violence and family law experts, coordinate the development of consistent training for, an accreditation process and minimum standards for family consultants.

Recommendation 23

The Australian Government establish an oversight mechanism and complaints process to monitor and review the conduct of family consultants.

Family Dispute Resolution Practitioners (FDRPs), or family mediators, also hold a lot of responsibility in determining outcomes for women and children who have experienced family violence. The Centre for Innovative Justice report *Pathways towards accountability: mapping the journeys of perpetrators of family violence* argues that the FDRP's skills in providing a safe environment for disclosures and to screen for family violence are crucial, as are their motivational interviewing skills, necessary for engaging perpetrators around referral options¹².

NTV/MRS members who had delivered training to FDRPs on family violence identification and risk assessment suggested this can be met with resistance. One member stated, 'They didn't see it as their job to ask questions like that, in depth questions. They didn't want to open a can of worms'¹³.

This member said that FDRPs lack confidence in asking difficult questions relating to violent and controlling behaviour and suggested that risk assessment training is crucial for workers to not only learn what questions to ask, but *how* to ask them.

The Family Law Council's final report on *Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems* supported this assertion, noting a potential for over-emphasis on screening tools and highlighting the importance of training in this area. The report cited Women's Legal Service Tasmania, who proposed that 'an experienced, well-trained workforce is more important to the task of identifying risk than the use of any particular tool'¹⁴.

Child contact centres are another importance source of assessment and intervention for family violence perpetrators. However, child contact centre practitioners, have little or no training in assessing and intervening when perpetrators use supervised contacts to engage in emotionally abusive or manipulative behaviour – either directly to their children or indirectly through the children, targeted at their mother.

Recommendation 3

That the Australian Government funds and develops a family violence professional development program for judicial officers and court staff from the family courts and state and territory courts in which judicial officers preside over matters involving family violence.

¹² CIJ Report 2016, p. 41.

¹³ Member consultation, 18 May 2017.

¹⁴ FLC Final Report, p. 34.

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Recommendation 4.

That the Australian Government funds and coordinates the development of a national, comprehensive family violence training program for family law legal professionals (including ICLs and FDRPs) and work with state and territory law institutes and bar associations to roll out the training.

Recommendation 5.

That all family violence training rolled out in the family law system includes specific content on recognising dynamics of family violence, understanding system abuse and avoiding collusion with perpetrators.

Recommendation 6.

That the training program for family law legal professionals (including family consultants, FDRPs and child contact centre practitioners) includes specific content on identifying and assessing family violence risk.

A potential national approach to administration and enforcement of intervention orders for personal protection

6. *the potential for a national approach for the administration and enforcement of intervention orders for personal protection, however described.*

National administration and enforcement of State Domestic Violence Orders (DVOs)

The process to develop a national database for Domestic Violence Orders under the National Plan to Reduce Violence Against Women and their Children has been underway since 2014. The NSW and Victorian Governments have implemented legislation to enable enforcement of Domestic Violence Orders (DVOs) issued by State and Territory courts.

The process to establish information sharing arrangements for relevant State and Territory DVOs needs to be integrated with the family law system. Family law system professionals should have access to relevant information, which will often include information from Children's Courts.

There is considerable variation in State and Territory policing approaches to enforcement of DVOs. NTV/MRS, which operates Men's Referral Service across NSW, Tasmania and Victoria, has varied experience of the knowledge, skill, processes, resources and commitment of State police to safe and effective practice in working with domestic and family violence. There are also varying jurisdictional arrangements for DVOs across States and Territories. For example, there are specialist domestic and family violence courts in some jurisdictions, with varying powers.

This inconsistency may benefit from agreements to a national approach to enforcement. However, an agreed national approach to enforcement and administration of DVOs should be based on best practice and not preclude innovative practice in any jurisdiction.

Recommendation 7.

That any national approach to administration and enforcement of intervention orders is based on best practice.

Administration and enforcement of personal protection injunctions

Recent proposed changes to the *Family Law Act 1975* to criminalise breaches of personal protection injunctions needs to be considered alongside the existing criminal justice arrangements relating to State and Territory DVOs.

The existence of personal protection injunctions alongside other State and Territory protection orders for family violence may increase the complexity of a situation for a family. NTV/MRS would recommend that the family law system is supported to participate in information sharing arrangements relating to family violence in each State and Territory in order to ensure an integrated and efficient process for families.

NTV/MRS supports Women's Legal Services Australia's recommendations (recommendations 26, 27 & 28) regarding these proposed changes and the suggested national administration and enforcement approach:

Recommendation 26

That the Australian Government fund training for state and territory police officers on family law and family violence to ensure there is a consistent national understanding of these matters. Training should include the formation of a national risk assessment and response framework that

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can be used by police nationally when responding to a family violence incident. Such a framework could, for example, draw upon the Victorian CRAF or the NSW DVSAT.

Recommendation 27

That the Australian Government work through COAG to encourage all state and territory police to introduce and enact consistent (or alternatively one national) *Code of Practice for the Investigation of Family Violence*, as in Victoria. That that/those Code(s) of Practice require that police receive appropriate and effective cultural awareness training for work with both Aboriginal and Torres Strait Islander and CALD communities.

Recommendation 28

That the Australian Government clarify the interaction between the criminalisation of breaches of family law safety injunctions and the proposed national DVO scheme.

A national approach to administration and enforcement of these changes may be beneficial once these legal issues are clarified, as many State and Territory police are unfamiliar with their powers under the *Family Law Act*, and lack resources and expertise to exercise these powers. NTV/MRS would support the development of an education strategy for State and Territory police on family law matters in order to improve the accountability measures in both State and Commonwealth jurisdictions.